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## **Federal Act on Foreign Nationals and Integration (Foreign Nationals and Integration Act, FNIA)<sup>1</sup>**

of 16 December 2005 (Status as of 2 October 2021)

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*The Federal Assembly of the Swiss Confederation,  
on the basis of Article 121 paragraph 1 of the Federal Constitution<sup>2</sup>,  
and having considered the Dispatch of the Federal Council dated 8 March 2002<sup>3</sup>,  
decrees:*

### **Chapter 1 Subject Matter and Scope of Application**

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

This Act regulates the entry and exit, residence and family reunification of foreign nationals in Switzerland. In addition, it regulates encouraging their integration.

#### **Art. 2** Scope of application

<sup>1</sup> This Act applies to foreign nationals, provided no other provisions of the federal law or international treaties concluded by Switzerland apply.

<sup>2</sup> For citizens of member states of the European Community (EC), their family members, and employees posted to Switzerland by employers resident or with their registered office in these states, this Act applies only to the extent that the Agreement of 21 June 1999<sup>4</sup> between the Swiss Confederation on the one hand and the European Community and their Member States on the other hand on Freedom of Movement does not contain any different provisions or that this Act provides for more advantageous provisions.

<sup>3</sup> For citizens of member states of the European Free Trade Association (EFTA), their family members, and employees posted to Switzerland by employers resident or with their registered office in these states, this Act applies only to the extent that the Agreement amending the Convention establishing the European Free Trade

AS 2007 5437

<sup>1</sup> Amended by No I 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>2</sup> SR 101

<sup>3</sup> BBl 2002 3709

<sup>4</sup> SR 0.142.112.681

Association from 21 June 2001<sup>5</sup> does not contain any different provisions or that this Act provides for more advantageous provisions.

<sup>4</sup> The provisions on the visa procedure and on entry and exit apply only insofar as there are no provisions to the contrary in the Schengen Association Agreements.<sup>6</sup>

<sup>5</sup> The Schengen Association Agreements are listed in Annex 1 No. 1.<sup>7</sup>

## Chapter 2 Principles of Admission and Integration

### Art. 3 Admission

<sup>1</sup> The admission of gainfully employed foreign nationals is allowed in the interests the economy as a whole; the chances of lasting integration in the Swiss employment market as well as in the social environment are crucial. Switzerland's cultural and scientific needs shall be appropriately taken account of.

<sup>2</sup> Foreign nationals shall also be admitted if international law obligations, humanitarian grounds or the unity of the family so requires.

<sup>3</sup> In deciding on the admission of foreign nationals, account shall be taken of Switzerland's demographic and social development.

### Art. 4 Integration

<sup>1</sup> The aim of integration is the co-existence of the resident Swiss and foreign population on the basis of the values of the Federal Constitution and mutual respect and tolerance.

<sup>2</sup> Integration should enable foreign nationals who are lawfully resident in Switzerland for the longer term to participate in the economic, social and cultural life of the society.

<sup>3</sup> Integration requires willingness on the part of the foreign nationals and openness on the part of the Swiss population.

<sup>4</sup> Foreign nationals are required to familiarise themselves with the social conditions and way of life in Switzerland and in particular to learn a national language.

<sup>5</sup> SR **0.632.31**; the Protocol of 21 June 2001, which is an integral part of the Agreement applies to relations between Switzerland and Liechtenstein.

<sup>6</sup> Inserted by Art. 127 below (AS **2008** 5405 Art. 2 let. a). Amended by No I 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>7</sup> Inserted by 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).

### Chapter 3 Entry and Exit

#### Art. 5 Entry requirements

<sup>1</sup> Foreign nationals who wish to enter Switzerland:

- a. must have a recognised identity document for crossing the border and a visa, if required;
- b. must have the required financial means for the period of stay;
- c. must not pose a threat to public security and order or to Switzerland's international relations; and
- d.<sup>8</sup> must not be subject to a measure banning them from entry or an order for expulsion from Switzerland under Article 66a or 66a<sup>bis</sup> of the Swiss Criminal Code (SCC)<sup>9</sup> or Article 49a or 49a<sup>bis</sup> of the Military Criminal Code of 13 June 1927<sup>10</sup> (MCC).

<sup>2</sup> They must provide a guarantee that they will leave Switzerland if only a temporary period of stay is planned.

<sup>3</sup> The Federal Council may provide for exceptions to the entry requirements in paragraph 1 on humanitarian or national interest grounds or on the basis of international obligations.<sup>11</sup>

<sup>4</sup> The Federal Council shall determine the recognised identity documents for crossing the border.<sup>12</sup>

#### Art. 6 Issue of the visa

<sup>1</sup> Visas are issued by the Swiss representation abroad on behalf of the competent authority of the Confederation or the cantons or by another authority appointed by the Federal Council.

