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## **Asylum Act** **(AsylA)**

of 26 June 1998 (Status as of 1 January 2020)

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*The Federal Assembly of the Swiss Confederation,*  
based on Article 121 of the Federal Constitution<sup>1,2</sup>  
and having considered the Federal Council Dispatch of 4 December 1995<sup>3</sup>,  
*decrees:*

### **Chapter 1 Principles**

#### **Art. 1** Subject matter

This Act regulates:

- a. the granting of asylum and the legal status of refugees in Switzerland;
- b. the temporary protection of persons in need of protection in Switzerland and their return.

#### **Art. 2** Asylum

<sup>1</sup> In response to an application, Switzerland grants asylum to refugees in accordance with this Act.

<sup>2</sup> Asylum includes the protection and the legal status granted in Switzerland to persons on the basis of their refugee status. It includes the right to stay in Switzerland.

#### **Art. 3** Definition of the term refugee

<sup>1</sup> Refugees are persons who in their native country or in their country of last residence are subject to serious disadvantages or have a well-founded fear of being exposed to such disadvantages for reasons of race, religion, nationality, membership of a particular social group or due to their political opinions.

AS 1999 2262

<sup>1</sup> SR 101

<sup>2</sup> Amended by No I 1 of the FA of 1 Oct. 2010 on the Coordination of Asylum and Extradition Proceedings, in force since 1 Apr. 2011 (AS 2011 925; BBl 2010 1467).

<sup>3</sup> BBl 1996 II 1

<sup>2</sup> Serious disadvantages include a threat to life, physical integrity or freedom as well as measures that exert intolerable psychological pressure. Motives for seeking asylum specific to women must be taken into account.

<sup>3</sup> Persons who are subject to serious disadvantages or have a well-founded fear of being exposed to such disadvantages because they have refused to perform military service or have deserted are not refugees. The provisions of the Convention of 28 July 1951<sup>4</sup> relating to the Status of Refugees are reserved.<sup>5</sup>

<sup>4</sup> Persons who claim grounds based on their conduct following their departure that are neither an expression nor a continuation of a conviction already held in their native country or country of origin are not refugees. The provisions of the Convention of Refugee Convention are reserved.<sup>6</sup>

#### **Art. 4** Granting temporary protection

Switzerland may grant temporary protection to persons in need of protection as long as they are exposed to a serious general danger, in particular during a war or civil war as well as in situations of general violence.

#### **Art. 5** Ban on refoulement

<sup>1</sup> No person may be forced in any way to return to a country where their life, physical integrity or freedom are threatened on any of the grounds stated in Article 3 paragraph 1 or where they would be at risk of being forced to return to such a country.

<sup>2</sup> The ban on refoulement may not be invoked if there are substantial grounds for the assumption that, because the person invoking it has a legally binding conviction for a particularly serious felony or misdemeanour, they represent a threat to Switzerland's security or are to be considered dangerous to the public.

#### **Art. 6<sup>7</sup>** Procedural principles

Procedures are governed by the Administrative Procedure Act of 20 December 1968<sup>8</sup> (APA), the Federal Administrative Court Act of 17 June 2005<sup>9</sup> and the Federal Supreme Court Act of 17 June 2005<sup>10</sup>, unless this Act provides otherwise.

<sup>4</sup> SR **0.142.30**

<sup>5</sup> Inserted by No II of the FA of 28 Sept 2012 (Emergency Amendments to the Asylum Act) (AS **2012** 5359; BBl **2010** 4455, **2011** 7325). Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>6</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>7</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>8</sup> SR **172.021**

<sup>9</sup> SR **173.32**

<sup>10</sup> SR **173.110**

## Chapter 2 Asylum Seekers

### Section 1 General Provisions

#### Art. 6a<sup>11</sup> Competent authority

<sup>1</sup> The State Secretariat for Migration (SEM)<sup>12</sup> decides on granting or refusing to grant asylum as well as on removal from Switzerland.

<sup>2</sup> The Federal Council shall identify states in addition to the EU/EFTA states in which on the basis of its findings:<sup>13</sup>

- a. there is protection against persecution, as a safe native country or country of origin;
- b. there is efficient protection against refoulement as defined in Article 5 paragraph 1, as a safe third country.

<sup>3</sup> It shall periodically review decisions made in terms of paragraph 2.

<sup>4</sup> It shall provide the competent committees of the Federal Assembly with the list of states in accordance with paragraph 2 letter a for consultation prior to any amendment and at least once each year.<sup>14</sup>

#### Art. 7 Proof of refugee status

<sup>1</sup> Any person who applies for asylum must prove or at least credibly demonstrate their refugee status.

<sup>2</sup> Refugee status is credibly demonstrated if the authority regards it as proven on the balance of probabilities.

<sup>3</sup> Cases are not credible in particular if they are unfounded in essential points or are inherently contradictory, do not correspond to the facts or are substantially based on forged or falsified evidence.

#### Art. 8 Duty to cooperate

<sup>1</sup> Asylum seekers are obliged to cooperate in establishing the facts. They must in particular:

- a. reveal their identity;
- b.<sup>15</sup> hand over their travel documents and identity papers;

<sup>11</sup> Inserted by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>12</sup> The name of this administrative unit was amended by Art. 16 para. 3 of the Publications Ordinance of 17 Nov. 2004 (AS **2004** 4937), in force since 1 Jan. 2015. This amendment has been made throughout the text.

<sup>13</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>14</sup> Inserted by Annex No 1 of the FA of 14 Dec. 2018 (Procedural Arrangements and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>15</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

- c. state at the interview why they are seeking asylum;
  - d. indicate any evidence in full and submit this without delay or, as far as this seems reasonable, endeavour to acquire such evidence within an appropriate period;
  - e.<sup>16</sup> cooperate in providing biometric data;
  - f.<sup>17</sup> undergo a medical examination ordered by SEM (Art. 26a).
- <sup>2</sup> Asylum seekers may be required to arrange for the translation of foreign-language documents into one of Switzerland's official languages.
- <sup>3</sup> Asylum seekers who reside in Switzerland are obliged make themselves available to the federal and cantonal authorities during the procedure. They must inform the cantonal or communal authority competent under cantonal legislation (the cantonal authority) of their address and any change to this immediately.
- <sup>3bis</sup> Persons, who fail to cooperate without valid reason or fail to make themselves available for more than 20 days lose their right to have the procedure continued. This also applies to persons who fail for more than 5 days to make themselves available to the asylum authorities in a federal centre without a valid reason. Their applications are cancelled without a formal decision being taken. No new application may be filed within three years. The foregoing is subject to compliance with the Refugee Convention of 28 July 1951<sup>18,19</sup>
- <sup>4</sup> In the event of an enforceable removal ruling being issued, the persons concerned are obliged to cooperate in obtaining valid travel documents.

## Art. 9 Search

<sup>1</sup> The competent authority may search asylum seekers who are accommodated in a federal centre<sup>20</sup> or in private or collective accommodation and the possessions they have with them for travel and identity documents as well as dangerous objects, drugs and assets of dubious origin.<sup>21</sup>

<sup>2</sup> Asylum seekers may only be searched by members of the same sex.

<sup>16</sup> Inserted by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBI **2002** 6845).

<sup>17</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBI **2014** 7991).

<sup>18</sup> SR **0.142.30**

<sup>19</sup> Inserted by No I of the FA of 14 Dec. 2012 (AS **2013** 4375 5357; BBI **2010** 4455, **2011** 7325). Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBI **2014** 7991).

<sup>20</sup> Term in accordance with No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBI **2014** 7991). This change has been made throughout the text.

<sup>21</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBI **2002** 6845).

**Art. 10** Seizure and confiscation of documents

<sup>1</sup> SEM shall place asylum seekers' travel documents and identity papers on file.<sup>22</sup>

<sup>2</sup> Authorities and government offices shall seize and pass on to SEM travel documents, identity papers or other documents which may indicate the identity of person who has applied for asylum in Switzerland. Paragraph 5 applies to recognised refugees.<sup>23</sup>

<sup>3</sup> If the authority or government office seizing documents in accordance with paragraph 2 examine these with regard to their authenticity, SEM must be notified of the results of this examination.

<sup>4</sup> Forged and falsified documents as well as genuine documents which have been misused may be confiscated by SEM or by the appellate authority or passed on to the agent.

<sup>5</sup> Passports or identity papers that have been issued to refugees recognised in Switzerland by their native country must be passed on to SEM.<sup>24</sup>

**Art. 11** Evidentiary procedure

The asylum seeker may not express a view on the decision of the authority to conduct an evidentiary procedure to establish the facts of the case.

**Art. 12<sup>25</sup>** Notification and service when living in a canton

<sup>1</sup> Any ruling or communication sent to the last known address of asylum seekers or of their agents becomes legally binding on expiry of the statutory seven-day time-limit for collection, even if the persons concerned do not learn of this until later due to a special agreement with Swiss Post or if the delivery is returned as undeliverable.

<sup>2</sup> If the asylum seeker is represented by several agents and if these do not indicate a joint address for service, the authority shall give notification of its rulings or direct communications to the first agent authorised by the asylum seeker.

<sup>3</sup> Notification may be given of rulings verbally and a summary statement of grounds provided. Verbal notification must be recorded in minutes that include a statement of the grounds. A copy of the minutes must be given to the asylum seeker or to his or her agent.

<sup>22</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>23</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>24</sup> Inserted by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>25</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

**Art. 12a<sup>26</sup>** Notification and service in federal centres

<sup>1</sup> In federal centres, notification of rulings is given and documents are served by hand. If the asylum seeker has disappeared, notification and service are governed by Article 12.

<sup>2</sup> If an asylum seeker has been assigned a legal representative, notification of rulings shall be given to and documents shall be served on the service provider tasked with providing legal representation. The provider shall inform the legal representative assigned of the notification or service on the same day as it is received.

<sup>3</sup> If an asylum seeker has not been assigned a legal representative, notification of rulings shall be given to and documents shall be served on the asylum seeker. An agent for the asylum seeker shall be informed immediately of the notification or service.

<sup>4</sup> Verbal notification and summary justification are governed by Article 12 paragraph 3.

**Art. 13<sup>27</sup>** Notification and service in procedures at airports and in urgent cases

<sup>1</sup> The competent authorities may also notify persons applying for asylum at the border or at the border control at a Swiss airport (Art. 21–23) of a ruling by providing them with a signed copy of the ruling that has been transmitted by fax. The persons concerned must confirm in writing that they have received the ruling; in the absence of such confirmation, the competent authority shall formally record that the ruling has been received. Article 11 paragraph 3 of the APA<sup>28</sup> does not apply. Any agent shall be informed of the notification.

<sup>2</sup> Article 12a applies mutatis mutandis to procedures at airports.

<sup>3</sup> In other urgent cases, SEM may authorise a cantonal authority, a Swiss diplomatic mission or a consular representation abroad (Swiss representation) to notify those concerned of a ruling by providing them with a signed copy of the ruling that has been transmitted by fax.

**Art. 14<sup>29</sup>** Issues relative to the procedure for foreign nationals

<sup>1</sup> From filing an asylum application to departure from Switzerland in accordance with a legally binding removal order, following the withdrawal of an asylum application, or until the ordering of a substitute measure in the event that removal cannot be enforced, persons seeking asylum may not initiate any procedure for the granting of a residence permit under the law on foreign nationals unless they are entitled to be issued with such a permit.

<sup>26</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>27</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>28</sup> SR **172.021**

<sup>29</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2007 (AS **2006** 4745 4767; BBl **2002** 6845).

<sup>2</sup> The canton may with consent of SEM grant a person for whom it is responsible in terms of this Act a residence permit if:<sup>30</sup>

- a. the person concerned has been a resident for a minimum of five years in Switzerland since filing the asylum application;
- b. the place of stay of the person concerned has always been known by the authorities;
- c. in light of their advanced stage of integration, there is a case of serious personal hardship; and
- d.<sup>31</sup> there are no grounds for revocation under Article 62 paragraph 1 of the Foreign Nationals and Integration Act of 16 December 2005<sup>32</sup> (FNIA)<sup>33</sup>.

<sup>3</sup> If the canton wishes to take advantage of this opportunity, it shall inform SEM without delay.

<sup>4</sup> The person concerned shall only have party status during SEM's consent procedure.

<sup>5</sup> Pending proceedings for the granting of a residence permit become irrelevant with the filing of an asylum application.

<sup>6</sup> Residence permits remain valid and may be extended in accordance with the provisions of the law on foreign nationals.

#### **Art. 15** Intercantonal offices

The cantons may establish intercantonal offices to fulfil the duties assigned to them in accordance with this Act, in particular for the hearing, preparation of the decision and the enforcement of any removal order.

#### **Art. 16** Procedural language

<sup>1</sup> Submissions may be made to the federal authorities in any official language. The Federal Council may require submissions made in federal centres by asylum seekers who are represented by an agent to be in the official language of the canton where the federal centre is located.<sup>34</sup>

<sup>2</sup> SEM rulings or interim rulings are issued in the official language spoken at the asylum seeker's place of residence.<sup>35</sup>

<sup>30</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>31</sup> Inserted by No I of the FA of 14 Dec. 2012 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325). Amended by No IV 4 of the FA of 19 June 2015 (Amendments to the Law of Criminal Sanctions), in force since 1 Jan. 2018 (AS **2016** 1249; BBl **2012** 4721).

<sup>32</sup> SR **142.20**

<sup>33</sup> The title was amended on 1 Jan. 2019 pursuant to Art. 12 para. 2 of the Publications Act of 18 June 2004 (SR **170.512**). This amendment has been made throughout the text.

<sup>34</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>35</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>3</sup> SEM may derogate from paragraph 2 if:

- a. the asylum seeker or his or her legal representative has a good command of a different official language;
- b. this is required to deal with applications efficiently and on time taking account of the number of applications received and the staff situation;
- c. the asylum seeker is allocated to a canton with a different official language by a federal centre.<sup>36</sup>

#### **Art. 17** Special procedural provisions

<sup>1</sup> The provision of the Administrative Procedure Act of 20 December 1968<sup>37</sup> on legal holidays does not apply to asylum proceedings.

<sup>2</sup> The Federal Council shall issue supplementary provisions on the asylum procedure, in particular to give consideration to the special situation of women and minors in the procedure.

<sup>2bis</sup> Applications for asylum made by unaccompanied minors shall be processed as a priority.<sup>38</sup>

<sup>3</sup> The interests of unaccompanied minor asylum seekers are taken care of for the duration of the procedure:

- a. in a federal centre or at an airport by a person nominated as the trusted person by the legal representative; this person is responsible for coordination with the cantonal authorities; or
- b. by a trusted person to be nominated immediately by the competent cantonal authorities, following allocation to the canton.<sup>39</sup>

<sup>3bis</sup> If there are indications that an alleged foreign minor has reached the age of majority, SEM may arrange an expert report on that person's age.<sup>40</sup>

<sup>4</sup> ...<sup>41</sup>

<sup>5</sup> On notification of a decision under Article 23 paragraph 1, 31a or 111c, SEM shall send the asylum seeker or his or her agent the case files at the same time if enforcement of the removal order has been ordered.<sup>42</sup>

<sup>36</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>37</sup> SR **172.021**

<sup>38</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>39</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>40</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>41</sup> Inserted by No I of the FA of 16 Dec. 2005 (AS **2006** 4745, BBl **2002** 6845). Repealed by No I of the FA of 25 Sept. 2015, with effect from 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>42</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).



<sup>6</sup> The Federal Council shall determine the role, responsibilities and duties of the trusted person.<sup>43</sup>

**Art. 17a<sup>44</sup>** Fees for services

SEM may charge third parties fees and outlays for services.

**Art. 17b<sup>45</sup>**

## **Section 2 Application for Asylum and Entry**

**Art. 18** Application for asylum

Any statement a person makes indicating that they are seeking protection in Switzerland from persecution elsewhere shall be regarded as an application for asylum.

**Art. 19<sup>46</sup>** Filing an application

<sup>1</sup> The application for asylum must be filed at a border control point at a Swiss airport, on entry at an open border crossing or in a federal centre. Article 24a paragraph 3 is reserved.

<sup>2</sup> An application may only be filed by a person who is at the Swiss border or on Swiss territory.

**Art. 20<sup>47</sup>**

<sup>43</sup> Inserted by Annex No I 2 of the FD of 26 Sept. 2014 (Adoption of R[EU] No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection), in force since 1 July 2015 (AS 2015 1841; BBl 2014 2675).

<sup>44</sup> Inserted by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845).

<sup>45</sup> Inserted by No I of the FA of 16 Dec. 2005 (AS 2006 4745 4767; BBl 2002 6845). Repealed by No I of the FA of 14 Dec. 2012, with effect from 1 Feb. 2014 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325).

<sup>46</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>47</sup> Repealed by No I of the FA of 25 Sept. 2015, with effect from 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

**Art. 21**<sup>48</sup> Application for asylum made at the border, following detention in the vicinity of the border, on illegal entry or within Switzerland

<sup>1</sup> Persons who request asylum at the border or following their detention for illegal entry in the vicinity of the border or within Switzerland shall be assigned to a federal centre by the competent authorities. Article 24a paragraph 3 is reserved.<sup>49</sup>

<sup>2</sup> SEM shall verify its competence to carry out the asylum procedure, taking account of the provisions of the Dublin Association Agreements.

<sup>3</sup> The Dublin Association Agreements are listed in Annex 1.

**Art. 22**<sup>50</sup> Procedure at the airport

<sup>1</sup> In the case of persons who apply for asylum at a Swiss airport, the competent authority shall record their personal details and take their fingerprints and photographs. It may record additional biometric data and summarily question asylum seekers about their itinerary and the reasons for leaving their country.<sup>51</sup>

<sup>1bis</sup> SEM shall verify its competence to carry out the asylum procedure, taking account of the provisions of the Dublin Association Agreements.<sup>52</sup>

<sup>1ter</sup> It shall authorise entry if Switzerland is competent to carry out the asylum procedure in accordance with Regulation (EU) No 604/2013<sup>53</sup> and the asylum seeker:<sup>54</sup>

- a. appears to be at risk for any of the grounds stated in Article 3 paragraph 1 or under threat of inhumane treatment in the country from which they have directly arrived; or

<sup>48</sup> Amended by Annex No 1 of the FA of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS 2008 5407 5405 Art. 2 let. c; BBl 2007 7937).

<sup>49</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>50</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845).

<sup>51</sup> Amended by Annex No 1 of the FA of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS 2008 5407 5405 Art. 2 let. c; BBl 2007 7937).

<sup>52</sup> Inserted by Annex No 1 of the FA of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS 2008 5407 5405 Art. 2 let. c; BBl 2007 7937).

<sup>53</sup> Council Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national; (new version), Amended by OJ L 180 of 29.6.2013, p. 31.

<sup>54</sup> Amended by Annex No I 2 of the FD of 26 Sept. 2014 (Adoption of R[EU] No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection), in force since 1 July 2015 (AS 2015 1841; BBl 2014 2675).

- b. establishes that the country from which they have directly arrived would force them, in violation of the ban on refoulement, to return to a country in which they appear to be at risk.<sup>55</sup>

<sup>2</sup> If, on the basis of the measures in accordance with paragraph 1 and the verification in accordance with paragraph 1<sup>bis</sup>, it is not immediately possible to determine whether the requirements for an entry permit in accordance with Article 1<sup>ter</sup> are fulfilled, entry shall be temporarily denied.<sup>56</sup>

<sup>2bis</sup> In order to avoid cases of hardship, the Federal Council may specify the additional cases in which entry will be authorised.<sup>57</sup>

<sup>3</sup> If SEM denies entry to asylum seekers, it shall provide them with a place of stay and appropriate accommodation. It bears the cost of the accommodation. Airport operators are responsible for providing reasonably priced accommodation.<sup>58</sup>

<sup>3bis</sup> The Confederation shall guarantee free counselling and legal representation to persons who submit a request for asylum at a Swiss airport, analogously to the provisions of Articles 102f–102k.<sup>59</sup>

<sup>4</sup> The asylum seeker must be informed about the decision on denial of entry and on the allocation of a place of stay within two days of filing the application and be notified of their rights of appeal. Prior to this, the asylum seeker shall be granted a hearing in accordance with the law.<sup>60</sup>

<sup>5</sup> Asylum seekers may be held at the airport or exceptionally at another location for a maximum of 60 days. On the issue of a legally binding removal order, asylum seekers may be transferred to a prison specifically for deportees.

<sup>6</sup> SEM may thereafter allocate asylum seekers to a canton or a federal centre. In all other cases, the further procedure at the airport is regulated by Articles 23, 29, 36 and 37.<sup>61</sup>

<sup>55</sup> Inserted by Annex No 1 of the FA of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS **2008** 5407 5405 Art. 2 let. c; BBl **2007** 7937).

<sup>56</sup> Amended by Annex No 1 of the FA of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS **2008** 5407 5405 Art. 2 let. c; BBl **2007** 7937).

<sup>57</sup> Inserted by Annex No 1 of the FA of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS **2008** 5407 5405 Art. 2 let. c; BBl **2007** 7937).

<sup>58</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325). See also the transitional provisions to this Amendment at the end of the text.

<sup>59</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>60</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>61</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

**Art. 23**<sup>62</sup> Decisions at the airport

<sup>1</sup> If SEM does not grant entry into Switzerland, it may dismiss or reject the application for asylum.<sup>63</sup>

<sup>2</sup> Notification must be given of the decision within 20 days of the application being filed. If the procedure lasts longer, SEM shall allocate the asylum seeker to a canton or a federal centre.<sup>64</sup>

**Section 2a Federal Centres**<sup>65</sup>**Art. 24**<sup>66</sup> Federal centres

<sup>1</sup> The Confederation shall establish centres, which are managed by SEM. The Confederation shall follow the principles of expediency and cost efficiency.

<sup>2</sup> The Confederation shall involve the cantons and communes in establishing the centres from an early stage.

<sup>3</sup> Asylum seekers shall be accommodated in a federal centre from submission of a request for asylum:

- a. under the accelerated procedure, until they are granted asylum or temporary admission, or until they leave the country;
- b. under the Dublin procedure, until they leave the country;
- c. under the extended procedure, until they are allocated to a canton.

<sup>4</sup> The maximum duration of stay in federal centres is 140 days. Allocation to a canton shall take place after this period has elapsed.

<sup>5</sup> A reasonable extension may be made to this period if it allows the asylum procedure to be concluded promptly or enables removal. The Federal Council shall determine the detailed rules for extending a stay in federal centres beyond the end of this period.

<sup>6</sup> Allocation to a canton may take place before the end of the period, in particular if there is a large and rapid rise in the number of asylum requests. Distribution and allocation are governed by Article 27.

<sup>62</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>63</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>64</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>65</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>66</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

**Art. 24a<sup>67</sup>** Special centres

<sup>1</sup> Asylum seekers who pose a significant danger to public safety and order or who significantly disrupt the operation and security of federal centres shall be accommodated in special centres, which shall be established and managed by SEM or by cantonal authorities. A person accommodated in a special centre shall be issued with a restriction or exclusion order under Article 74 paragraph 1<sup>bis</sup> FNIA<sup>68</sup>; the procedure is governed by Article 74 paragraphs 2 and 3 FNIA.

<sup>2</sup> Asylum seekers allocated to a canton may be accommodated under the same conditions in the special centres. The Confederation and the cantons shall share the costs proportionally to their use of the centres.

<sup>3</sup> The same procedures as in federal centres under Article 24 may be carried out in special centres; an exception is the submission of a request for asylum.

<sup>4</sup> The handling of requests for asylum by persons in special centres and the implementation of any removal decisions shall be prioritised.

**Art. 24b<sup>69</sup>** Operation of the centres

<sup>1</sup> SEM may task third parties with ensuring the safe operation of federal centres. These third parties shall be bound by the same confidentiality requirement as federal personnel.

<sup>2</sup> The Federal Department of Justice and Police (FDJP) shall adopt provisions which ensure that procedure is swift and the operation is orderly in the federal centres.

**Art. 24c<sup>70</sup>** Temporary use of federal military buildings and installations

<sup>1</sup> Federal military buildings and installations may be used without cantonal or communal authorisation to accommodate asylum seekers for a maximum of three years provided the change in use does not require substantial structural measures and there is no significant change in the occupancy of the installation or building.

<sup>2</sup> The following in particular do not constitute substantial structural measures within the meaning of paragraph 1:

- a. normal maintenance work on buildings and installations;
- b. minor structural alterations;
- c. the installation of equipment of secondary importance such as sanitary facilities or water and electricity connections;
- d. movable structures.

<sup>67</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>68</sup> SR 142.20

<sup>69</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>70</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 Jan. 2018 (AS 2016 3101, 2017 6171; BBl 2014 7991).

<sup>3</sup> The same buildings or installations in terms of paragraph 1 may only be used again after a period of two years has elapsed, unless the canton and the commune concerned agree to dispense with this period; the exceptions in accordance with Article 55 are reserved.

<sup>4</sup> After consulting the canton and commune concerned, the Confederation shall give notice to them of any change in use at the latest 60 days before the accommodation comes into operation.

**Art. 24d<sup>71</sup>** Accommodation in cantonal and communal centres

<sup>1</sup> Asylum seekers may be accommodated in a centre run by a canton or commune if there are not sufficient places in the federal centres under Article 24. The agreement of the canton concerned is required for accommodating asylum seekers in a communal centre.

<sup>2</sup> The canton or the commune concerned:

- a. shall ensure suitable accommodation, care and activities for the asylum seekers;
- b. shall provide social assistance or emergency aid;
- c. shall provide medical care and primary school education for children;
- d. shall take the security measures necessary to ensure orderly operation.

<sup>3</sup> The canton or the commune concerned may delegate the tasks listed in paragraph 2 to third parties, either partially or in full.

<sup>4</sup> The provision of social assistance and emergency aid is governed by cantonal law.

<sup>5</sup> The Confederation shall make federal contributions by agreement to the canton or commune concerned to compensate for the administrative, staff and other costs which arise from fulfilling the tasks listed in paragraph 2. The compensation shall be fixed as a lump sum. In exceptional cases, the contributions may be fixed on the basis of expenditure, especially in the case of non-recurring costs.

<sup>6</sup> The other provisions concerning federal centres apply *mutatis mutandis* to cantonal and communal centres. In the centres defined in paragraph 1, the same procedures may be carried out as in federal centres as defined in Article 24.

**Art. 24e<sup>72</sup>** Additional measures

The Confederation and the cantons shall take measures to respond promptly to changes in the number of requests for asylum with the resources required, in particular regarding accommodation, staff and finance, or with further measures.

<sup>71</sup> Inserted by No 1 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBI **2014** 7991).

<sup>72</sup> Inserted by No 1 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBI **2014** 7991).

### Section 3 Procedure at First Instance

#### Art. 25<sup>73</sup>

#### Art. 25a<sup>74</sup>

#### Art. 26<sup>75</sup> Preparatory phase

<sup>1</sup> After the application for asylum has been filed, the preparatory phase begins. Under the Dublin procedure, it lasts no more than 10 days, and under other procedures no more than 21 days.

<sup>2</sup> In the preparatory phase, SEM records the asylum seekers' personal details and normally takes their fingerprints and photographs. It may collect additional biometric data, prepare reports on a person's age (Art. 17 para. 3<sup>bis</sup>), verify evidence and travel and identity documents and make enquiries specific to origin and identity.

<sup>3</sup> SEM shall inform asylum seekers of their rights and obligations in the asylum procedure. It may question the asylum seekers about their identity and their itinerary, and summarily about the reasons for leaving their country. At this point, SEM may also ask about any commercial human trafficking. It shall discuss with the asylum seeker whether there is sufficient justification for their request for asylum. If this is not the case and if the asylum seeker withdraws the request, the request shall be cancelled without a formal decision being taken and preparations made for the return journey.

<sup>4</sup> The comparison of data under Article 102a<sup>bis</sup> paragraphs 2–3, the examination of fingerprints under Article 102a<sup>ter</sup> paragraph 1 and the request for admission or readmission to the competent state bound by one of the Dublin Association Agreements is made during the preparatory phase.

<sup>5</sup> SEM may delegate the tasks under paragraph 2 to third parties. Third parties are subject to the same duty of confidentiality as federal personnel.

#### Art. 26a<sup>76</sup> Establishing medical condition

<sup>1</sup> Immediately after filing their application, but at the latest at the interview on the grounds for asylum under Article 36 paragraph 2 or being granted a hearing under Article 36 paragraph 1, asylum seekers must state any serious health problems of

<sup>73</sup> Repealed by No I of the FA of 16 Dec. 2005, with effect from 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845).

<sup>74</sup> Inserted by No I of the FA of 14 Dec. 2012 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325). Repealed by No I of the FA of 25 Sept. 2015, with effect from 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>75</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>76</sup> Originally Art. 26<sup>bis</sup>. Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325). See also the transitional provisions to this Amendment at the end of the text.

relevance to the asylum and removal procedures of which they were aware when filing the application for asylum.

<sup>2</sup> SEM appoints a competent medical specialist to investigate matters contended under paragraph 1. Article 82a applies mutatis mutandis. SEM may delegate the required medical duties to a third party.

<sup>3</sup> Medical problems that are claimed later or established by another medical specialist may be taken into account in the asylum and removal procedures if they are proven. The provision of prima facie evidence suffices by way of exception if there are excusable grounds for the delay or proof cannot be provided in the case in question for medical reasons. SEM may call in an independent medical examiner.

**Art. 26b<sup>77</sup>** Dublin procedure

The procedure with view to a decision under Article 31a paragraph 1 letter b begins with submission of a request to a Dublin state for the admission or readmission of the asylum seeker. It lasts until the asylum seeker is transferred to the Dublin state responsible or until it is terminated and a decision is taken about implementing an accelerated or extended procedure.

**Art. 26c<sup>78</sup>** Accelerated procedure

After the preparatory phase, the accelerated procedure shall commence immediately with an interview on the grounds for asylum or the granting of a hearing under Article 36. The Federal Council shall lay down the individual steps of the procedure.

**Art. 26d<sup>79</sup>** Extended procedure

If it is clear after the interview on the grounds for asylum that a decision cannot be made under the accelerated procedure, namely because further investigation is required, the asylum seeker shall be assigned to the extended procedure and be allocated to a canton under Article 27.

**Art. 27** Distribution and allocation to the cantons<sup>80</sup>

<sup>1</sup> The cantons shall reach an agreement on the distribution of asylum seekers.

<sup>1bis</sup> The special services provided by cantons where federal centres or airports are located shall be appropriately taken into account in the distribution of asylum seekers.<sup>81</sup>

<sup>77</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>78</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>79</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>80</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>81</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).



<sup>2</sup> If the cantons cannot reach an agreement, the Federal Council shall, after hearing them, set out the criteria for distribution in an ordinance.

<sup>3</sup> SEM shall allocate asylum seekers to the cantons (cantons of allocation).<sup>82</sup> In doing so, it shall take account of the interests of the cantons and of the asylum seekers that are worthy of protection. Asylum seekers may only contest the decision on allocation if it violates the principle of family unity.

<sup>4</sup> Persons whose removal has been ordered and in respect of whom a decision on asylum has become legally binding in a federal centre or whose request for asylum was cancelled in a federal centre<sup>83</sup> shall not be allocated to a canton.

**Art. 28** Allocation of a place of stay and accommodation

<sup>1</sup> SEM or the cantonal authorities may allocate asylum seekers to a place of stay.

<sup>2</sup> They may allocate asylum seekers accommodation, and in particular accommodate them as a group. The cantons shall ensure that this procedure is operated efficiently; they may lay down provisions and take measures.<sup>84</sup>

**Art. 29**<sup>85</sup> Interview on the grounds for asylum

<sup>1</sup> SEM shall interview asylum seekers on their grounds for asylum; the interview shall take place in a federal centre.

<sup>1bis</sup> If necessary, it shall call in an interpreter.

<sup>2</sup> The asylum seekers may be accompanied additionally at their own expense a person and an interpreter of their choice who are not themselves asylum seekers.

<sup>3</sup> Minutes shall be taken of the interview. They shall be signed by those participating in the interview.

**Art. 29a**<sup>86</sup> Cooperation in establishing the circumstances

The Federal Council may enter into agreements with third countries and international organisations on cooperation in establishing the circumstances of cases. It may in particular enter into agreements on a mutual exchange of information in order to establish the motives for seeking asylum of an asylum seeker in his or her native country or country of origin, his or her itinerary and his or her stay in a third country.

<sup>82</sup> Amended by No I 2 of the FA of 19 Dec. 2003 on the Budgetary Relief Programme 2003, in force since 1 Apr. 2004 (AS **2004** 1633; BBl **2003** 5615).

<sup>83</sup> Inserted by No I 2 of the FA of 19 Dec. 2003 on the Budgetary Relief Programme 2003, (AS **2004** 1633; BBl **2003** 5615). Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>84</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>85</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>86</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

**Art. 30**<sup>87</sup>**Art. 31**<sup>88</sup> Preparation of decisions by the cantons

The FDJP may with the consent of the cantons determine that cantonal officials prepare the decisions on behalf of and under the supervision of SEM.

**Art. 31a**<sup>89</sup> SEM decisions

<sup>1</sup> SEM shall normally dismiss an application for asylum if the asylum seeker:

- a. can return to a safe third country under Article 6a paragraph 2 letter b in which he or she was previously resident;
- b. can travel to a third country that is responsible under an international agreement for conducting the asylum and removal procedures;
- c. can return to a third country in which he or she was previously resident;
- d. can continue to a third country for which he or she holds a visa and in which he or she can seek protection;
- e. can continue to a third country in which persons with whom he or she has a close relationship or dependants live;
- f.<sup>90</sup> can be removed to their native country or country of origin under Article 31b.

<sup>2</sup> Paragraph 1 letters c–e do not apply if there are indications in the case in question that the third country does not provide effective protection against refoulement in terms of Article 5 paragraph 1.

<sup>3</sup> SEM shall dismiss an application that fails to meet the requirements of Article 18. This applies in particular if the application for asylum is made exclusively for economic or medical reasons.

<sup>4</sup> In the other cases, SEM shall reject the application for asylum if refugee status has neither been proven nor credibly demonstrated or there are grounds for denying asylum under Articles 53 and 54.<sup>91</sup>

<sup>87</sup> Repealed by No I of the FA of 25 Sept. 2015, with effect from 1 March 2019 (AS 2016 3101, 2018 2855; BBI 2014 7991).

<sup>88</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS 2013 4375 5357; BBI 2010 4455, 2011 7325).

<sup>89</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS 2013 4375 5357; BBI 2010 4455, 2011 7325).

<sup>90</sup> Inserted by No I of the FA of 26 Sept. 2014, in force since 1 July 2015 (AS 2015 1871; BBI 2014 3373).

<sup>91</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBI 2014 7991).

**Art. 31<sup>b92</sup>** Recognition of asylum and removal decisions made in Dublin States

<sup>1</sup> An asylum seeker in respect of whom a negative asylum decision and a legally binding removal decision has been issued in a state that is bound by one of the Dublin Association Agreements (Dublin State) may be removed directly to their native country or country of origin in accordance with the requirements of Directive 2001/40/EC<sup>93</sup> if:

- a. the competent Dublin State has not executed any removals to the asylum seeker's native country or country of origin for a long period; and
- b. it is likely that removal from Switzerland can be executed quickly.

<sup>2</sup> SEM shall obtain the information required to execute the removal from the competent authorities of the Dublin State concerned and make the necessary arrangements.

**Art. 32–35<sup>94</sup>**

**Art. 35<sup>a95</sup>** Resumption of asylum proceedings under the Dublin procedure

If Switzerland is responsible for assessing an asylum application on the basis of Regulation (EU) No 604/2013<sup>96</sup>, the asylum proceedings shall be resumed, even if the asylum application had previously been dismissed.

**Art. 36<sup>97</sup>** Procedure prior to a decision

<sup>1</sup> If it is decided to dismiss an application under Article 31<sup>a</sup> paragraph 1, the asylum seeker is granted a hearing. The same applies if the asylum seeker:

- a. deceives the authorities as to his or her identity and this deception is confirmed by the results of the identification procedure or other evidence;
- b. bases his or her application primarily on forged or falsified evidence;
- c. seriously and culpably fails to cooperate in some other way.

<sup>2</sup> In the other cases, an interview is held under Article 29.

<sup>92</sup> Inserted by No I of the FA of 26 Sept. 2014, in force since 1 July 2015 (AS **2015** 1871; BBI **2014** 3373).

<sup>93</sup> Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, OJ L 149 of 2.6.2001, p. 34.

<sup>94</sup> Repealed by No I of the FA of 14 Dec. 2012, with effect from 1 Feb. 2014 (AS **2013** 4375 5357; BBI **2010** 4455, **2011** 7325).

<sup>95</sup> Inserted by No I of the FA of 16 Dec. 2005 (AS **2006** 4745; BBI **2002** 6845). Amended by Annex No I 2 of the FD of 26 Sept. 2014 (Adoption of R[EU] establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national), in force since 1 July 2015 (AS **2015** 1841; BBI **2014** 2675).

<sup>96</sup> See footnote to Art. 22 para. 1<sup>ter</sup>.

<sup>97</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBI **2010** 4455, **2011** 7325).

**Art. 37<sup>98</sup>** Procedural deadlines in the first instance

<sup>1</sup> Notice of decisions under the Dublin procedure (Art. 26*b*) must be given within three working days after the Dublin state to which the request was directed has agreed to the transfer request under Articles 21 and 23 of Regulation (EU) No 604/2013<sup>99</sup>.

<sup>2</sup> Notice of decisions under the accelerated procedure (Art. 26*c*) must be given within eight days of the conclusion of the preparatory phase.

<sup>3</sup> If there are valid reasons and it is foreseeable that the decision can be taken in a federal centre, the time limits laid down in paragraphs 1 and 2 may be exceeded by a few days.

<sup>4</sup> Decisions under the extended procedure (Art. 26*d*) must be taken within two months of the conclusion of the preparatory phase.

<sup>5</sup> In other cases, decisions to dismiss an application must be made within five working days and decisions must be made within ten working days of the application being filed.

<sup>6</sup> SEM shall decide as a priority and immediately if the person seeking asylum is in detention pending extradition on the basis of a request by a state which the asylum seeker is seeking protection from in Switzerland. This also applies when the person has been made subject to an expulsion order under Article 66*a* or 66*a*<sup>bis</sup> of the Criminal Code (SCC)<sup>100</sup> or Article 49*a* or 49*a*<sup>bis</sup> of the Military Criminal Code of 13 June 1927<sup>101</sup> (MCC).

**Art. 37*a*<sup>102</sup>** Grounds

Decisions to dismiss an application must be accompanied by a summary statement of grounds.

**Art. 37*b*<sup>103</sup>** SEM processing strategy

SEM shall set out in a processing strategy which applications for asylum shall be processed as a priority. In doing so, it shall pay particular attention to the statutory time limits, the situation in the countries of origin, the evident merits or otherwise of the applications and the conduct of the asylum seekers.