<sup>2</sup> In the case of a refusal of the visa for a period of stay not requiring a permit (Art. 10), the competent foreign representation shall issue a decision on a standard form on behalf of the State Secretariat for Migration (SEM)<sup>13</sup> or the Federal Department of Foreign Affairs (FDFA). The Federal Council may provide that other offices of the FDFA may also issue decisions on behalf of the FDFA.<sup>14</sup>

<sup>8</sup> Amended by No IV 3 of the FA of 19 June 2015 (Amendment to the Law of Criminal Sanctions), in force since 1 Jan. 2018 (AS 2016 1249; BBl 2012 4721).

<sup>9</sup> SR 311.0

<sup>10</sup> SR 321.0

<sup>11</sup> Amended by No I of the FA of 21 June 2019, in force since 1 Dec. 2019 (AS 2019 3539; BBl 2019 175).

<sup>12</sup> Amended by Art. 127 below, in force since 12 Dec. 2008 (AS 2008 5405 Art. 2 let. a).

<sup>13</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>14</sup> Amended by 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).

<sup>2bis</sup> A written objection may be filed against this decision with the relevant authority (SEM or FDFA) within 30 days. Article 63 of the Federal Act of 20 December 1968<sup>15</sup> on Administrative Procedure applies *mutatis mutandis*.<sup>16</sup>

<sup>3</sup> To cover any residence, supervision and return costs, a formal obligation limited in time, the deposit of a surety bond or other types of guarantee may be required.<sup>17</sup>

#### **Art. 7**<sup>18</sup> Crossing the border and border controls

<sup>1</sup> Entry and exit are governed by the Schengen Association Agreements.

<sup>2</sup> The Federal Council regulates possible checks on persons at the border in accordance with these Agreements. If entry is refused, the authority responsible for the border control shall issue a removal order in accordance with Article 64.<sup>19</sup>

<sup>3</sup> If checks at the Swiss border are temporarily reintroduced in accordance with Articles 27, 28 or 29 of the Schengen Borders Code<sup>20</sup> and entry is refused, the authority responsible for the border controls shall issue a reasoned and appealable decision on a form in accordance with Annex V Part B of the Schengen Borders Code. The refusal of entry may be enforced immediately. An appeal has no suspensive effect.<sup>21</sup>

#### **Art. 8**<sup>22</sup>

#### **Art. 9** Authorities responsible for border controls

<sup>1</sup> The cantons carry out checks on persons on their sovereign territory.

<sup>2</sup> The Federal Council regulates the federal checks on persons carried out in the border zone in consultation with the border cantons.

<sup>15</sup> SR 172.021

<sup>16</sup> Inserted by Art. 2 No 1 of the FD of 11 Dec. 2009 (Approval and Implementation of the Exchange of Notes relating to the Visa Information System) (AS 2010 2063; BBl 2009 4245). Amended by No 1 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).

<sup>17</sup> Amended by Art. 127 below, in force since 12 Dec. 2008 (AS 2008 5405 Art. 2 let. a).

<sup>18</sup> Amended by Art. 2 below, in force since 12 Dec. 2008 (AS 2008 5405 Art. 2 let. a).

<sup>19</sup> Amended by Art. 2 No 1 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>20</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ. L 77 of 23.3.2016, p. 1; last amended by Regulation (EU) 2017/458, OJ. L 74 of 18.03.2017, p. 1.

<sup>21</sup> Inserted by Art. 2 of the FD of 13 June 2008 on the Approval and the Implementation of the Exchange of Notes between Switzerland and the European Community on the Acceptance of the Schengen Borders Code (AS 2008 5629 5405 Art. 2 let. b). Amended by Annex No 1 of the FD of 15 Dec. 2017 (Adoption of Regulation [EU] 2016/1624 on the European Border and Coast Guard), in force since 15 Sept. 2018 (AS 2018 3161; BBl 2017 4155).

<sup>22</sup> Repealed by Art. 127 below, with effect from 12 Dec. 2008 (AS 2008 5405 Art. 2 let. a).

## Chapter 4 Permit and Notification Requirements

### Art. 10 Permit requirement for period of stay without gainful employment

<sup>1</sup> Foreign nationals do not require a permit for any period of stay without gainful employment of up to three months; if the visa indicates a shorter period of stay, then this period applies.

<sup>2</sup> A permit is required for foreign nationals intending a longer period of stay without gainful employment. They must apply to the competent authority at the planned place of residence for this permit before entering Switzerland. Article 17 paragraph 2 remains reserved.

### Art. 11 Permit requirement for period of stay with gainful employment

<sup>1</sup> Foreign nationals who wish to work in Switzerland require a permit irrespective of the period of stay. They must apply to the competent authority at the planned place of employment for this permit.

<sup>2</sup> Gainful employment is any salaried or self-employed activity that is normally carried out for payment, irrespective of whether payment is made.

<sup>3</sup> In the case of salaried employment, the application for a permit must be submitted by the employer.

### Art. 12 Registration requirement

<sup>1</sup> Foreign nationals who require a short stay, residence or settlement permit, must register with the competent authority at their place of residence in Switzerland before the expiry of the period of stay not requiring a permit or before they take up employment.