<sup>98</sup> Amended by No I, paras 4 and 6 in accordance with No IV 2 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBI **2014** 7991).

<sup>99</sup> Council Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national; (new version), Amended by OJ L 180 of 29.6.2013, p. 31.

<sup>100</sup> SR **311.0**

<sup>101</sup> SR **321.0**

<sup>102</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBI **2010** 4455, **2011** 7325).

<sup>103</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBI **2010** 4455, **2011** 7325).

**Art. 38**<sup>104</sup>**Art. 39**<sup>105</sup> Granting temporary protection

If, as a result of questioning at the federal centre or at the interview, it is obvious that asylum seekers belong to a group of persons in need of protection in accordance with Article 66, they shall be granted temporary protection.

**Art. 40** Rejection without further investigations

<sup>1</sup> If, as a result of the interview, it is obvious that asylum seekers are unable to prove or credibly demonstrate their refugee status and there are no grounds preventing their removal, the application shall be rejected without further investigations.

<sup>2</sup> The decision must at least be summarily substantiated.<sup>106</sup>

**Art. 41**<sup>107</sup>**Art. 41a**<sup>108</sup> Coordination with the extradition proceedings

If the person seeking asylum is the subject of an application for extradition in accordance with the Mutual Assistance Act of 20 March 1981<sup>109</sup>, SEM shall consult the files on the extradition proceedings when deciding on the asylum application.

**Section 4 Status of Asylum Seekers during the Procedure****Art. 42**<sup>110</sup> Stay during the asylum procedure

Any person who applies for asylum in Switzerland may stay in Switzerland until the conclusion of the procedure.

**Art. 43** Authorisation for gainful employment

<sup>1</sup> While staying in federal centres, asylum seekers may not be gainfully employed.<sup>111</sup>

<sup>104</sup> Repealed by No I of the FA of 14 Dec. 2012, with effect from 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>105</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>106</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>107</sup> Repealed by No I of the FA of 14 Dec. 2012, with effect from 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>108</sup> Inserted by No I of the FA of 1 Oct. 2010 on the Coordination of Asylum and Extradition Proceedings, in force since 1 Apr. 2011 (AS **2011** 925; BBl **2010** 1467).

<sup>109</sup> SR **351.1**

<sup>110</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>111</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>1bis</sup> The additional requirements for authorising gainful employment are governed by the Federal Act of 16 December 2005<sup>112</sup> on Foreign Nationals (FNIA).<sup>113</sup>

<sup>2</sup> If an application for asylum is rejected in a legally binding decision, authorisation for gainful employment expires on expiry of the period specified for departure, even if an extraordinary legal remedy has been applied for and the enforcement of removal has been suspended. If SEM extends the departure period as part of the ordinary procedure, gainful employment may continue to be authorised. Gainful employment may not be authorised during proceedings under Article 111c.<sup>114</sup>

<sup>3</sup> The FDJP may, in agreement with the Federal Department of Economic Affairs, Education and Research authorise the cantons to extend permits for certain categories of persons to be gainfully employed beyond the expiry of the departure period, provided special circumstances justify this. This also applies mutatis mutandis to asylum proceedings under Article 111c.<sup>115</sup>

<sup>3bis</sup> The Federal Council may issue a temporary ban on employment for certain groups of asylum seekers.<sup>116</sup>

<sup>4</sup> Asylum seekers who are entitled to be gainfully employed in accordance with the immigration provisions or who participate in occupational programmes are not subject to the ban on employment.<sup>117</sup>

## Section 5

### Enforcement of Removal Orders and Alternative Measures<sup>118</sup>

#### Art. 44<sup>119</sup> Removal and temporary admission

<sup>1</sup> If SEM rejects or dismisses the application for asylum, it shall normally order and enforce removal from Switzerland; however, in doing so it shall take account of the principle of family unity. In addition, Articles 83 and 84 FNIA<sup>120</sup> apply to the enforcement of the removal order.

<sup>112</sup> SR 142.20

<sup>113</sup> Inserted by Annex No II 1 of the FA of 16 Dec. 2005 on Foreign Nationals, in force since 1 Jan. 2008 (AS 2007 5437, 2008 5405; BBl 2002 3709).

<sup>114</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325).

<sup>115</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325).

<sup>116</sup> Inserted by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845).

<sup>117</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>118</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845).

<sup>119</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325).

<sup>120</sup> SR 142.20

**Art. 44a**<sup>121</sup>**Art. 45** Removal order<sup>122</sup>

<sup>1</sup> The removal order shall indicate:

- a. the obligation of the asylum seeker to leave Switzerland;
- b. the time by which the asylum seeker must have left Switzerland; where temporary admission has been granted, the departure date is determined when the decision is made to revoke temporary admission;
- c.<sup>123</sup> the coercive measures that may be applied;
- d. if applicable, the designation of the states to which the asylum seeker may not be returned;
- e. if applicable, the ordering of an alternative measure instead of enforcing the removal order;
- f. the designation of the canton responsible for the enforcement of the removal order or the alternative measure.

<sup>2</sup> On issuing the removal order, an appropriate departure period of between seven and thirty days must be set. The period is seven days in the case of decisions taken under the accelerated procedure. Under the extended procedure, the period is between seven and thirty days.<sup>124</sup>

<sup>2bis</sup> A longer period must be set or the departure period extended if special circumstances such as the family situation, health problems or a long period of stay so require.<sup>125</sup>

<sup>3</sup> The removal order must be enforced immediately or a departure period of less than seven days may be set where the person concerned is being removed under the Dublin Association Agreements<sup>126,127</sup>

<sup>121</sup> Inserted by No I 2 of the FA of 19 Dec. 2003 on the 2003 Budgetary Relief Programme (AS **2004** 1633; BBl **2003** 5615). Repealed by No I of the FA of 16 Dec. 2005, with effect from 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>122</sup> Amended by Art. 2 No 2 of the FD of 18 June 2010 on the Adoption of the EC Directive on the Return of Illegal Immigrants (Directive 2008/115/EC), in force since 1 Jan. 2011 (AS **2010** 5925; BBl **2009** 8881).

<sup>123</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>124</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>125</sup> Amended by Art. 2 No 2 of the FD of 18 June 2010 on the Adoption of the EC Directive on the Return of Illegal Immigrants (Directive 2008/115/EC), in force since 1 Jan. 2011 (AS **2010** 5925; BBl **2009** 8881).

<sup>126</sup> These Agreements are listed in Annex 1.

<sup>127</sup> Inserted by Art. 2 No 2 of the FD of 18 June 2010 on the Adoption of the EC Directive on the Return of Illegal Immigrants (Directive 2008/115/EC), in force since 1 Jan. 2011 (AS **2010** 5925; BBl **2009** 8881).

<sup>4</sup> The asylum seeker must be provided with an information sheet with an explanation of the removal order.<sup>128</sup>

**Art. 46** Enforcement by the cantons

<sup>1</sup> The canton of allocation is obliged to enforce the removal order.<sup>129</sup>

<sup>1bis</sup> During an asylum seeker's stay in a federal centre, the canton responsible for enforcing the removal order is the canton where the centre is located. For persons defined under Article 27 paragraph 4, the canton concerned remains responsible for enforcing the removal order even after the person's stay in a federal centre. The Federal Council may in special circumstances allow for a canton other than the canton concerned to be allocated this responsibility.<sup>130</sup>

<sup>1ter</sup> In the case of a multiple request under Article 111c, the canton responsible under the previous asylum and removal procedure remains responsible for removal and administering emergency care.<sup>131</sup>

<sup>2</sup> If enforcement provides impossible for technical reasons, the canton shall apply to SEM for a system for monitoring the enforcement of removal.<sup>132</sup>

<sup>3</sup> SEM supervises enforcement and, working with the cantons, shall establish a system for monitoring the enforcement of removal.<sup>133</sup>

**Art. 47** Measures where the place of stay is unknown

If asylum seekers subject to a removal order avoid enforcement of the order by concealing their place of stay, the canton or SEM may arrange for their registration in the police system for tracing missing persons.

**Art. 48** Cantonal cooperation

If asylum seekers are not located in the canton responsible for the enforcing the removal order, the canton of stay shall provide administrative assistance on request. Administrative assistance includes in particular delivering the person concerned to the competent canton or deporting them directly.

<sup>128</sup> Inserted by Art. 2 No 2 of the FD of 18 June 2010 on the Adoption of the EC Directive on the Return of Illegal Immigrants (Directive 2008/115/EC), in force since 1 Jan. 2011 (AS **2010** 5925; BBl **2009** 8881).

<sup>129</sup> Amended by No 12 of the FA of 19 Dec. 2003 on the 2003 Budgetary Relief Programme, in force since 1 Apr. 2004 (AS **2004** 1633 1647; BBl **2003** 5615).

<sup>130</sup> Inserted by No 12 of the FA of 19 Dec. 2003 on the Budgetary Relief Programme 2003, (AS **2004** 1633; BBl **2003** 5615). Amended by No 1 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>131</sup> Inserted by No 1 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>132</sup> Amended by No 1 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>133</sup> Inserted by No 1 of the FA of 25 Sept. 2015, in force since 1 Oct. 2016 (AS **2016** 3101; BBl **2014** 7991).



## Chapter 3 Granting of Asylum and Legal Status of Refugees

### Section 1 Granting of Asylum

#### Art. 49 Principle

Asylum is granted to persons if they have refugee status and there are no grounds for denying asylum.

#### Art. 50 Country of second asylum

Refugees who have been admitted as such to another state may be granted asylum if they have resided in Switzerland in a law-abiding manner and without interruption for a minimum of two years.

#### Art. 51 Family asylum

<sup>1</sup> Spouses or registered partners of refugees and their minor children shall be recognised as refugees and granted asylum provided there are no special circumstances that preclude this.<sup>134</sup>

<sup>1bis</sup> If, during the asylum procedure, SEM has reason to believe that there are grounds under Article 105 number 5 or 6 of the Civil Code<sup>135</sup> (CC) for the marriage to be annulled, they shall report this to the competent authority under Article 106 CC. The procedure shall be suspended until this authority makes its decision. If the authority raises an action for annulment, the request is suspended until a legally binding judgment has been issued.<sup>136</sup>

<sup>2</sup> ...<sup>137</sup>

<sup>3</sup> Children born in Switzerland to refugee parents shall be recognised as refugees, provided if there are no special circumstances that preclude this.<sup>138</sup>

<sup>4</sup> If the persons entitled under paragraphs 1 were separated during flight and are now abroad, their entry must be authorised on request.<sup>139</sup>

<sup>5</sup> ...<sup>140</sup>

<sup>134</sup> Amended by No I 2 of the FA of 15 June 2012 on Measures against Forced Marriages, in force since 1 July 2013 (AS **2013** 1035; BBl **2011** 2185).

<sup>135</sup> SR **210**

<sup>136</sup> Inserted by No I 2 of the FA of 15 June 2012 on Measures against Forced Marriages, in force since 1 July 2013 (AS **2013** 1035; BBl **2011** 2185).

<sup>137</sup> Repealed by No I of the FA of 14 Dec. 2012, with effect from 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>138</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>139</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>140</sup> Repealed by No I of the FA of 16 Dec. 2005, with effect from 1 Jan. 2007 (AS **2006** 4745 4767; BBl **2002** 6845).

**Art. 52**1 ...<sup>141</sup>2 ...<sup>142</sup>**Art. 53**<sup>143</sup> Unworthiness of refugee status

Refugees shall not be granted asylum if:

- a. they are unworthy of it due to serious misconduct;
- b. they have violated or endanger Switzerland's internal or external security; or
- c. they have been made subject to an expulsion order under Article 66a or 66a<sup>bis</sup> SCC<sup>144</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>145</sup>.

**Art. 54** Subjective post-flight grounds

Refugees shall not be granted asylum if they became refugees in accordance with Article 3 only by leaving their native country or country of origin or due to their conduct after their departure.

**Art. 55** Exceptional situations

<sup>1</sup> In times of increased international tension, in the event of the outbreak of an armed conflict in which Switzerland is not involved, or in the event of an exceptionally large influx of asylum seekers in times of peace, Switzerland shall grant asylum to refugees as long as the circumstances permit.

<sup>2</sup> The Federal Council shall take the required measures. It may, in derogation from the law, restrict the requirements for granting asylum and the legal status of the refugees and issue special procedural provisions. It shall submit a report on this to the Federal Assembly immediately.

<sup>3</sup> If Switzerland's capacity to permanently accommodate refugees is exceeded, asylum may only be granted temporarily until those admitted are able to go elsewhere.

<sup>4</sup> If it becomes apparent that a considerable number of refugees are coming to Switzerland, the Federal Council shall seek rapid and effective international cooperation with a view to their reallocation to other countries.

<sup>141</sup> Repealed by No I of the FA of 16 Dec. 2005, with effect from 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>142</sup> Repealed by No I of the FA of 25 Sept. 2015, with effect from 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>143</sup> Amended by Annex No 2 of the FA of 20 March 2015 (Implementation of Art. 121 para. 3–6 Federal Constitution on the expulsion of foreign nationals convicted of certain criminal offences), in force since 1 Oct. 2016 (AS **2016** 2329; BBl **2013** 5975).

<sup>144</sup> SR **311.0**

<sup>145</sup> SR **321.0**

## Section 2 Asylum for Groups

### Art. 56 Decision

<sup>1</sup> A Federal Council decision is required for asylum to be granted to large groups of refugees. The Department shall decide in the case of smaller groups of refugees.

<sup>2</sup> SEM shall determine who belongs to such a group.

### Art. 57 Allocation and initial integration

<sup>1</sup> For the allocation of the refugees to the cantons, Article 27 applies.

<sup>2</sup> The Confederation may in the interests of initial integration temporarily allocate groups of refugees to accommodation and, in particular house them in an initial integration centre.

## Section 3 Legal Status of Refugees

### Art. 58 Principle

The legal status of refugees in Switzerland is governed by the law applicable to foreign nationals, unless special provisions, in particular of this Act and of the Refugee Convention of 28 July 1951<sup>146</sup>, apply.

### Art. 59<sup>147</sup> Effect

Persons to whom Switzerland has granted asylum or who fulfil the requirements for refugee status are deemed in their relations with all federal and cantonal authorities to be refugees within the meaning of this Act and the Convention of 28 July 1951<sup>148</sup> relating to the Status of Refugees.

### Art. 60<sup>149</sup> Regulation of stay

<sup>1</sup> Persons to whom asylum has been granted have the right to a residence permit in the canton in which they legally stay.

<sup>2</sup> The granting of a permanent residence permit is governed by Article 34 FNIA<sup>150,151</sup>

<sup>146</sup> SR **0.142.30**

<sup>147</sup> Amended by Annex No 2 of the FA of 20 March 2015 (Implementation of Art. 121 para. 3–6 Federal Constitution on the expulsion of foreign nationals convicted of certain criminal offences), in force since 1 Oct. 2016 (AS **2016** 2329; BBl **2013** 5975).

<sup>148</sup> SR **0.142.30**

<sup>149</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>150</sup> SR **142.20**

<sup>151</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

**Art. 61**<sup>152</sup> Gainful employment

<sup>1</sup> Persons to whom Switzerland has granted asylum or whom Switzerland has temporarily admitted as refugees and refugees subject to a legally enforceable expulsion order under Article 66a or 66a<sup>bis</sup> SCC<sup>153</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>154</sup> may be gainfully employed anywhere in Switzerland provided salary and employment conditions customary for the location, profession and sector are satisfied (Art. 22 FNIA<sup>155</sup>).<sup>156</sup>

<sup>2</sup> The employer must report the start, end or change of employment to the cantonal authority responsible for the place of work in advance. The reporting procedure is governed by Article 85a paragraphs 2–6 FNIA.

<sup>3</sup> Paragraph 2 does not apply to recognised refugees who hold a permanent residence permit.

**Art. 62** Medical examinations

Persons to whom Switzerland has granted asylum shall be permitted to sit federal medical examinations; the Federal Department of Home Affairs shall determine the requirements.

**Section 4 Termination of Asylum****Art. 63** Revocation

<sup>1</sup> SEM shall revoke asylum or deprive a person of refugee status:

- a. if the foreign national concerned has fraudulently obtained asylum or refugee status by providing false information or by concealing essential facts;
- b. if any of the grounds stated in Article 1 letter C numbers 1–6 of the Refugee Convention of 28 July 1951<sup>157</sup> apply.

<sup>1bis</sup> It shall deprive a person of refugee status if the refugee concerned travels to his or her native country or country of origin. It shall not deprive a person of refugee status if the person concerned credibly demonstrates that the journey to his or her native country or country of origin was made under duress.<sup>158</sup>

<sup>2</sup> SEM shall revoke asylum if a refugee has violated or represents a threat to Switzerland's internal or external security, or has committed a particularly serious criminal offence.

<sup>152</sup> Amended by Annex No 1 of the FA of 16 Dec. 2016 (Integration), in force since 1 Jan. 2019 (AS 2017 6521, 2018 3171; BBl 2013 2397, 2016 2821).

<sup>153</sup> SR 311.0

<sup>154</sup> SR 321.0

<sup>155</sup> SR 142.20

<sup>156</sup> Amended by Annex No 1 of the FA of 14 Dec. 2018 (Procedural Arrangements and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>157</sup> SR 0.142.30

<sup>158</sup> Inserted by Annex No 1 of the FA of 14 Dec. 2018 (Procedural Arrangements and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>3</sup> The revocation of asylum or the deprivation of refugee status applies in relation to all federal and cantonal authorities.

<sup>4</sup> The revocation of asylum or the deprivation of refugee status does not extend to the spouse or the children of the person concerned.<sup>159</sup>

**Art. 64**            Expiry

<sup>1</sup> Asylum in Switzerland shall expire if:

- a.<sup>160</sup> the refugee has lived more than one year abroad;
- b. the refugee has been granted asylum or permission to stay permanently in another country;
- c. the refugee renounces their refugee status;
- d.<sup>161</sup> an order for removal or expulsion has been executed;
- e.<sup>162</sup> an expulsion order under Article 66a or 66a<sup>bis</sup> SCC<sup>163</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>164</sup> has become legally enforceable.

<sup>2</sup> SEM may extend the deadline in accordance with paragraph 1 letter a under special circumstances.

<sup>3</sup> Refugee status and asylum shall expire if the foreign national acquires Swiss nationality in accordance with Article 1 number C letter 3 of the Refugee Convention of 28 July 1951<sup>165,166</sup>

**Art. 65**<sup>167</sup>        Removal or expulsion

Refugees may be expelled only if they endanger Switzerland's internal or external security or have seriously violated public order, subject to Article 5. The removal or expulsion of refugees is governed by Article 64 FNIA<sup>168</sup> in conjunction with Article 63 paragraph 1 letter b and Article 68 FNIA. Article 5 is reserved.

<sup>159</sup> Amended by No I 2 of the FA of 15 June 2012 on Measures against Forced Marriages, in force since 1 July 2013 (AS **2013** 1035; BBl **2011** 2185).

<sup>160</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>161</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>162</sup> Inserted by Annex No 2 of the FA of 20 March 2015 (Implementation of Art. 121 para. 3–6 Federal Constitution on the expulsion of foreign nationals convicted of certain criminal offences), in force since 1 Oct. 2016 (AS **2016** 2329; BBl **2013** 5975).

<sup>163</sup> SR **311.0**

<sup>164</sup> SR **321.0**

<sup>165</sup> SR **0.142.30**

<sup>166</sup> Inserted by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>167</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>168</sup> SR **142.20**

## Chapter 4 Granting Temporary Protection and the Legal Status of Persons in Need of Protection

### Section 1 General Provisions

#### Art. 66 Policy decision of the Federal Council

<sup>1</sup> The Federal Council shall decide whether and according to which criteria Switzerland will grant temporary protection to groups of persons in need of protection in accordance with Article 4.

<sup>2</sup> Before doing so, it shall consult representatives of the cantons, the charitable organisations and if need be additional non-governmental organisations as well as the Office of the United Nations High Commissioner for Refugees.

#### Art. 67 Foreign policy measures

<sup>1</sup> The granting of temporary protection as well as measures and assistance in the native country or country of origin or in the region of origin of the persons in need of protection should complement one another as far as possible.

<sup>2</sup> The Confederation shall work with the native country or country of origin, other host countries and international organisations to create the conditions for the safe return of the persons in need of protection.

### Section 2 Procedure

#### Art. 68 Persons in need of protection abroad

<sup>1</sup> SEM shall define the group of persons in need of protection in detail and decide who will be granted temporary protection in Switzerland. In doing so, it shall take account of the principle of family unity.

<sup>2</sup> The decision on granting temporary protection may only be contested on the grounds that it violates the principle of family unity.

<sup>3</sup> ...<sup>169</sup>

#### Art. 69 Persons in need of protection at the border or in Switzerland

<sup>1</sup> Articles 18 and 19 and 21–23 apply *mutatis mutandis* to applications filed at the border or in Switzerland by persons in need of protection.<sup>170</sup>

<sup>2</sup> If there is no obvious persecution in terms of Article 3, SEM shall, following questioning at the federal centre in accordance with Article 26, determine who

<sup>169</sup> Repealed by No I of the FA of 25 Sept. 2015, with effect from 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>170</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

belongs to a group of persons in need of protection and who will be granted temporary protection in Switzerland. There is no appeal against the decision on whether to grant temporary protection.

<sup>3</sup> If a person is granted temporary protection, the procedure for any application for recognition as a refugee shall be suspended.

<sup>4</sup> If SEM intends to refuse temporary protection, it shall continue the procedure for recognition as a refugee or the removal proceedings immediately.

**Art. 70** Resumption of the procedure for recognition as a refugee

Persons in need of protection who have filed an application for recognition as a refugee may request the resumption of the procedure for recognition as a refugee at the earliest five years following the decision to suspend the procedure in accordance with Article 69 paragraph 3. On the resumption of this procedure, temporary protection shall be revoked.

**Art. 71** Granting temporary protection to families

<sup>1</sup> Spouses of persons in need of protection and their minor children shall be granted temporary protection if:<sup>171</sup>

- a. they apply for protection together and there are no grounds for rejection in terms of Article 73;
- b. the family was separated by events such as those cited in Article 4, wishes to be reunited in Switzerland and there are no special circumstances that preclude this.

<sup>1bis</sup> If, during the procedure to grant temporary protection, SEM has reason to believe that there are grounds under Article 105 number 5 or 6 CC<sup>172</sup> for the marriage to be annulled, they shall report this to the competent authority under Article 106 CC. The request for reunification shall be suspended until this authority makes its decision. If the authority raises an action for annulment, the request is suspended until a legally binding judgment has been issued.<sup>173</sup>

<sup>2</sup> Children born in Switzerland to persons in need of protection shall also be granted temporary protection.

<sup>3</sup> If the persons entitled to protection are abroad, their entry must be authorised.

<sup>4</sup> The Federal Council shall regulate the requirements for family reunion in Switzerland in other cases.

<sup>171</sup> Amended by No I 2 of the FA of 15 June 2012 on Measures against Forced- Marriages, in force since 1 July 2013 (AS 2013 1035; BBl 2011 2185).

<sup>172</sup> SR 210

<sup>173</sup> Inserted by No I 2 of the FA of 15 June 2012 on Measures against Forced Marriages, in force since 1 July 2013 (AS 2013 1035; BBl 2011 2185).

**Art. 72**<sup>174</sup> Procedure

In addition, the provisions of Sections 1, 2a and 3 of Chapter 2 apply *mutatis mutandis* to the procedure in accordance with Articles 68, 69 and 71. The provisions of Chapter 8 apply *mutatis mutandis* to the procedures laid down in Articles 69 and 71.

**Art. 73**<sup>175</sup> Grounds for rejection

Temporary protection shall not be granted if the person in need of protection:

- a. has committed an act falling within the terms of Article 53;
- b. has violated or is a serious threat to public security; or
- c. is subject to a legally enforceable expulsion order under Article 66a or 66a<sup>bis</sup> SCC<sup>176</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>177</sup>.

**Section 3 Legal Status****Art. 74** Regulation of stay

<sup>1</sup> Persons in need of protection shall reside in the canton to which they have been allocated.

<sup>2</sup> If the federal council has not yet revoked temporary protection within five years, the persons in need of protection shall receive from this canton a residence permit limited until the revocation of temporary protection.

<sup>3</sup> Ten years after the granting of temporary protection, the canton may grant persons in need of protection a permanent residence permit.

**Art. 75** Authorisation for gainful employment

<sup>1</sup> For the first three months after entry into Switzerland, persons in need of protection may not be gainfully employed. Thereafter, the requirements for authorising gainful employment are governed by the FNIA<sup>178,179</sup>

<sup>2</sup> The Federal Council may stipulate more favourable conditions for gainful employment.

<sup>3</sup> Work permits already issued shall remain valid.

<sup>174</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBI **2014** 7991).

<sup>175</sup> Amended by Annex No 2 of the FA of 20 March 2015 (Implementation of Art. 121 para. 3–6 Federal Constitution on the expulsion of foreign nationals convicted of certain criminal offences), in force since 1 Oct. 2016 (AS **2016** 2329; BBI **2013** 5975).

<sup>176</sup> SR **311.0**

<sup>177</sup> SR **321.0**

<sup>178</sup> SR **142.20**

<sup>179</sup> Amended of the second sentence in accordance with Annex No II 1 of the FA of 16 Dec. 2005 on Foreign Nationals, in force since 1 Jan. 2008 (AS **2007** 5437, **2008** 5405; BBI **2002** 3709).



<sup>4</sup> Persons in need of protection who are entitled to be gainfully employed in accordance with provisions laid down by the immigration authorities or who participate in occupational programmes are not subject to the ban on employment.<sup>180</sup>

## Section 4 Termination of the Temporary Protection and Return

### Art. 76 Withdrawal of temporary protection and removal

<sup>1</sup> After consultation with representatives of the cantons, the charitable organisations and, if required, other non-governmental organisations, the Office of the United High Commissioner for Refugees as well as with international organisations, the Federal Council shall determine when the temporary protection for certain groups of persons in need of protection will be withdrawn; it shall make the decision in a general ruling.

<sup>2</sup> SEM shall grant the persons affected by the decision in accordance with paragraph 1 the right to a hearing.

<sup>3</sup> If as a result of the hearing, indications of persecution are revealed, an interview shall be held in accordance with Article 29.<sup>181</sup>

<sup>4</sup> If, having been granted the right to a hearing, the person concerned does not provide an opinion, SEM shall issue a removal order. For the enforcement of the removal order, Articles 10 paragraph 4 and 46–48 of this Act as well as Article 71 of the FNIA<sup>182</sup> apply *mutatis mutandis*.<sup>183</sup>

<sup>5</sup> The provisions of Section 1a. of Chapter 8 apply *mutatis mutandis* to paragraphs 2–4.<sup>184</sup>

### Art. 77 Return

The Confederation shall support international efforts to organise the return of persons in need of protection.

### Art. 78 Revocation

<sup>1</sup> SEM may revoke temporary protection if:

- a. it has been fraudulently obtained by providing false information or by concealing essential facts;

<sup>180</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>181</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325).

<sup>182</sup> SR 142.20

<sup>183</sup> Amended of the second sentence in accordance with Annex No II 1 of the FA of 16 Dec. 2005 on Foreign Nationals, in force since 1 Jan. 2008 (AS 2007 5437, 2008 5405; BBl 2002 3709).

<sup>184</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

- b. the person in need of protection has violated or endangered Switzerland's internal or external security or is guilty of serious misconduct;
- c. since being granted temporary protection, the person in need of protection has resided repeatedly or for an extended period of time in their native country or country of origin;
- d. the person in need of protection has a legal right of residence in a third country where they may return.

<sup>2</sup> Temporary protection shall not be revoked if the person in need of protection travels to their native country or country of origin with the consent of the competent authorities.

<sup>3</sup> The revocation of temporary protection does not extend to the spouse and the children, unless it is shown they are not in need of protection.<sup>185</sup>

<sup>4</sup> If it is intended to revoke temporary protection, an interview shall normally be held in accordance with Articles 29. The provisions of section 1a. of Chapter 8 apply *mutatis mutandis*.<sup>186</sup>

#### Art. 79<sup>187</sup> Expiry

Temporary protection expires if the person in need of protection:

- a. has transferred the focus of their living conditions abroad;
- b. has renounced temporary protection;
- c. has received a permanent residence permit in accordance with the FNIA<sup>188</sup>; or
- d. is made subject to a legally enforceable expulsion order under Article 66a or 66a<sup>bis</sup> SCC<sup>189</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>190</sup>.

#### Art. 79a<sup>191</sup> Registered partnership

The provisions of Chapters 3 and 4 on spouses apply *mutatis mutandis* to registered partnerships of same-sex couples.

<sup>185</sup> Amended by No 12 of the FA of 15 June 2012 on Measures against Forced Marriages, in force since 1 July 2013 (AS **2013** 1035; BBl **2011** 2185).

<sup>186</sup> Amended by No 1 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>187</sup> Amended by Annex No 2 of the FA of 20 March 2015 (Implementation of Art. 121 para. 3–6 Federal Constitution on the expulsion of foreign nationals convicted of certain criminal offences), in force since 1 Oct. 2016 (AS **2016** 2329; BBl **2013** 5975).

<sup>188</sup> SR **142.20**

<sup>189</sup> SR **311.0**

<sup>190</sup> SR **321.0**

<sup>191</sup> Inserted by No 12 of the FA of 15 June 2012 on Measures against Forced Marriages, in force since 1 July 2013 (AS **2013** 1035; BBl **2011** 2185).

## Chapter 5 Social Assistance and Emergency Aid<sup>192</sup>

### Section 1

#### Provision of Social Assistance, Emergency Aid, Child Allowances and Primary Education<sup>193</sup>

##### Art. 80<sup>194</sup> Responsibility in federal centres

<sup>1</sup> The Confederation shall provide social assistance or emergency aid to persons staying in Switzerland on the basis of this Act and who are accommodated in a federal centre or in an initial integration centre for groups of refugees. It shall work with the canton concerned to ensure that health-care and primary education are provided. It may delegate these tasks entirely or in part to third parties. Articles 81–83a apply *mutatis mutandis*.

<sup>2</sup> SEM shall reimburse third party contractors in respect of the administrative and staff costs that they incur in fulfilling their tasks under paragraph 1. The payments shall be determined at a flat rate. By way of exception, the payments may be based on the actual costs, in particularly when reimbursing individual non-recurring costs.

<sup>3</sup> SEM may arrange with the canton concerned that it enter into a contract for compulsory health insurance. SEM shall reimburse the costs of the health insurance premiums, deductible and franchise.

<sup>4</sup> The canton concerned shall organise primary education for asylum seekers of school age who are accommodated in a federal centre. The lessons shall be provided in the centres as required. The Confederation may subsidise the provision of primary school education. The payments shall be determined at a flat rate. By way of exception, the payments may be based on the actual costs, in particularly when reimbursing individual non-recurring costs.

##### Art. 80a<sup>195</sup> Responsibility in the cantons

The cantons of allocation shall provide social assistance or emergency aid for persons staying in Switzerland on the basis of this Act. Persons who have not been allocated to a canton shall be granted emergency aid by the canton that has been designated responsible for enforcing removal. The cantons may delegate the fulfilment of these tasks entirely or in part to third parties.

<sup>192</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>193</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 Oct. 2016 (AS **2016** 3101; BBl **2014** 7991).

<sup>194</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 Oct. 2016 (AS **2016** 3101; BBl **2014** 7991).

<sup>195</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 Oct. 2016 (AS **2016** 3101; BBl **2014** 7991).

**Art. 81**<sup>196</sup> Right to social assistance benefits or to emergency aid

Persons who are staying in Switzerland on the basis of this Act and who are unable to maintain themselves from their own resources shall receive the necessary social assistance benefits unless third parties are required to support them on the basis of a statutory or contractual obligation, or may request emergency aid.

**Art. 82**<sup>197</sup> Social benefits and emergency aid

<sup>1</sup> The payment of social assistance benefits and emergency aid is regulated by cantonal law. Persons subject to a legally binding removal decision for which a departure period has been fixed are excluded from receiving social assistance.<sup>198</sup>

<sup>2</sup> For the duration of an extraordinary appeal or of asylum proceedings under Article 111c, persons under paragraph 1 and asylum seekers shall on application receive emergency aid. This is also the case if enforcement of the removal order is suspended.<sup>199</sup>

<sup>2bis</sup> The cantons may pay social assistance benefits to persons under paragraphs 1 and 2 for the duration of a general moratorium on decision-making and enforcement and if the FDJP so provides. Payments are governed by Article 88 paragraph 2.<sup>200</sup>

<sup>3</sup> For asylum seekers and persons in need of protection who do not hold a residence permit, support shall be provided in the form of non-cash benefits wherever possible. The level of support is less than that given to the local population.<sup>201</sup>

<sup>3bis</sup> The particular needs of unaccompanied minor asylum seekers, families with children and persons requiring care must be met if possible when providing accommodation.<sup>202</sup>

<sup>4</sup> Emergency aid must wherever possible be provided in the form of non-cash benefits at the locations indicated by the cantons or the Confederation. The level of support is less than that of the social assistance paid to asylum seekers and persons in need of protection who do not have a residence permit.<sup>203</sup>

<sup>5</sup> The special situation of refugees and persons in need of protection who have a right to a residence permit must be taken into account in determining the level of support; in particular professional, social and cultural integration shall be facilitated.

<sup>196</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBI **2002** 6845).

<sup>197</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBI **2002** 6845).

<sup>198</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBI **2010** 4455, **2011** 7325).

<sup>199</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBI **2010** 4455, **2011** 7325).

<sup>200</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 Oct. 2016 (AS **2016** 3101; BBI **2014** 7991).

<sup>201</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBI **2010** 4455, **2011** 7325).

<sup>202</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBI **2014** 7991).

<sup>203</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBI **2010** 4455, **2011** 7325).

**Art. 82<sup>a</sup>**<sup>204</sup> Health insurance for asylum seekers and persons in need of protection without a residence permit

<sup>1</sup> Health insurance for asylum seekers and persons in need of protection without a residence permit must be arranged in accordance with the provisions of the Federal Act of 18 March 1994<sup>205</sup> on Health Insurance (HIA), subject to the following provisions.

<sup>2</sup> The cantons may limit the choice of insurers for asylum seekers and persons in need of protection without a residence permit and may specify one or more insurers who offer a special form of insurance in accordance with Article 41 paragraph 4 HIA.

<sup>3</sup> They may limit the choice of service providers for asylum seekers and persons in need of protection without a residence permit in accordance with Articles 36–40 HIA. They may do this before designating an insurer in terms of paragraph 2.

<sup>4</sup> They may limit the choice for asylum seekers and persons in need of protection without a residence permit designate to one or more insurers who offer insurance with a limited selection of service providers in terms of Article 41 paragraph 4 HIA.

<sup>5</sup> The Federal Council shall regulate the details of the limitation of the choice of the service providers.

<sup>6</sup> The cantons and the insurers may agree to dispense with cost sharing in accordance with Article 64 paragraph 2 HIA.

<sup>7</sup> As long as asylum seekers and persons in need of protection without a residence permit are reliant solely or partly on social assistance, their right to premium reductions in accordance with Article 65 HIA shall be suspended. This right shall revive respectively when the asylum seekers are recognised as refugees, the persons in need of protection are entitled to a residence permit, or the persons are no longer in receipt of social assistance.

**Art. 83** Restrictions of social assistance benefits<sup>206</sup>

<sup>1</sup> Social benefits or reduced benefits under Article 82 paragraph 3 must be completely or partially refused, reduced or withdrawn if the beneficiary:<sup>207</sup>

- a. has obtained them or attempted to obtain them by providing untrue or incomplete information;
- b. refuses to give the competent office information about their financial circumstances, or fails to authorise the office to obtain this information;
- c. does not report important changes in their circumstances;

<sup>204</sup> Inserted by No II of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4823, **2007** 5575; BBl **2002** 6845).

<sup>205</sup> SR **832.10**

<sup>206</sup> Expression in accordance with No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845). This amendment has been made throughout the text.

<sup>207</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

- d. obviously neglects to improve their situation, in particular by refusing to accept reasonable work or accommodation allocated to them;
- e. without consulting the competent office, terminates an employment contract or lease or is responsible for its termination and thereby exacerbates their situation;
- f. uses social assistance benefits improperly;
- g. fails to comply with the instructions of the competent office despite the threat of the withdrawal of social assistance benefits.
- h.<sup>208</sup> endangers public security or order;
- i.<sup>209</sup> has been prosecuted or convicted of a crime;
- j.<sup>210</sup> seriously and culpably fails to cooperate, in particular by refusing to disclose their identity;
- k.<sup>211</sup> fails to comply with the instructions from staff responsible for the proceedings or from the accommodation facilities, thereby endangering order and security.

<sup>1bis</sup> Paragraph 1 only applies to refugees subject to the guarantee that they are treated the same way as the local population.<sup>212</sup>

<sup>2</sup> Social benefits unlawfully received must be paid back in full. The amount due for repayment may in particular be deducted from future social assistance benefits. The canton shall implement the claim for repayment. Article 85 paragraph 3 applies.<sup>213</sup>

**Art. 83a<sup>214</sup>** Requirements for the payment of emergency aid

The person concerned must cooperate in the enforcement of a legally binding removal order that is lawful, reasonable and feasible as well as in the determination of whether the requirements for emergency aid are fulfilled.

<sup>208</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>209</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>210</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>211</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>212</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>213</sup> Inserted by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>214</sup> Inserted by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

**Art. 84**<sup>215</sup> Child allowances

Child allowances for asylum seekers' children living abroad shall be withheld during asylum procedures. They shall be paid when the asylum seeker is recognised as a refugee or temporarily admitted in accordance with Article 83 paragraphs 3 and 4 of the FNIA<sup>216</sup>.

**Section 2**<sup>217</sup>**Duty to Reimburse and Special Charge on Assets****Art. 85** Duty to reimburse

<sup>1</sup> As far as it is reasonable, social assistance, emergency aid, departure and enforcement costs as well as the costs of the appeal procedure must be reimbursed.

<sup>2</sup> The Confederation shall enforce the claim for reimbursement by means of a special charge on assets (Art. 86).

<sup>3</sup> The Confederation's right to reimbursement prescribes three years after the competent authority has been informed, but in any case 10 years after the right is created.<sup>218</sup> No interest is charged on reimbursement claims.

<sup>4</sup> The canton's right to reimbursement is governed by cantonal law.

**Art. 86**<sup>219</sup> Special charge on assets

<sup>1</sup> Asylum seekers, persons in need of protection without a residence permit and persons subject to a legally binding removal order who have assets at their disposal are liable to pay the special charge. The special charge serves to cover the overall costs in accordance with Article 85 paragraph 1 generated by all these persons and their dependents.

<sup>2</sup> The special charge is levied by confiscating assets.

<sup>3</sup> The competent authorities may only levy the special charge if the persons concerned:

- a. are unable to prove that the assets derive from earned income or compensation for loss of earned income or from public social assistance benefits;
- b. are unable to prove the origin of the assets; or
- c. are able prove the origin of the assets, but these exceed the amount determined by the Federal Council.

<sup>215</sup> Amended by No IV 1 of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845).

<sup>216</sup> SR 142.20

<sup>217</sup> Amended by Annex No 1 of the FA of 16 Dec. 2016 (Integration), in force since 1 Jan. 2018 (AS 2017 6521; BBl 2016 2821, 2013 2397).

<sup>218</sup> Amended by Annex No 1 of the FA of 15 Juni 2018 (Revision of the Law of Prescription), in force since 1 Jan. 2020 (AS 2018 5343; BBl 2014 235).

<sup>219</sup> See also the transitional provision to the Amendment of 16 Dec. 2016 at the end of this text.

<sup>4</sup> The obligation to pay the special charge continues to apply for a maximum of ten years after filing the application for asylum or the application for temporary protection.

<sup>3</sup> The Federal Council shall determine the amount of the special charge and duration of the obligation to pay.

**Art. 87<sup>220</sup>** Disclosure of assets and procedure on departure

<sup>1</sup> Asylum seekers, persons in need of protection who do not have a residence permit and persons subject to a legally binding removal order must disclose any assets that they have that do not derive from earned income.

<sup>2</sup> Confiscated assets shall be reimbursed in full on request if the person concerned leaves the country under supervision within seven months of filing the application for asylum or the application for temporary protection. The request for reimbursement must be made before departure.

## Chapter 6 Federal Subsidies

**Art. 88<sup>221</sup>** Flat-rate compensatory payments

<sup>1</sup> The Confederation shall compensate the cantons for the costs of implementing this Act by means of flat-rate payments. The cantons do not receive the subsidies in accordance with Articles 91–93b.<sup>222</sup>

<sup>2</sup> The flat-rate payments made in respect of persons seeking asylum and in need of protection without a residence permit shall cover, in particular, the costs of social assistance and of mandatory health insurance and also contain a contribution towards the supervision costs.

<sup>3</sup> The flat-rate payments made in respect of refugees and persons in need of protection with a residence permit and refugees subject to a legally enforceable expulsion order in accordance with Article 66a or 66a<sup>bis</sup> SCC<sup>223</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>224</sup> shall cover, in particular, the costs of social assistance and also contain a contribution towards the supervision and administrative costs. They shall be made for a maximum of five years from the date of submission of the asylum application.<sup>225</sup>

<sup>220</sup> See also the transitional provision to the Amendment of 16 Dec. 2016 at the end of this text.

<sup>221</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>222</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>223</sup> SR **311.0**

<sup>224</sup> SR **321.0**

<sup>225</sup> Amended by Annex No 2 of the FA of 20 March 2015 (Implementation of Art. 121 para. 3–6 Federal Constitution on the expulsion of foreign nationals convicted of certain criminal offences), in force since 1 Oct. 2016 (AS **2016** 2329; BBl **2013** 5975).



<sup>3bis</sup> The Confederation may make flat-rate payments under paragraph 3 for longer than five years in respect of persons admitted to Switzerland under asylum granted to groups of refugees, and in particular when these persons are disabled or elderly.<sup>226</sup>

<sup>4</sup> Payments made in respect of persons who are only entitled to emergency aid under Article 82 are compensation for granting emergency aid.<sup>227</sup>

<sup>5</sup> ...<sup>228</sup>

**Art. 89**<sup>229</sup> Determination of the flat-rate payments

<sup>1</sup> The Federal Council shall determine the level of the flat-rate payments based on the probable expenditures on cost-effective solutions.

<sup>2</sup> It shall determine the structure and the duration of the flat-rate payments as well as the necessary requirements. It may in particular:

- a. determine the flat-rate payments on the basis of residence status and the duration of residence;
- b. adjust the flat-rate payments to take account of the cost differences between the cantons.

<sup>3</sup> SEM may make the disbursement of individual components of the flat-rate payments subject to the achievement of socio-political goals.

<sup>4</sup> The flat-rate payments shall be periodically adjusted in line with inflation and reviewed if necessary.

**Art. 89a**<sup>230</sup> Duty to cooperate for recipients of subsidies

<sup>1</sup> SEM may require the cantons to collect the data required for financial supervision, determining and adjusting the financial compensatory payments from the Confederation under Articles 88 and 91 paragraph 2<sup>bis</sup> of this Act and 55 and 87 of the FNIA<sup>231</sup> and to make it available to SEM or record it in SEM's Central Migration Information System (ZEMIS).

<sup>2</sup> If a canton fails to comply with this requirement, SEM may reduce the financial compensatory payments made to this canton or determine the payments due on the basis of the data available.

<sup>226</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>227</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>228</sup> Repealed by No I of the FA of 14 Dec. 2012, with effect from 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>229</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>230</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>231</sup> SR **142.20**

**Art. 89b**<sup>232</sup> Claiming back and declining to make flat-rate compensatory payments

<sup>1</sup> The Confederation may claim back flat-rate compensatory payments already made under Article 88 of this Act and under Articles 55<sup>233</sup> and 87 FNIA<sup>234</sup> if a canton fails to carry out the enforcement tasks in accordance with Article 46 of this Act or carries out such tasks inadequately without excuse.

<sup>2</sup> If the non-fulfilment or inadequate fulfilment of enforcement tasks in accordance with Article 46 leads to the person concerned staying longer in Switzerland, the Confederation may decline to make flat-rate compensatory payments under Article 88 of this Act and under Articles 55<sup>235</sup> and 87 FNIA in respect of the related costs incurred by the canton.

**Art. 90** Funding of collective accommodation

<sup>1</sup> The Confederation may finance, in full or in part, the construction, conversion and furnishing of collective accommodation in which the authorities place persons residing in Switzerland on the basis of this Act.

<sup>2</sup> The Federal Council shall regulate the procedure, determine the details on ownership and ensure the accommodation is used for its intended purpose.

<sup>3</sup> It shall determine the extent to which the amount spent on direct funding by the Confederation on accommodation is charged against the flat-rate payment.

**Art. 91** Further subsidies

<sup>1</sup> and <sup>2</sup>...<sup>236</sup>

<sup>2bis</sup> The Confederation shall pay the cantons a flat-rate subsidy towards the administrative costs incurred in respect of persons seeking asylum and persons in need of protection without a residence permit.<sup>237</sup>

<sup>2ter</sup> The Confederation may pay cantons in which a federal centre is located a flat-rate subsidy towards the security costs.<sup>238</sup>

<sup>3</sup> It may pay subsidies to facilities for traumatised persons residing in Switzerland on the basis of this Act.

<sup>4</sup> ...<sup>239</sup>

<sup>232</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 Oct. 2016 (AS **2016** 3101; BBl **2014** 7991).

<sup>233</sup> Now: Art. 58.

<sup>234</sup> SR **142.20**

<sup>235</sup> Now: Art. 58.

<sup>236</sup> Repealed by No I of the FA of 16 Dec. 2005, with effect from 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>237</sup> Inserted by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>238</sup> Inserted by No I of the FA of 28 Sept 2012 (Emergency Amendments to the Asylum Act), (AS **2012** 5359; BBl **2010** 4455, **2011** 7325). Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>4bis</sup> It may pay subsidies for the conduct of employment programmes for persons accommodated in federal centres. For this purpose it shall enter into public service agreements with the cantons, communes or responsible third parties at the relevant locations.<sup>240</sup>

<sup>5</sup> ...<sup>241</sup>

<sup>6</sup> The Confederation shall reimburse the cantons for staff costs which arise in connection with the preparation of decisions in accordance with Article 31.

<sup>7</sup> It may in terms of the international cooperation in accordance with Article 113 provide subsidies to the bodies funding internationally oriented projects or to internationally active organisations.

<sup>8</sup> The Federal Council shall regulate the requirements and the payment and the accounting procedures for the contributions.

#### **Art. 92** Entry and departure costs

<sup>1</sup> The Confederation may bear the costs for the entry and departure of refugees and persons in need of protection.

<sup>2</sup> If the persons concerned are destitute, it shall bear the costs for the departure of asylum seekers, of persons whose application for asylum was rejected, whose application for asylum was dismissed or who withdrew their application for asylum, and of persons who were removed following the revocation of temporary protection.<sup>242</sup>

<sup>3</sup> It may make provide subsidies towards expenditure incurred by the cantons that is directly connected with the organisation of departure.

<sup>3bis</sup> In the context of applying the Dublin Association Agreements<sup>243</sup>, it may provide subsidies towards expenditure incurred by the cantons that is directly connected with the transfer of persons to Switzerland.<sup>244</sup>

<sup>4</sup> The Federal Council shall regulate the requirements and the payment and accounting procedure for the contributions. If possible it shall determine flat-rate payments.

<sup>239</sup> Repealed by No I of the FA of 14 Dec. 2012, with effect from 1 Jan. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>240</sup> Inserted by No I of the FA of 28 Sept 2012 (Emergency Amendments to the Asylum Act), (AS **2012** 5359; BBl **2010** 4455, **2011** 7325). Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>241</sup> Repealed by No I of the FA of 16 Dec. 2005, with effect from 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>242</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>243</sup> These agreements are listed in Annex 1.

<sup>244</sup> Inserted by Annex No I of the FA of 20 June 2014 (Violations of the Duty of Care and to Report by Air Carriers, Information Systems), in force since 1 Oct. 2015 (AS **2015** 3023; BBl **2013** 2561).

**Art. 93<sup>245</sup>** Return assistance and prevention of irregular migration

<sup>1</sup> The Confederation shall provide return assistance. For this purpose, it may provide for the following measures:

- a. the full or partial funding of return counselling services;
- b. the full or partial funding of projects in Switzerland to preserve the ability of those concerned to return;
- c. the full or partial funding of programmes in the native country, country of origin or a third country to facilitate and arrange the return, repatriation and reintegration (programmes abroad);
- d. the granting of financial support in individual cases to facilitate the reintegration of returnees or provide them with temporary medical care in their native country, country of origin or third country.

<sup>2</sup> Programmes abroad may also pursue the goal of contributing to the prevention of irregular migration. Irregular migration prevention programmes are those that contribute in the short term to limiting the risk of primary or secondary migration to Switzerland.

<sup>3</sup> For the purpose of implementing return assistance, the Confederation may work with international organisations and set up a coordination office.

<sup>4</sup> The Federal Council shall regulate the requirements and the payment and the accounting procedure for the subsidies.

**Art. 93a<sup>246</sup>** Return counselling

<sup>1</sup> The Confederation shall encourage voluntary return by providing return counselling. The return counselling shall be given at federal centres and in the cantons.

<sup>2</sup> SEM shall ensure that regular counselling sessions take place in the federal centres. It may delegate these tasks to the cantonal return counselling agencies.

**Art. 93b<sup>247</sup>** Contributions to return counselling

<sup>1</sup> The Confederation shall by agreement make contributions to compensate the provider of return counselling in federal centres for the administrative and staff costs arising from provision of information and counselling to asylum seekers and persons subject to removal orders. The compensation shall be set as a lump sum. In exceptional cases, the contributions may be fixed on the basis of expenditure, especially in the case of non-recurring costs.

<sup>2</sup> The payment of contributions for return counselling provided in the cantons is governed by Article 93 paragraph 4.

<sup>245</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBI **2002** 6845).

<sup>246</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBI **2014** 7991).

<sup>247</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBI **2014** 7991).

**Art. 94**<sup>248</sup>**Art. 95**<sup>249</sup> Supervision

<sup>1</sup> The Confederation shall verify that federal subsidies are used in accordance with the legislation on subsidies, that they are effective and that accounts on federal subsidies are properly maintained. It may also delegate this task to a third party and call in the cantonal audit offices for support.

<sup>2</sup> Any person who receives federal subsidies is obliged to disclose the details of their organisation as well as the data and key figures in relation to income and expenditure in the field of asylum.

<sup>3</sup> The Federal Audit Office, SEM and the cantonal audit offices shall monitor financial activities in accordance with their regulations. They shall determine the suitable course of action, coordinate their activities and keep each other informed about their findings.

**Chapter 6a**<sup>250</sup>**Planning Approval for Federal Buildings and Installations****Section 1 General Provisions****Art. 95a** Principle

<sup>1</sup> Buildings and installations used by the Confederation to accommodate asylum seekers or for conducting asylum procedures require planning approval from the FDJP (approval authority) if they:

- a. are to be newly constructed;
- b. are altered or assigned a new form of use.

<sup>2</sup> Planning approval covers all forms of authorisation required under federal law.

<sup>3</sup> Cantonal authorisations and plans are not required. The cantonal law must be taken into consideration during the planning approval procedure and the weighing up of interests.

<sup>4</sup> In principle, planning approval for projects that will have a considerable effect on space and the environment requires a sectoral plan in accordance with the Federal Act of 22 June 1979<sup>251</sup> on Spatial Planning.

<sup>248</sup> Repealed by No I of the FA of 25 Sept. 2015, with effect from 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>249</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>250</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 Jan. 2018 (AS **2016** 3101, **2017** 6171; BBl **2014** 7991).

<sup>251</sup> SR **700**

**Art. 95b** Compulsory purchase rights and applicable law

<sup>1</sup> The acquisition of real estate for buildings and installations to accommodate asylum seekers or to conduct asylum procedures and the establishment of rights in rem to such real estate is the responsibility of the FDJP. It is entitled to make compulsory purchases if necessary.

<sup>2</sup> The planning approval procedure is governed by this Act and at a subsidiary level by the Federal Act of 20 June 1930<sup>252</sup> on Compulsory Purchase (ComPurA).

**Section 2 Planning Approval Procedures****Art. 95c** Initiating the ordinary planning approval procedure

The planning approval application must be submitted with required documentation to the approval authority. The authority shall check the documentation to make sure that it is complete and request any further documents that are needed.

**Art. 95d** Marking

<sup>1</sup> Before the application is made available for public inspection, the applicant must indicate the alterations that the planned buildings and installations will make to the site by marking them out; in the case of structures above-ground, the applicant must erect profiles.

<sup>2</sup> Objections to the marking of alterations or the erection of profiles must be made to the approval authority immediately, and in any case before expiry of the period when the application is made available for public inspection.

**Art. 95e** Consultation, publication and making the application available for inspection

<sup>1</sup> The approval authority shall forward the application to the cantons and communes concerned for their opinions. The entire consultation procedure shall last three months. In justified cases, this period may be extended by way of exception.

<sup>2</sup> The application must be published in the official organs of publicity for the cantons and communes concerned and in the Federal Gazette and must be made available for public inspection for a period of 30 days.

<sup>3</sup> A ban on compulsory purchase in accordance with Articles 42–44 ComPurA<sup>253</sup> applies while the application is available for public inspection.

<sup>252</sup> SR 711

<sup>253</sup> SR 711

**Art. 95f** Personal notification

At the latest by the date on which the application is made available for public inspection, the applicant must send persons entitled to compensation under Article 31 ComPurA<sup>254</sup> personal notification of the rights to be expropriated.

**Art. 95g** Objection

<sup>1</sup> Any person who is a party in accordance with the APA<sup>255</sup> or the ComPurA<sup>256</sup> may file an objection during the period when the application is available for public inspection. Unless such a person files an objection, he or she is excluded from the remainder of the procedure.

<sup>2</sup> All objections under the law on compulsory purchase and claims for compensation or compensation-in-kind must be filed within the period when the application is available for public inspection. Subsequent objections and claims under Articles 39–41 ComPurA must be filed with the approval authority.

<sup>3</sup> The communes concerned may safeguard their interests by filing an objection.

**Art. 95h** Elimination of differences in the Federal Administration

The procedure for eliminating differences in the Federal Administration is governed by Article 62*b* of the Government and Administration Organisation Act of 21 March 1997<sup>257</sup>.

**Art. 95i** Term of validity

<sup>1</sup> The approval authority shall decide on the objections under the law on compulsory purchase at the same time as deciding on planning approval.

<sup>2</sup> Planning approval expires if the construction project has not begun five years after approval becomes legally binding.

<sup>3</sup> The approval authority may extend the period of validity of the planning approval for good cause by a maximum of three years. No extension is permitted if the relevant factual and legal circumstances have substantially changed since legally binding planning approval was granted.

**Art. 95j** Simplified planning approval procedure

<sup>1</sup> A simplified planning approval procedure is applied in the case of:

- a. small-scale local projects that affect only a few easily identifiable persons;
- b. alterations or changes of use that do not substantially change the external appearance of the buildings or installations concerned, do not affect the le-

<sup>254</sup> SR 711

<sup>255</sup> SR 172.021

<sup>256</sup> SR 711

<sup>257</sup> SR 172.010

gitimate interests of third parties, and have a negligible effect on space or the environment;

c. buildings and installations that will be removed after three years at the latest.

<sup>2</sup> Detailed plans based on a project that has already been approved shall be approved under the simplified procedure.

<sup>3</sup> The approval authority may order the marking of the project. The application is not published and not made available for public inspection. The approval authority shall send the plans to the persons concerned unless they have already given their consent in writing; they have 30 days to object. The approval authority may consult the cantons and communes. It shall allow an appropriate period for doing so.

<sup>4</sup> The simplified procedure is otherwise governed by the provisions for the ordinary procedure. In the event of any doubt, the ordinary procedure shall be carried out.

### Section 3 Valuation Procedure; Early Possession

#### Art. 95k

<sup>1</sup> After conclusion of the planning approval procedure, a valuation procedure shall be conducted by the Federal Compulsory Purchase Commission pursuant to the ComPurA<sup>258</sup>. Only submitted claims are considered.

<sup>2</sup> The approval authority shall send the approved plans, the compulsory purchase plan, the land acquisition table and the submitted claims to the president of the Federal Compulsory Purchase Commission.

<sup>3</sup> The president of the Federal Compulsory Purchase Commission may authorise early possession of the property on the basis of an enforceable planning approval decision and if it is presumed that the purchaser would suffer significant prejudice if not granted early possession. The position is otherwise governed by Article 76 ComPurA.

### Section 4 Legal Remedies

#### Art. 95l

<sup>1</sup> Legal remedies are governed by the general provisions on the administration of federal justice.

<sup>2</sup> The cantons and communes concerned also have a right of objection.



## Chapter 7 Processing of Personal Data

### Section 1 Principles<sup>259</sup>

#### Art. 96<sup>260</sup> Processing of personal data

<sup>1</sup> Provided they require the data for the fulfilment of their legal duties, SEM, the appeal authorities and private organisations entrusted with duties under this Act may process or have processed the personal data of persons seeking asylum or in need of protection and their dependants, and in particular sensitive data or personality profiles as defined in Article 3 letters c and d of the Federal Act of 19 June 1992<sup>261</sup> on Data Protection (FADP).

<sup>2</sup> Data required to combat illegal employment may be disclosed by the authorities under paragraph 1 in accordance with Articles 11 and 12 of the Federal Act of 17 June 2005<sup>262</sup> on Measures to Combat Illegal Employment.<sup>263</sup>

#### Art. 97 Disclosure of personal data to the native country or country of origin

<sup>1</sup> Personal data of asylum seekers, recognised refugees and persons in need of protection may not be disclosed to their native country or country of origin if the person concerned or their dependants would be endangered as a result. No information may be disclosed regarding an application for asylum.<sup>264</sup>

<sup>2</sup> The authority responsible for the organising departure may contact the native country or the country of origin to acquire the travel documents required for the enforcement of the removal order if the refugee status has been refused in the first instance.<sup>265</sup>

<sup>3</sup> For the enforcement of removal to the native country or the country of origin, the authorities responsible for organising departure may disclose the following data to the foreign authority:

- a. personal details (name, first name, aliases, date of birth, place of birth, gender, nationality, last address in the native country or the country of origin) of the person concerned and, as far as necessary for their identification, of dependants;

<sup>259</sup> Inserted by Art. 3 No 2 of the FD of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, in force since 12 Dec. 2008 (AS **2008** 447 5405 Art. 1 let. a; BBl **2004** 5965).

<sup>260</sup> Amended by Art. 3 No 2 of the FD of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, in force since 12 Dec. 2008 (AS **2008** 447 5405 Art. 1 let. a; BBl **2004** 5965).

<sup>261</sup> SR **235.1**

<sup>262</sup> SR **822.41**

<sup>263</sup> Inserted by Annex No 2 of the FA of 17 June 2005 on Measures to Combat Illegal Employment, in force since 1. Jan. 2008 (AS **2007** 359; BBl **2002** 3605).

<sup>264</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2007 (AS **2006** 4745 4767; BBl **2002** 6845).

<sup>265</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2007 (AS **2006** 4745 4767; BBl **2002** 6845).

- b. information about the passport or other identity papers;
- c. fingerprints, photographs and further biometric data if necessary;
- d. further data from documents that help identify a person;
- e. information on the state of health, insofar as this is in the interest of the person concerned;
- f. the data required to guarantee the returnee's entry to the destination country and to ensure the security of the accompanying persons;
- g. information on criminal proceedings in the specific cases where this is required for the readmission procedure and to safeguard public security and order in the native country, and the person concerned will not be endangered thereby; Article 2 of the Mutual Assistance Act of 20 March 1981<sup>266</sup> applies *mutatis mutandis*.<sup>267</sup>

**Art. 98** Disclosure of personal data to third countries and international organisations

<sup>1</sup> In order to implement this Act, SEM and the appeal authorities may disclose personal data to foreign authorities and international organisations entrusted with corresponding tasks if the state or the international organisation concerned guarantees an equivalent level of protection of the data transmitted.

<sup>2</sup> The following personal data may be disclosed:

- a. personal details (name, first name, alias names, date of birth, place of birth, gender, nationality, last address in the native country or the country of origin) of the person concerned and, as far as necessary for their identification, of dependants;
- b. information about the passport or other identity papers;
- c. fingerprints, photographs and further biometric data if necessary;
- d. further data from documents that help identify a person;
- e. information on the state of health, insofar as this is in the interest of the person concerned;
- f. the data required to guarantee the returnee's entry to the destination country and to ensure the security of the accompanying persons;
- g. information on the place of stay and travel routes;
- h. information on permission to stay and visas granted;
- i. information on an application for asylum (place and date the filing, status of the procedure, summary details of the content of a decision made).<sup>268</sup>

<sup>266</sup> SR 351.1

<sup>267</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBI 2002 6845).

<sup>268</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBI 2002 6845).

**Art. 98a**<sup>269</sup> Cooperation with the prosecution authorities

SEM or the Federal Administrative Court shall transmit to the responsible prosecution authorities information and evidence on asylum seekers where there are serious grounds for suspicion that they have committed a felony under international law, in particular a felony against peace, a war crime, a crime against humanity, genocide or torture.

**Art. 98b**<sup>270</sup> Biometric data

<sup>1</sup> The competent authorities may process biometric data for the purpose of establishing the identity of asylum seekers and persons in need of protection.

<sup>1bis</sup> SEM may delegate the processing of biometric data to third parties. It shall verify the compliance by the third parties with the regulations on data protection and information security.<sup>271</sup>

<sup>2</sup> The Federal Council shall determine what biometric data is collected and regulate access to the data.

**Art. 99** Taking and evaluating fingerprints

<sup>1</sup> Fingerprints of all fingers as well as photographs shall be taken of asylum seekers and persons in need of protection. The Federal Council may provide for exceptions in the case of minors under the age of 14.<sup>272</sup>

<sup>2</sup> The fingerprints and photographs shall be stored without the corresponding personal details in database managed by the Federal Office of Police and SEM.<sup>273</sup>

<sup>3</sup> The new fingerprints shall be compared with the fingerprint database managed by the Federal Office of Police.<sup>274</sup>

<sup>4</sup> If the Federal Office of Police determines a match with existing fingerprints, it shall inform SEM, the cantonal police authorities concerned and the Frontier Guards Corps and provide them with the personal details of the person concerned (name, first name, aliases, date of birth, sex, reference number, personal number, nationality, process control number and canton of allocation). Where there is a police report,

<sup>269</sup> Inserted by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>270</sup> Inserted by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>271</sup> Inserted by Annex No 1 of the FA of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS **2008** 5407 5405 Art. 2 let. c; BBl **2007** 7937).

<sup>272</sup> Amended by Art. 3 No 2 of the FD of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, in force since 12 Dec. 2008 (AS **2008** 447 5405 Art. 1 let. a; BBl **2004** 5965).

<sup>273</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>274</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

the date, place and reason for taking the fingerprints contained therein shall also be provided in code form.<sup>275</sup>

<sup>5</sup> SEM shall use this information to:

- a. check the identity of the person concerned;
- b. check whether the person concerned has already applied for asylum before;
- c. check whether there is data that confirms or refutes the statements made by the person concerned;
- d. check whether there is data that call into question the eligibility of the person concerned to be granted asylum;
- e. facilitate administrative assistance between SEM and the police authorities.

<sup>6</sup> The personal data transmitted in accordance with paragraph 4 may not be disclosed abroad without the consent of the owner of the data collection. Article 6 paragraph 1 of the FADP<sup>276</sup> applies mutatis mutandis.

<sup>7</sup> The data shall be erased:

- a. if asylum is granted;
- b. at the latest ten years after the legally binding rejection, withdrawal or abandonment of the application for asylum or after a decision to dismiss the application;
- c.<sup>277</sup> in the case of persons in need of protection, at the latest ten years after the lifting of the temporary protection.

## **Section 1a<sup>278</sup>** **Information System for Federal Centres and** **Airport Accommodation<sup>279</sup>**

### **Art. 99a** Principles

<sup>1</sup> SEM shall operate an information system for federal centres and airport accommodation (MIDES).

<sup>275</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBI **2002** 6845).

<sup>276</sup> SR **235.1**

<sup>277</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBI **2002** 6845).

<sup>278</sup> Inserted by the Annex to the FA of 18 June 2010 (Automated Border Controls, Documentation Advisers, MIDES Information System), in force since 1 Jan. 2011 (AS **2010** 5755; BBI **2009** 8881).

<sup>279</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBI **2014** 7991).

<sup>2</sup> MIDES serves as an aid in:

- a. the processing of personal data relating to asylum seekers and persons in need of protection, including sensitive personal data and personality profiles in accordance with Article 3 letters c and d of the FADP<sup>280</sup>; and
- b. audits, the conduct of asylum procedures and the planning and organisation of accommodation.

<sup>3</sup> MIDES contains the following personal data:

- a. data on the identity of the registered persons, and in particular their surname, name, sex, date and place of birth, nationality, ethnic origin, religion, marital status, address and parents' names;
- b.<sup>281</sup> minutes of the summary questioning conducted at federal centres and at the airports in accordance with Articles 22 paragraph 1 and 26 paragraph 3;
- c. biometric data;
- d. details of the accommodation;
- e. the status of the proceedings;
- f.<sup>282</sup> the note «medical case», for the purpose of distributing asylum seekers among the cantons.

<sup>4</sup> The personal data in accordance with paragraph 3 letters a, c, e and f shall be entered in ZEMIS.<sup>283</sup>

<sup>5</sup> The asylum seekers and persons in need of protection must in particular be informed of the reasons for processing the data and the categories of data recipient.

#### **Art. 99b** Data processing in MIDES

The following persons have access to MIDES provided such access is required in order to fulfil their duties:

- a. employees of SEM;
- b. authorities in accordance with Article 22 paragraph 1;
- c. authorised third parties in accordance with Article 99c.
- d.<sup>284</sup> employees of the cantonal or communal centres under Article 24d who are responsible for asylum seekers' accommodation and care.

<sup>280</sup> SR 235.1

<sup>281</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>282</sup> Inserted by Annex No 1 of the FA of 14 Dec. 2018 (Procedural Arrangements and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>283</sup> Amended by Annex No 1 of the FA of 14 Dec. 2018 (Procedural Arrangements and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>284</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

**Art. 99c** Authorised third parties

<sup>1</sup> SEM may authorise third parties who are responsible for procuring biometric data, ensuring security or for administration and care in federal centres and airport accommodation to process personal data in accordance with Article 99a paragraph 3 letters a, c and d in MIDES.

<sup>2</sup> SEM shall ensure that authorised third parties comply with the applicable regulations on data protection and information technology security.

**Art. 99d** Supervision and implementation

<sup>1</sup> SEM is responsible for the security of MIDES and the legality of the processing of personal data.

<sup>2</sup> The Federal Council shall regulate:

- a. the organisation and operation of MIDES;
- b. the catalogue of personal data to be processed;
- c. rights of access;
- d. technical and organisational protective measures against unauthorised processing;
- e. the length of time that data may be stored;
- f. the archiving and destruction of data on expiry of the storage period.

**Section 1b Other Information Systems**<sup>285</sup>**Art. 100**<sup>286</sup> Information system of the appeal authorities<sup>287</sup>

<sup>1</sup> The appeal authorities shall maintain an information system to record appeals that have been filed, for the conduct of audits and to compile statistics.

<sup>2</sup> These information systems may contain personal data and personality profiles especially worthy of protection if this is necessary for the fulfilment of the statutory task.

<sup>285</sup> Inserted by the Annex to the FA of 18 June 2010 (Automated Border Controls, Documentation Advisers, MIDES Information System), in force since 1 Jan. 2011 (AS 2010 5755; BBl 2009 8881).

<sup>286</sup> Amended by Art. 18 No 2 of the FA of 20 June 2003 on the Information System on Asylum and Foreign Nationals, in force since 29 May 2006 (AS 2006 1931; BBl 2002 4693).

<sup>287</sup> Amended by the Annex to the FA of 18 June 2010 (Automated Border Controls, Documentation Advisers, MIDES Information System), in force since 1 Jan. 2011 (AS 2010 5755; BBl 2009 8881).

<sup>2bis</sup> Incorrect data must be corrected by the authorities. If the incorrect data is attributed to a person's violation of the duty to cooperate, this person may be billed for the costs for the correction.<sup>288</sup>

**Art. 101**<sup>289</sup>

**Art. 102** Information and documentation system

<sup>1</sup> SEM shall manage an automated information and documentation system in cooperation with the Federal Administrative Court. The system shall contain factual information and documentation from the sphere of responsibilities of SEM and the Federal Administrative Court stored in various databases. If required, personal data contained in the texts may also be stored, in particular personal details, as well as particularly sensitive personal data and personality profiles.<sup>290</sup>

<sup>2</sup> Only employees of SEM and the Federal Administrative Court shall have access to databases containing particularly sensitive personal data and personality profiles.<sup>291</sup>

<sup>3</sup> Databases containing predominantly factual information drawn from public sources may be made accessible to external users on request by means of a retrieval procedure.

<sup>4</sup> The Federal Council shall regulate the details, and in particular access to the system and the protection of the personal data collected therein.

**Art. 102a**<sup>292</sup> Statistics on recipients of social assistance

For the taxation of the financial compensatory payments to the cantons, the Federal Statistical Office shall periodically transmit anonymised and aggregated data on the persons seeking asylum who draw benefits from public social assistance to SEM.

<sup>288</sup> Inserted by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>289</sup> Repealed by No I of the FA of 14 Dec. 2012, with effect from 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>290</sup> Amended by No 4 of the Federal Administrative Court Act of 17 June 2005, in force since 1 Jan. 2007 (AS **2006** 2197 1069; BBl **2001** 4202).

<sup>291</sup> Amended by No 4 of the Federal Administrative Court Act of 17 June 2005, in force since 1 Jan. 2007 (AS **2006** 2197 1069; BBl **2001** 4202).

<sup>292</sup> Inserted by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

## Section 2<sup>293</sup> Data Processing under the Dublin Association Agreements

### Art. 102<sup>a</sup><sup>bis</sup> Eurodac

<sup>1</sup> Within the framework of the application of the Dublin Association Agreements <sup>294</sup> SEM is responsible for dealings with the Central Unit of the Eurodac System.

<sup>2</sup> It shall transmit the following data to the Central Unit:

- a. the place and date of the application in Switzerland;
- b. the sex of the applicant;
- c. the fingerprints taken in accordance with Article 99 paragraph 1;
- d. the Swiss code number for the fingerprints;
- e. the date on which the fingerprints were taken;
- f. the date on which the data was transmitted to the Central Unit.
- g. the user password.<sup>295</sup>

<sup>2bis</sup> If the condition of the fingers of the person concerned do not allow fingerprints to be taken, the fingerprints must be transmitted to the Central Unit within 48 hours of fingerprints of acceptable quality being taken. If it is impossible to take fingerprints due to the state of health of the person concerned or due to public health measures, the fingerprints must be transmitted to the Central Unit within 48 hours of the impediment ceasing to apply.<sup>296</sup>

<sup>2ter</sup> If the transmission of data is prevented by serious technical problems, an additional period of 48 hours shall be allowed in order to take the measures required to ensure that the system operates correctly again.<sup>297</sup>

<sup>2quater</sup> SEM shall also transmit the following data to the Central Unit:

- a. on the admission of a person under Regulation (EU) No 604/2013<sup>298</sup>; the time of arrival in Switzerland;

<sup>293</sup> Inserted by Art. 3 No 2 of the FD of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, in force since 12 Dec. 2008 (AS **2008** 447 5405 Art. 1 let. a; BBl **2004** 5965).

<sup>294</sup> These conventions are listed in Annex 1.

<sup>295</sup> Amended by Annex No 2 of the FD of 26 Sept. 2014 (Adoption of R [EU] No 603/2013 on the Establishment of Eurodac and the amendment to R [EU] No 1077/2011 on the Establishment of the IT Agency), in force since 20 July 2015 (AS **2015** 2323; BBl **2014** 2675).

<sup>296</sup> Inserted by Annex No 2 of the FD of 26 Sept. 2014 (Adoption of R [EU] No 603/2013 on the Establishment of Eurodac and the amendment to R [EU] No 1077/2011 on the Establishment of the IT Agency), in force since 20 July 2015 (AS **2015** 2323; BBl **2014** 2675).

<sup>297</sup> Inserted by Annex No 2 of the FD of 26 Sept. 2014 (Adoption of R [EU] No 603/2013 on the Establishment of Eurodac and the amendment to R [EU] No 1077/2011 on the Establishment of the IT Agency), in force since 20 July 2015 (AS **2015** 2323; BBl **2014** 2675).

<sup>298</sup> Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Mem-



- b. on the readmission of a person under Regulation (EU) No 604/2013: the time of arrival in Switzerland;
- c. on proof that an applicant whose application must be processed by Switzerland under Regulation (EU) No 604/2013 has left the territory of the states bound by any one of the Dublin Association Agreements: the time of departure;
- d. on successful enforcement of a removal order, the time of the deportation or departure of the applicant from the territory of the states bound by any one of the Dublin Association Agreements;
- e. if Switzerland, based on the sovereignty clause in Regulation (EU) No 604/2013, decides voluntarily to become the Dublin state responsible for processing an asylum application: the time of this decision.<sup>299</sup>

<sup>3</sup> The transmitted data shall be stored in the Eurodac database and automatically compared with the data already stored in this database. The result of the comparison shall be communicated to SEM.<sup>300</sup>

<sup>4</sup> The data shall be automatically erased by the Central Unit ten years after the fingerprints were taken. If a person whose data has been transmitted by Switzerland to the Eurodac database is granted citizenship of a state bound by one of the Dublin Association Agreements before the expiry of this period, SEM, as soon as it has been notified of this fact, shall request the Central Unit to erase the data immediately.

**Art. 102a<sup>ter</sup>**<sup>301</sup> Examination of the fingerprints in Eurodac

<sup>1</sup> A specialist shall examine the fingerprints if Eurodac reveals a match.

<sup>2</sup> SEM decides on the qualifications that the fingerprint specialist must have.

**Art. 102b** Disclosure of personal data to a state bound by one of the Dublin Association Agreements

The disclosure of personal data to the competent authorities of states that are bound by one of the Dublin Association Agreements shall be regarded as equivalent to the disclosure of personal data between federal bodies.

ber States by a third-country national or a stateless person (new version), Amended by OJ L 180 of 29.6.2013, p. 31.

<sup>299</sup> Inserted by Annex No 2 of the FD of 26 Sept. 2014 (Adoption of R [EU] No 603/2013 on the Establishment of Eurodac and the amendment to R [EU] No 1077/2011 on the Establishment of the IT Agency), in force since 20 July 2015 (AS 2015 2323; BBI 2014 2675).

<sup>300</sup> Amended by Annex No 2 of the FD of 26 Sept. 2014 (Adoption of R [EU] No 603/2013 on the Establishment of Eurodac and the amendment to R [EU] No 1077/2011 on the Establishment of the IT Agency), in force since 20 July 2015 (AS 2015 2323; BBI 2014 2675).

<sup>301</sup> Inserted by Annex No 2 of the FD of 26 Sept. 2014 (Adoption of R [EU] No 603/2013 on the Establishment of Eurodac and the amendment to R [EU] No 1077/2011 on the Establishment of the IT Agency), in force since 20 July 2015 (AS 2015 2323; BBI 2014 2675).

**Art. 102c** Disclosure of personal data to a state not bound by any of the Dublin Association Agreements

<sup>1</sup> Personal data may be disclosed to third countries only if they guarantee an adequate standard of data protection.

<sup>2</sup> If a third country fails to guarantee an adequate standard of data protection, personal data may be disclosed to this country in individual cases if:

- a. the person concerned gives their unequivocal consent; if the personal data or personality profiles are particularly sensitive, consent must be given expressly;
- b. the disclosure is required to protect the life or physical integrity of the person concerned; or
- c. the disclosure is required to safeguard overriding public interests or to establish, exercise or enforce legal rights in court.

<sup>3</sup> In addition to the cases mentioned in paragraph 2, personal data may also be disclosed if in specific cases adequate guarantees ensure appropriate protection of the person concerned.

<sup>4</sup> The Federal Council shall determine the extent of the guarantees required and the modalities for providing the guarantees.

<sup>5</sup> The data obtained from the Eurodac database may not be transmitted under any circumstances to:

- a. a state that is not bound by any of the Dublin association agreements;
- b. international organisations;
- c. private entities.<sup>302</sup>

**Art. 102d**<sup>303</sup>

**Art. 102e** Right to information

The right to information is governed by the federal and cantonal data protection provisions.<sup>304</sup> The proprietor of the data collection shall also furnish information on the details available on the origin of the data.

<sup>302</sup> Inserted by Annex No 2 of the FD of 26 Sept. 2014 (Adoption of R [EU] No 603/2013 on the Establishment of Eurodac and the amendment to R [EU] No 1077/2011 on the Establishment of the IT Agency), in force since 20 July 2015 (AS 2015 2323; BBl 2014 2675).

<sup>303</sup> Repealed by No 2 of the FA of 19 March 2010 on the Implementation of Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, with effect from 1 Dec. 2010 (AS 2010 3387 3418; BBl 2009 6749).

<sup>304</sup> Amended by No 2 of the FA of 19 March 2010 on the Implementation of Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, in force since 1 Dec. 2010 (AS 2010 3387 3418; BBl 2009 6749).

## Chapter 8 Legal Protection, Appeal Proceedings, Re-examination and Multiple Applications<sup>305</sup>

### Section 1<sup>306</sup> Legal Protection in Federal Centres

#### Art. 102f Principles

<sup>1</sup> Asylum seekers whose request is processed in a federal centre have the right to free advice and legal representation.

<sup>2</sup> SEM shall mandate one or more providers to carry out the tasks mentioned in paragraph 1.

#### Art. 102g Counselling on the asylum procedure

<sup>1</sup> During their stay in a federal centre, asylum seekers shall have access to counselling on the asylum procedure.

<sup>2</sup> The counselling shall include in particular informing the asylum seekers about their rights and obligations in the asylum procedure.

#### Art. 102h Legal representation

<sup>1</sup> Each asylum seeker shall be assigned a legal representative from the start of the preparatory phase and for the remainder of the asylum procedure, unless the asylum seeker expressly declines this.

<sup>2</sup> The legal representative assigned shall inform the asylum seeker as quickly as possible about the asylum seeker's chances in the asylum procedure.

<sup>3</sup> Legal representation shall last, under the accelerated and the Dublin procedure, until a legally binding decision is taken, or until a decision is taken about carrying out an extended procedure. Article 102l is reserved.

<sup>4</sup> Legal representation shall end when the legal representative assigned informs the asylum seeker that he or she does not wish to submit an appeal because it would have no prospect of success. This shall take place as quickly as possible after notification of the decision to reject asylum.

<sup>5</sup> The tasks of the legal representative are governed by Article 102k.

#### Art. 102i Tasks of the provider

<sup>1</sup> The provider under Article 102f paragraph 2 is responsible in particular for providing, organising and implementing counselling and legal representation in federal centres. It shall ensure the quality of the counselling and legal representation.

<sup>305</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325).

<sup>306</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>2</sup> The provider shall determine the persons to whom counselling and legal representation is assigned. It shall assign the persons responsible for legal representation to the asylum seekers.

<sup>3</sup> Persons professionally involved in counselling asylum seekers are allowed to provide counselling.

<sup>4</sup> Attorneys are allowed to provide legal representation. Persons with a university degree in law who are involved in counselling and representing asylum seekers professionally are also allowed to provide legal representation.

<sup>5</sup> There shall be a regular exchange of information between the provider and SEM, in particular to coordinate tasks and ensure quality.

**Art. 102j** Participation of the legal representative

<sup>1</sup> SEM shall notify the provider of the appointments for initial questioning in the preparatory phase, for the interview on the grounds for asylum and for further procedural steps requiring involvement of the legal representation. The provider shall give this information promptly to the legal representative.

<sup>2</sup> Provided the appointments are notified in good time, SEM's actions have legal force even if the legal representative is not present or does not participate. Exceptions may be for absences at short notice there is justifiable good cause.

<sup>3</sup> If the legal representative does not provide an opinion on a draft decision to refuse asylum within the time limit, despite the draft decision being sent by the provider in good time, it shall be considered that no view is expressed.

**Art. 102k** Payment for counselling and legal representation

<sup>1</sup> The Confederation shall, by agreement and on the principle that value for money will be ensured, pay the provider for the following tasks in particular:

- a. providing information and counselling to asylum seekers;
- b. the participation of the legal representative in the initial questioning in the preparatory phase and in the interview on the grounds for asylum;
- c. providing an opinion on the draft asylum decision under the accelerated procedure;
- d. providing legal representation in appeal proceedings, in particular preparing the appeal documentation;
- e. representing the interests of unaccompanied minor asylum seekers as a trusted person at federal centres and at airports;
- f. in the case of allocation to the extended procedure, provision of information by the assigned legal representative to the legal advice agency on the current state of proceedings, or continuation of legal representation assigned in procedural stages relevant to a decision under Article 102l.

<sup>2</sup> The payment shall contain a contribution to the administrative and staff costs incurred by the provider, in particular for the organisation of counselling and legal

representation, as well as a contribution to independent translation. Payment shall be made as a lump sum. In exceptional cases, the payment may be based on the actual expenditure, especially in the case of non-recurring costs.

### **Section 1a<sup>307</sup>**

#### **Counselling and Legal Representation in the Extended Procedure following Allocation to the Cantons**

##### **Art. 102l**

<sup>1</sup> Following allocation to a canton, asylum seekers may contact a legal advice agency or the legal representative allocated free of charge at steps of the procedure at first instance relevant to the decision, in particular if an additional interview is held on the grounds for asylum.

<sup>2</sup> The Confederation shall pay the legal advice agency for the work it carries out under paragraph 1 by agreement and on the principle that value for money will be ensured. The payment shall be made as a lump sum. In exceptional cases, the payment may be based on the actual expenditure, especially in the case of non-recurring costs.

<sup>3</sup> The Federal Council shall lay down the requirements for authorisation as a legal advice agency and shall determine the procedural steps relevant to the decision under paragraph 1.

### **Section 1b<sup>308</sup> Legal Aid**

##### **Art. 102m**

<sup>1</sup> The Federal Administrative Court shall at the request of the asylum seeker, who shall be exempted from paying the procedural costs, appoint an official legal adviser, but only in the case of appeals against:

- a. decisions to dismiss the application, decisions to refuse asylum and removal orders under Articles 31a and 44;
- b. decisions on the revocation or expiry of asylum under Articles 63 and 64;
- c. the termination of temporary admission relating to asylum seekers under Article 84 paragraphs 2 and 3 FNIA<sup>309</sup>;
- d. decisions relating to granting temporary protection under Chapter 4 of this Act.

<sup>307</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>308</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>309</sup> SR 142.20

<sup>2</sup> An exception is made for appeals under paragraph 1 if they relate to re-examination and review procedures and multiple applications. For these and for the other appeals, with the exception of paragraph 1, Article 65 paragraph 2 of the Administrative Procedure Act applies<sup>310</sup>.

<sup>3</sup> In the case of appeals submitted on the basis of this Act, persons with a university degree in law who are involved in counselling and representing asylum seekers professionally are also authorised to act as official legal advisers.

<sup>4</sup> Paragraphs 1–3 also apply to persons whose application is decided on under the accelerated procedure and who do not make use of legal representation under Article 102*h*. This also applies when the legal representative assigned under the accelerated procedure does not make an appeal (Art. 102*h* paragraph 4).

## Section 1c Appeal Proceedings at Cantonal Level<sup>311</sup>

### Art. 103

<sup>1</sup> The cantons shall provide at least one appellate authority where appeals may be filed against rulings of cantonal authorities based on this Act and its implementing provisions.

<sup>2</sup> Appeals against decisions by cantonal courts of the last instance are governed by the general provisions on the administration of federal justice, unless otherwise provided in this Act.

## Section 2 Appeal Proceedings at Federal Level

### Art. 104<sup>312</sup>

### Art. 105<sup>313</sup> Appeals against SEM rulings

Appeals may be filed against SEM rulings in accordance with the Federal Administrative Court Act of 17 June 2005<sup>314</sup>.

<sup>310</sup> SR 172.021

<sup>311</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>312</sup> Repealed by Annex No 4 of the Administrative Court Act of 17 June 2005, with effect from 1 Jan. 2007 (AS 2006 2197 1069; BBl 2001 4202).

<sup>313</sup> Amended by No I 3 to No IV of the Ordinance of the Federal Assembly of 20 Dec. 2006 on the Adaptation of Enactments to the Provisions of the Supreme Court Act and the Administrative Court Act, in force since 1 Jan. 2008 (AS 2006 5599, 2007 5573; BBl 2006 7759).

<sup>314</sup> SR 173.32

**Art. 106**<sup>315</sup> Grounds for appeal

<sup>1</sup> An appeal may be filed on the following grounds:

- a. the violation of federal law, including the abuse and exceeding of discretionary powers;
- b. incorrect and incomplete determination of the legally relevant circumstances;
- c.<sup>316</sup> ...

<sup>2</sup> Article 27 paragraph 3 and Article 68 paragraph 2 remain reserved.

**Art. 107** Contestable interim rulings

<sup>1</sup> Interim rulings issued in application of Article 10 paragraphs 1–3 and 18–48 of this Act as well as Article 71 FNIA<sup>317</sup> may only be contested by appeal against the final ruling. The contesting of rulings remains reserved in accordance with Article 27 paragraph 3.<sup>318</sup>

<sup>2</sup> The following are also independently contestable, provided they may cause permanent prejudice:

- a. precautionary measures;
- b. rulings by which proceedings are suspended, other than rulings in accordance with Article 69 paragraph 3.

<sup>3</sup> ...<sup>319</sup>

**Art. 107a**<sup>320</sup> Dublin procedure

<sup>1</sup> No suspensive effect may be applied to appeals against decisions to dismiss applications made by asylum seekers who are able to travel to another state that is responsible under an international treaty for the conduct of asylum or removal proceedings.

<sup>2</sup> The asylum seeker may apply for the order to be suspended within the deadline for filing the appeal.

<sup>315</sup> Amended by No I 2 of the Ordinance of the Federal Assembly of 20 Dec. 2006 on the Adaptation of Enactments to the Provisions of the Supreme Court Act and the Administrative Court Act (AS **2006** 5599; BBl **2006** 7759).

<sup>316</sup> Repealed by No I of the FA of 14 Dec. 2012, with effect from 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>317</sup> SR **142.20**

<sup>318</sup> Amended by Annex No II 1 of the FA of 16 Dec. 2005 on Foreign Nationals, in force since 1 Jan. 2008 2008 (AS **2007** 5437, **2008** 5405; BBl **2002** 3709).

<sup>319</sup> Repealed by No I of the FA of 16 Dec. 2005, with effect from 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

<sup>320</sup> Inserted by Art. 3 No 2 of the FD of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin (AS **2008** 447; BBl **2004** 5965). Amended by Annex No I 2 of the FD of 26 Sept. 2014 (Adoption of R[EU] No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection), in force since 1 July 2015 (AS **2015** 1841; BBl **2014** 2675).

<sup>3</sup> The Federal Administrative Court shall decide on the matter within five days of receipt of an application under paragraph 2. If suspension is not granted within five days, the removal order may be enforced

**Art. 108<sup>321</sup>** Time limits for appeals

<sup>1</sup> Under the accelerated procedure, an appeal against a decision under Article 31a paragraph 4 must be submitted within five days of notification of the ruling.

<sup>2</sup> Under the extended procedure, an appeal against a decision under Article 31a paragraph 4 must be filed within 30 days, and against interim rulings within ten days of notification of the ruling.

<sup>3</sup> An appeal against decisions to dismiss an application and against rulings in accordance with Article 23 paragraph 1 and Article 40 in conjunction with Article 6a paragraph 2 letter a must be submitted within five working days of notification of the ruling.

<sup>4</sup> Denial of entry in accordance with Article 22 paragraph 2 may be contested until notification of the ruling in accordance with Article 23 paragraph 1.

<sup>5</sup> A review of the legality and the appropriateness of the allocation of a place of stay at the airport or at another appropriate place in accordance with Article 22 paragraphs 3 and 4 may be requested by means of appeal at any time.

<sup>6</sup> In other cases, the time limit for appeals is 30 days from notification of the ruling.

<sup>7</sup> Written legal submissions sent by fax are legally binding if they reach the Federal Administrative Court within the notice period and are supplemented by filing the signed original subsequently in accordance with Article 52 paragraphs 2 and 3 of the Federal Act of 20 December 1968<sup>322</sup> on Administrative Procedure.

**Art. 108a<sup>323</sup>** Coordination with the extradition proceedings

If the person seeking asylum is the subject of an application for extradition in accordance with the Mutual Assistance Act of 20 March 1981<sup>324</sup>, the appeal authorities shall consult the files on the extradition proceedings when deciding on appeal relating to the asylum application.

<sup>321</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>322</sup> SR 172.021

<sup>323</sup> Inserted by No I 2 of the FA of 19 Dec. 2003 on the 2003 Relief Programme (AS 2004 1633; BBl 2003 5615). Amended by No I 1 of the FA of 1 Oct. 2010 on the Coordination of Asylum and Extradition Proceedings, in force since 1 Apr. 2011 (AS 2011 925; BBl 2010 1467).

<sup>324</sup> SR 351.1



**Art. 109**<sup>325</sup> Time limits for decisions

<sup>1</sup> Under the accelerated procedure, the Federal Administrative Court normally decides within 20 days on appeals against decisions under Article 31a paragraph 4.

<sup>2</sup> Under the extended procedure, the Federal Administrative Court decides on appeals against decisions under Article 31a paragraph 4 within 30 days.

<sup>3</sup> In the case of appeals against decisions to dismiss an application and against rulings under Article 23 paragraph 1 and Article 40 in conjunction with Article 6a paragraph 2 letter a, it normally decides within 5 working days.

<sup>4</sup> The time limits laid down in paragraphs 1 and 3 may be exceeded by a few days if there are valid reasons.

<sup>5</sup> The Federal Administrative Court decides on appeals against decisions in accordance with Article 22 paragraphs 2–3 and 4 without delay on the basis of the files.

<sup>6</sup> In other cases, the Federal Administrative Court shall decide on appeals within 20 days.

<sup>7</sup> It shall decide exceptionally and immediately if the person seeking asylum is in detention pending extradition on the basis of a request by a state in respect of which the asylum seeker is seeking protection in Switzerland. This also applies when the asylum seeker has been made subject to an expulsion order under Article 66a or 66a<sup>bis</sup> SCC<sup>326</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>327</sup>.

**Art. 109a**<sup>328</sup> Exchange of information

A regular exchange of information shall take place between the FDJP and the Federal Administrative Court on the prioritisation and administrative processing of proceedings of first and second instance.

**Art. 109b**<sup>329</sup> Federal Administrative Court processing strategy

The Federal Administrative Court shall adopt a processing strategy; in doing so, it shall take account of:

- a. SEM processing strategy under Article 37b;
- b. the statutory appeal and processing deadlines.

**Art. 110** Procedural time limits

<sup>1</sup> The additional period allowed for the amendment of the appeal amounts to seven days, and in the case of appeals against decisions to dismiss an application and

<sup>325</sup> Amended by No I, paras 5 and 7 in accordance with No IV 2 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>326</sup> SR 311.0

<sup>327</sup> SR 321.0

<sup>328</sup> Inserted by No I of the FA of 14 Dec. 2012 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325).

<sup>329</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325).

decisions in accordance with Article 23 paragraph 1, under Article 40 in conjunction with Article 6a paragraph 2 letter a, and rulings under Article 111b, three days.<sup>330</sup>

<sup>2</sup> The time limit for furnishing evidence is seven days if the evidence must be obtained in Switzerland, and 30 days for evidence that must be obtained abroad. Expert reports must be produced within 30 days.

<sup>3</sup> The time limit under paragraph 2 may be extended if the appellant or their representative is prevented from acting within this time limit, in particular due to illness or accident.<sup>331</sup>

<sup>4</sup> The deadline for proceedings is at the most two working days in the case of proceedings relating to the denial of entry into Switzerland and the allocation of a place of stay at the airport in accordance with Article 22 paragraphs 2–3 and 4.<sup>332</sup>

#### Art. 110a<sup>333</sup>

#### Art. 111<sup>334</sup> Competence of a single judge

<sup>1</sup> The following cases may be heard by a single judge:

- a. the dismissal of appeals due to irrelevance;
- b. summary dismissal of manifestly unlawful appeals;
- c. the decision relative to the preliminary denial of entry at the airport and the allocation of a place of stay at the airport;
- d.<sup>335</sup> ...
- e. with consent of a second judge: appeals that are clearly with or without justification.

#### Art. 111a<sup>336</sup> Procedure and decision

<sup>1</sup> The Federal Administrative Court may dispense with an exchange of written submissions.<sup>337</sup>

<sup>330</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>331</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>332</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>333</sup> Inserted by No I of the FA of 14 Dec. 2012 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325). Repealed by No I of the FA of 25 Sept. 2015, with effect from 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>334</sup> Amended by No I and IV 1 of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845).

<sup>335</sup> Repealed by No I of the FA of 25 Sept. 2015, with effect from 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>336</sup> Inserted by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845).

<sup>337</sup> Amended by No I 3 of the Ordinance of the Federal Assembly of 20 Dec. 2006 on the Amendment of Legislation in accordance with the Provisions on the Federal Supreme

<sup>2</sup> Appeal decisions in accordance with Article 111 need only be summarily substantiated.

**Art. 111a<sup>bis</sup>**<sup>338</sup> Preparatory measures and oral notification of a judgment

<sup>1</sup> In the appeal procedure against decisions on asylum under Article 31a of this Act issued under the accelerated or the Dublin procedure, the Federal Administrative Court may carry out preparatory measures in federal centres under Article 39 paragraph 2 of the Federal Administrative Court Act of 17 June 2005<sup>339</sup> if this means that the appeal can be decided on more quickly.

<sup>2</sup> Oral notification of the judgment is permitted. The oral notification together with a summary justification must be recorded in minutes.

<sup>3</sup> The parties may request a complete copy of the judgment within 5 days of oral notification of the judgment. This does not mean that enforceability of the judgment is deferred.

**Art. 111a<sup>ter</sup>**<sup>340</sup> Party costs

In the appeal procedure against decisions on asylum under Article 31a which have been issued under the accelerated or the Dublin procedure, no party costs shall be awarded. If the asylum seeker has not made use of legal representation under Article 102h or has not made use of legal representation when making an appeal (Art. 102h paragraph 4), the general provisions on the administration of federal justice apply.

### Section 3 Re-examination and Multiple Applications<sup>341</sup>

**Art. 111b<sup>342</sup>** Re-examination

<sup>1</sup> An application for re-examination must be submitted to SEM in writing and with a statement of grounds within 30 days of identifying the grounds for re-examination. There is no preparatory phase.<sup>343</sup>

<sup>2</sup> Decisions to dismiss an application must normally be made within five working days of submission of an application for re-examination. In other cases, decisions must normally be made within ten working days of the application being submitted.

Court Act and the Federal Administrative Court Act, in force since 1 Jan. 2008 (AS 2006 5599, 2007 5573; BBl 2006 7759).

<sup>338</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>339</sup> SR 173.32

<sup>340</sup> Inserted by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>341</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325).

<sup>342</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325).

<sup>343</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>3</sup> The submission of an application for re-examination does not delay enforcement. The authority responsible for processing may suspend enforcement on request if there is a specific danger to the applicant in his or her native country or country of origin.

<sup>4</sup> Applications for re-examination without a statement of grounds or repeat applications that state the same grounds shall be dismissed without a formal decision being taken.

**Art. 111c<sup>344</sup>** Multiple applications

<sup>1</sup> Applications for asylum made within five years of the asylum decision or removal order becoming legally binding must be submitted in writing with a statement of the grounds. There is no preparatory phase. The grounds for dismissal under Article 31a paragraphs 1–3 apply.<sup>345</sup>

<sup>2</sup> Multiple applications or repeat applications that state the same grounds shall be dismissed without a formal decision being taken

**Art. 111d<sup>346</sup>** Fees

<sup>1</sup> SEM shall charge a fee if it rejects or dismisses an application for re-examination or a multiple application. If a request or application is approved in part, the fee is reduced. No compensation is paid.

<sup>2</sup> SEM shall on request exempt the applicant following submission of re-examination or multiple applications from having to pay procedural costs provided he or she is in financial need and the application does not appear prima facie without merit.

<sup>3</sup> SEM may request the applicant to make an advance payment of fees equivalent to the probable procedural costs. It shall allow an appropriate period for payment to be made, under threat of dismissal for failure to do so. An advance payment of fees shall not be requested:

- a. if the requirements of paragraph 2 are met; or
- b. in proceedings involving unaccompanied minors, provided the re-examination or multiple application does not appear prima facie without merit.

<sup>4</sup> The Federal Council shall regulate the assessment of the fee and the level of the advance payment.

<sup>344</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>345</sup> Amended by No I of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>346</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

**Art. 112**<sup>347</sup>**Section 4 Stop and Suspension of Limitation Periods**<sup>348</sup>**Art. 112a**<sup>349</sup>

For the duration of appeal proceedings, the limitation period for financial claims by the Confederation against recipients of subsidies or social assistance does not begin or is suspended if it has already begun.

**Chapter 8a Asylum Proceedings in Test Phases**<sup>350</sup>**Art. 112b**<sup>351</sup> ...<sup>352</sup>

<sup>1</sup> The Confederation may provide for test phases to assess new procedures if a test phase is required for such procedures prior to amending the law due to the complex organisational and technical measures involved.

<sup>2</sup> The Confederation regulates the details of the test phases in an ordinance. In doing so it may deviate from the terms of this Act and the FNIA<sup>353</sup> in relation to the organisation of first instance asylum proceedings and the removal proceedings and related financial issues.

<sup>3</sup> It may reduce the deadline for filing an appeal under Article 108 paragraph 1 in test phases from 30 days to ten days, provided effective legal protection for the asylum seekers concerned is guaranteed by suitable measures.

<sup>4</sup> The ordinance lists all the statutory provisions from which it deviates.

<sup>5</sup> The test phases last no longer than two years.

<sup>347</sup> Repealed by No I of the FA of 14 Dec. 2012, with effect from 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>348</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>349</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>350</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>351</sup> Inserted by No I of the FA of 28 Sept 2012 (Emergency Amendments to the Asylum Act), in force from 29 Sept. 2012 to 28 Sept. 2015 (AS **2012** 5359; BBl **2010** 4455, **2011** 7325) and extended to 28 Sept. 2019 by No II of the FA of 26 Sept. 2014 (AS **2015** 2047; BBl **2014** 2087). See also the transitional provision to this amendment at the end of the text.

<sup>352</sup> Repealed by No I of the FA of 14 Dec. 2012, with effect from 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>353</sup> SR **142.20**

## Chapter 9 International Cooperation<sup>354</sup>

### Art. 113 ...<sup>355</sup>

The Confederation shall participate in the harmonisation of European refugee policy at international level as well as in the resolution of refugee problems abroad. It shall support the activities of international charitable organisations. It shall in particular work with the United Nations High Commissioner for Refugees.

### Art. 114<sup>356</sup>

## Chapter 10 Criminal Provisions<sup>357</sup>

### Section 1 Criminal Provisions relative to Chapter 5 Section 2<sup>358</sup>

#### Art. 115 Misdemeanours

Any person who commits any of the following acts is liable to a monetary penalty not exceeding 180 daily penalty units, unless the act constitutes a felony or misdemeanour that carries a higher penalty under the SCC<sup>359,360</sup>

- a. obtaining, on the basis of this Act, for themselves or for another by providing false or incomplete information or in another way a pecuniary advantage that is not theirs by right;
- b.<sup>361</sup> completely or partly evading the duty to pay the special charge in accordance with Article 86 by providing false or incomplete information or in another way;

<sup>354</sup> Amended by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>355</sup> Repealed by No I of the FA of 14 Dec. 2012, with effect from 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>356</sup> Repealed by No I of the FA of 14 Dec. 2012, with effect from 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>357</sup> Amended by Art. 3 No 2 of the FD of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, in force since 12 Dec. 2008 (AS **2008** 447 5405 Art. 1 let. a; BBl **2004** 5965).

<sup>358</sup> Inserted by Art. 3 No 2 of the FD of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, in force since 12 Dec. 2008 (AS **2008** 447 5405 Art. 1 let. a; BBl **2004** 5965).

<sup>359</sup> SR **311.0**. Term in accordance with Annex No 2 of the FA of 20 March 2015 (Implementation of Art. 121 para. 3–6 Federal Constitution on the expulsion of foreign nationals convicted of certain criminal offences), in force since 1 Oct. 2016 (AS **2016** 2329; BBl **2013** 5975).

<sup>360</sup> Amended by Art. 333 of the Criminal Code (SR **311.0**) in the version contained in the FA of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459; BBl **1999** 1979).

<sup>361</sup> Amended by No I of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

c.<sup>362</sup> ...

d.<sup>363</sup> assists a person to commit an offence under Article 116 letter c with a view to his or her own financial gain, in particular through planning or organisation.

**Art. 116**            Contraventions

Any person who commits any of the following acts is liable to a fine, unless the act constitutes an offence under Article 115:

- a. violating the obligation to provide information by knowingly providing false information or refusing to provide information;
- b. resisting a check instructed by the competent authority or rendering this impossible in another way;
- c.<sup>364</sup> carries out public political activities as an asylum seeker in Switzerland solely with the intention of establishing subjective post-flight grounds within the meaning of Article 54;
- d.<sup>365</sup> assists a person to commit an offence under letter c, in particular through planning or organisation.

**Art. 116a**<sup>366</sup>

**Art. 117**<sup>367</sup>

<sup>362</sup> Repealed by Annex No 1 of the FA of 16 Dec. 2016 (Integration), with effect from 1 Jan. 2018 (AS **2017** 6521; BBl **2016** 2821, **2013** 2397).

<sup>363</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>364</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>365</sup> Inserted by No I of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>366</sup> Inserted by No I of the FA of 16 Dec. 2005 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845). Repealed by Annex No 1 of the FA of 16 Dec. 2016 (Integration), with effect from 1 Jan. 2018 (AS **2017** 6521; BBl **2016** 2821, **2013** 2397).

<sup>367</sup> Repealed by Annex No 1 of the FA of 16 Dec. 2016 (Integration), with effect from 1 Jan. 2018 (AS **2017** 6521; BBl **2016** 2821, **2013** 2397).

## Section 2<sup>368</sup> Criminal Provisions relative to Chapter 7 Section 2

### Art. 117a Improper processing of personal data

Any person who processes personal data stored in Eurodac for a purpose other than to establish which state is responsible for examining an application for asylum made by a citizen of a third country in a state subject to the Dublin Association Agreements is liable to a fine.

## Section 3 Prosecution<sup>369</sup>

### Art. 118 ...<sup>370</sup>

Prosecution is the responsibility of the cantons.

## Chapter 11 Final Provisions

### Art. 119 Implementation

The Federal Council shall be responsible for implementation. It shall issue the implementing provisions.

### Art. 120 Repeal of existing legislation

The following are repealed:

- a. the Asylum Act of 5 October 1979<sup>371</sup>;
- b. the Federal Decree of 16 December 1994<sup>372</sup> on Economy Measures in the Sphere of Asylum and Foreign Nationals.

<sup>368</sup> Inserted by Art. 3 No 2 of the FD of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, in force since 12 Dec. 2008 (AS **2008** 447 5405 Art. 1 let. a; BBl **2004** 5965).

<sup>369</sup> Inserted by Art. 3 No 2 of the FD of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, in force since 12 Dec. 2008 (AS **2008** 447 5405 Art. 1 let. a; BBl **2004** 5965).

<sup>370</sup> Repealed by Art. 3 No 2 of the FD of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, with effect from 12 Dec. 2008 (AS **2008** 447 5405 Art. 1 let. a; BBl **2004** 5965).

<sup>371</sup> [AS **1980** 1718, **1986** 2062, **1987** 1674, **1990** 938 1587 Art. 3, **1994** 1634 No I 8.1 2876, **1995** 146 No II 1126 No II 1 4356, **1997** 2372 2394, **1998** 1582]

<sup>372</sup> [AS **1994** 2876]



**Art. 121** Transitional provisions

<sup>1</sup> The new law applies to proceedings pending on the commencement of this Act.

<sup>2</sup> Pending proceedings on the granting of a residence permit by the immigration authorities in accordance with the prior Article 17 paragraph 2 shall become irrelevant.

<sup>3</sup> The Appeals Commission and the FDJP shall retain jurisdiction over any appeals pending before them on the commencement of this Act, subject to paragraph 2 above.

<sup>4</sup> On the commencement of this Act, the provisions of Chapter 4 shall apply to groups of foreign nationals temporarily admitted in accordance with the current Article 14a paragraph 5 of the Federal Act of 26 March 1931<sup>373</sup> on the Residence and Permanent Settlement of Foreign Nationals. The length of stay of persons temporarily admitted in groups shall be taken into account when calculating the time limits in accordance with Article 74 paragraphs 2 and 3.

<sup>5</sup> The previous law shall apply for up to two years after the commencement of this Act in relation to the payment of social assistance benefits to refugees with a residence permit.

**Art. 122** Relationship with the Federal Decree of 26 June 1998<sup>374</sup> on Emergency Measures in the Sphere of Asylum and Foreign Nationals

If a referendum is sought on the Federal Decree of 26 June 1998 on Emergency Measures in the Sphere of Asylum and Foreign Nationals and it is rejected in a popular vote, the provisions listed below shall be deleted:

- a. Article 8 paragraph 4 (duty to cooperate in the acquisition of valid travel documents),
- b. Article 32 paragraph 2 letter a (dismissal of the application in the event of failure to submit travel documents or identity papers),
- c. Article 33 (dismissal of the application in the event of improper filing of an asylum application),
- d. Article 32 paragraph 2 letter b (dismissal of the application in the event of identity fraud); in this case, the content of Article 16 paragraph 1 letter b shall be inserted in the version in accordance with Number I of the Federal Decree of 22 June 1990<sup>375</sup> on Asylum Procedures instead of the deleted provision of Article 32 paragraph 2 letter b; and

<sup>373</sup> [BS 1 121; AS 1949 221, 1987 1665, 1988 332, 1990 1587 Art. 3 para. 2, 1991 362 No II 11 1034 No III, 1995 146, 1999 1111, 2000 1891 No IV 2, 2002 685 No I 1 701 No I 1 3988 Annex No 3, 2003 4557 Annex No II 2, 2004 1633 No I 1 4655 No I 1, 2005 5685 Annex No 2, 2006 979 Art. 2 No 1 1931 Art. 18 No 1 2197 Annex No 3 3459 Annex No 1 4745 Annex No 1, 2007 359 Annex No 1. AS 2007 5437 Annex No I]. See: the FA of 16 Dec. 2005 on Foreign Nationals (SR 142.20).

<sup>374</sup> AS 1998 1582 No III. In the light of the adoption of this FD in the popular vote of 13 June 1999, this Article is irrelevant.

<sup>375</sup> AS 1990 938

- e. Article 45 paragraph 2 (immediate implementation of decisions to dismiss applications); in this case, the content of Article 17a paragraph 2 shall be inserted in the version in accordance with Number II of the Federal Act of 18 March 1994<sup>376</sup> on Coercive Measures under the Law on Foreign Nationals instead of the deleted provision of Article 45 paragraph 2 after the adjustment of the article references.

**Art. 123** Referendum and commencement

<sup>1</sup> This Act is subject to an optional referendum.

<sup>2</sup> The Federal Council shall determine the commencement date.

Commencement date: 1 October 1999<sup>377</sup>

**Final Provisions to the Amendment of 19 December 2003**<sup>378</sup>

<sup>1</sup> The previous law in accordance with Article 37 applies to the time limit for processing applications for asylum that are filed before the commencement of this amendment to the Act.

<sup>2</sup> Article 50 of the Federal Administrative Procedure Act of 20 December 1968<sup>379</sup> applies to time limits for filing appeals against decisions to dismiss an application in the first instance in accordance with Articles 32–34 that are issued before the commencement of this amendment to the Act.

<sup>3</sup> The previous law in accordance with Article 109 applies to appeals against decisions to dismiss an application in accordance with Articles 32–34 that is filed before the commencement of this amendment to the Act.

<sup>4</sup> Articles 44a and 88 paragraph 1<sup>bis</sup> also apply to decisions to dismiss an application in accordance with Articles 32–34 that became legally binding before the commencement of this Act. The cantons shall, however, receive support for nine months at the most after the commencement of this amendment to the Act in accordance with Article 88 paragraph 1, provided the Federal Office for Refugees supported the cantons in the enforcement of the removal order until the commencement of this amendment to the Act.

<sup>376</sup> AS 1995 146 151

<sup>377</sup> Federal Council Decree of 11 Aug. 1999.

<sup>378</sup> AS 2004 1633; BBl 2003 5615

<sup>379</sup> SR 172.021

**Transitional Provisions to the Amendment of 16 December 2005<sup>380</sup>**

<sup>1</sup> The new law applies to the procedures pending on commencement of this amendment to the Act.

<sup>2</sup> If there are grounds for a final account before the commencement of this amendment to the Act in accordance with Article 87 in the version of 26 June 1998<sup>381</sup>, the settlement and the balancing of the account shall be carried out in accordance with current legislation.

<sup>3</sup> The Federal Council shall regulate the settlement procedures; it determines to what extent and how long persons who were gainfully employed before the commencement of this amendment to the Act and for whom there was no intermediate or final account in accordance with paragraph 2 at the in the time of the commencement of this amendment to the Act must pay a special charge and to which extent and how long their assets are distrained.

<sup>4</sup> The Confederation shall make a single flat-rate payment of 15,000 francs to the cantons for each person for whom the decision to grant asylum or the removal decision became legally binding before the commencement of this amendment to the Act, provided these persons have not yet left Switzerland.

**Transitional Provision to the Amendment of 28 September 2012<sup>382</sup>**

Articles 12, 19, 20, 41 paragraph 2, 52 and 68 apply in their previous versions to asylum applications that are filed abroad before the amendment to this Act of 28 September 2012 comes into force.

**Transitional Provisions to the Amendment of 14 December 2012<sup>383</sup>**

<sup>1</sup> Subject to paragraphs 2–4, the new law applies to proceedings pending when the Amendment to this Act of 14 December 2012 comes into force.

<sup>2</sup> The previous law as of 1 January 2008 applies to re-examination and multiple application proceedings pending when the Amendment to this Act of 14 December 2012 comes into force. Paragraph 1 applies to Article 43 paragraph 2 and 82 paragraph 2.

<sup>3</sup> Airport operators are responsible for making accommodation at the airport in accordance with Article 22 paragraph 3 available within two years of the Amendment to this Act of 14 December 2012 coming into force.

<sup>4</sup> Asylum applications filed before the Amendment to this Act of 14 December 2012 comes into force are governed by Article 17 and 26 of the previous law. Article

<sup>380</sup> AS **2006** 4745, **2007** 5573; BBl **2002** 6845. Para. 1 in force since 1 Jan. 2007 and paras. 2–4 in force since 1 Jan. 2008.

<sup>381</sup> AS **1999** 2262

<sup>382</sup> AS **2012** 5359; BBl **2010** 4455, **2011** 7325

<sup>383</sup> AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325

26<sup>bis</sup> 384 does not apply to asylum proceedings pending when the Amendment of 14 December 2012 comes into force. Article 110a does not apply to appeal proceedings pending when the Amendment of 14 December 2012 comes into force.

<sup>5</sup> Revocation of asylum or the deprivation of refugee status does not apply to persons recognised as refugees under Article 51 of the previous law.

### **Transitional Provisions to the Amendment of 26 September 2014<sup>385</sup>**

<sup>1</sup> On conclusion of the test phases, the Federal Council may continue to apply the implementing provisions tested on the basis of Article 112b paragraph 2 provided the tested procedures:

- a. may be regarded as suitable on the basis of an evaluation; and
- b. are incorporated in a legislative bill in accordance with Article 112b paragraph 1.

<sup>2</sup> The Federal Council may make minor adjustments to the implementing provisions tested on the basis of Article 112b paragraph 2 in view of the results of the evaluation.

<sup>3</sup> The further application of the tested implementing provisions ends when the amendment to the law comes into force in accordance with Article 112b paragraph 1, but by 28 September 2019 at the latest.

### **Transitional Provisions to the Amendment of 25 September 2015<sup>386</sup>**

<sup>1</sup> The previous law applies to procedures pending when the Amendment of 25 September 2015 comes into force, subject to paragraph 2.

<sup>2</sup> The previous law continues to apply to accelerated procedures and Dublin procedures pending when this Amendment comes into force which are based on the implementing provisions for Article 112b paragraphs 2 and 3 in the version in accordance with Number I of the Amendment of 28 September 2012<sup>387</sup> to the Asylum Act of 26 June 1998 (Emergency Amendment to the Asylum Act).

<sup>3</sup> The previous law applies for at most two years to requests for asylum which cannot be processed in federal centres. The previous law applies to procedures still pending at the end of this period until their legally binding conclusion.

<sup>4</sup> Planning approval procedures for constructing new buildings and installations may be continued until their legally binding conclusion if the application was filed during the term of validity of Article 95a paragraph 1 letter a.

<sup>5</sup> Approval procedures for the construction of new buildings and installations that the Confederation intends to use to accommodate asylum seekers or to conduct

384 Now: Art. 26a

385 AS 2015 2047; BBl 2014 2087

386 AS 2016 3101, 2017 6171, 2018 2855; BBl 2014 7991

387 AS 2012 5359, 2015 2047

asylum procedures that are pending before the first instance when the Amendment of 25 September 2015 comes into force shall be continued in accordance with Chapter 6a.

**Transitional Provision to the Amendment of 16 December 2016<sup>388</sup>**

Proceedings that are pending and claims that are outstanding under Articles 86 and 87 of this Act and Article 88 FNIA<sup>389</sup> when the Amendment of 16 December 2016 comes into force are governed by the previous law.

<sup>388</sup> AS 2017 6521; BBl 2016 2821, 2013 2397  
<sup>389</sup> SR 142.20

*Annex I*<sup>390</sup>  
(Art. 21 para. 3)

## Dublin Association Agreements

The Dublin Association Agreements comprise:

- a. the Agreement of 26 October 2004<sup>391</sup> between the Swiss Confederation and the European Community on the criteria and procedure for determining the State responsible for examining an application for asylum lodged in a member state or in Switzerland (DAA);
- b. the Agreement of 17 December 2004<sup>392</sup> between the Swiss Confederation, the Republic of Iceland and the Kingdom of Norway on the implementation, application and development of the Schengen Acquis and on the criteria and procedure for determining the State responsible for examining an application for asylum lodged in Switzerland, Iceland or Norway;
- c. the Protocol of 28 February 2008<sup>393</sup> between the Swiss Confederation, the European Community and the Principality of Liechtenstein to the Agreement between the Swiss Confederation and the European Community on the criteria and procedure for determining the State responsible for examining an application for asylum lodged in a member state or in Switzerland;
- d. the Protocol of 28 February 2008<sup>394</sup> between the Swiss Confederation, the European Community and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the Swiss Confederation and the European Community on the criteria and procedure for determining the State responsible for examining an application for asylum lodged in a member state or in Switzerland.

<sup>390</sup> Inserted by Annex No 1 of the FA of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS **2008** 5407 5405 Art. 2 let. c; BBl **2007** 7937).

<sup>391</sup> SR **0.142.392.68**

<sup>392</sup> SR **0.362.32**

<sup>393</sup> SR **0.142.393.141**

<sup>394</sup> SR **0.142.395.141**

*Annex 2*<sup>395</sup>

## **Amendment of Current Legislation**

...<sup>396</sup>

<sup>395</sup> Originally Annex.

<sup>396</sup> The amendments may be consulted under AS **1999** 2262.