<sup>2</sup> Foreign nationals must register with the competent authority at the new place of residence if they move to another commune or to another canton.

<sup>3</sup> The Federal Council shall determine the time limits for registration.

### Art. 13 Permit and registration procedures

<sup>1</sup> Foreign nationals must produce a valid identity document at the time of registration. The Federal Council shall determine the exceptions and the recognised identity documents.

<sup>2</sup> The competent authority may require an extract from the register of convictions in the applicant's country of origin or native country as well as further documents that are necessary for the procedure.

<sup>3</sup> Registration may only be carried out if all the documents indicated by the competent authority as necessary for granting the permit are provided.

**Art. 14** Derogations from the permit and the registration requirement

The Federal Council may lay down more favourable provisions on the permit and the registration requirement, in particular to facilitate temporary cross-border services.

**Art. 15** Notice of departure

Foreign nationals who hold a permit must give notice of departure to the competent authority at the place of residence if they move to another commune or to another canton or if they move abroad.

**Art. 16** Notification requirement in the case of commercial accommodation

Any person who accommodates foreign nationals for commercial gain must provide the competent cantonal authority with their particulars.

**Art. 17** Regulation of the period of stay until the permit decision

<sup>1</sup> Foreign nationals who have entered the country lawfully for a temporary period of stay and who subsequently apply for longer period of stay must wait for the decision abroad.

<sup>2</sup> If the admission requirements are clearly fulfilled, the competent cantonal authority may permit the applicant to remain in Switzerland during the procedure.

**Chapter 5 Admission Requirements****Section 1 Admission for a Period of Stay with Gainful Employment****Art. 18** Salaried employment

Foreign nationals may be admitted to work as an employee if:

- a. this is in the interests of the economy as a whole;
- b. an application from an employer has been submitted; and
- c. the requirements of Articles 20–25 are fulfilled.

**Art. 19** Self-employment

Foreign nationals may be admitted to work on a self-employed basis if:

- a. this is in the interests of the economy as a whole;
- b. the necessary financial and operational requirements are fulfilled;

c.<sup>23</sup> they have an adequate and independent source of income; and

d.<sup>24</sup> the requirements of Articles 20 and 23–25 are met.

#### **Art. 20**            Limitation measures

<sup>1</sup> The Federal Council may limit the number of first-time short stay and residence permits (Art. 32 and 33) for work purposes. It shall consult the cantons and the social partners beforehand.

<sup>2</sup> It may define quotas for the Confederation and the cantons.

<sup>3</sup> The SEM may, within the federal quota limits, grant first-time short stay and residence permits or increase the cantonal quotas. In doing so, it shall take account of the needs of the cantons and overall economic interests.

#### **Art. 21**            Precedence

<sup>1</sup> Foreign nationals may be permitted to work only if it is proven that no suitable domestic employees or citizens of states with which an agreement on the free movement of workers has been concluded can be found for the job.

<sup>2</sup> Domestic employees include:

a. Swiss nationals;

b. persons with a settlement permit;

c. persons with a residence permit authorising them to work;

d.<sup>25</sup> temporarily admitted persons;

e.<sup>26</sup> persons who have been granted temporary protection and have a permit entitling them to take up employment.

<sup>3</sup> Foreign nationals with a Swiss university degree may be admitted in derogation from paragraph 1 if their work is of high academic or economic interest. They shall be temporarily admitted for a period of six months following completion of their education or training in Switzerland in order to find suitable work.<sup>27</sup>

<sup>23</sup> Amended by No I of the FA of 16 Dec. 2016 (Controlling Immigration and Improving Implementation of the Free Movement Agreements), in force since 1 July 2018 (AS 2018 733; BBl 2016 3007).

<sup>24</sup> Inserted by No I of the FA of 16 Dec. 2016 (Controlling Immigration and Improving Implementation of the Free Movement Agreements), in force since 1 July 2018 (AS 2018 733; BBl 2016 3007).

<sup>25</sup> Inserted by No I of the FA of 16 Dec. 2016 (Controlling Immigration and Improving Implementation of the Free Movement Agreements), in force since 1 July 2018 (AS 2018 733; BBl 2016 3007).

<sup>26</sup> Inserted by No I of the FA of 16 Dec. 2016 (Controlling Immigration and Improving Implementation of the Free Movement Agreements), in force since 1 July 2018 (AS 2018 733; BBl 2016 3007).

<sup>27</sup> Inserted by No I of the FA of 18 June 2010 (Simplified Admission for Foreign Nationals with University Degrees), in force since 1 Jan. 2011 (AS 2010 5957; BBl 2010 427 445).

**Art. 21a<sup>28</sup>** Measures for persons seeking employment

<sup>1</sup> The Federal Council shall introduce measures to make full use of the Swiss employment market potential. It shall consult the cantons and social partners beforehand.

<sup>2</sup> In the event of an above-average level of unemployment in specific professions, areas of employment or economic regions, temporary measures shall be taken to assist persons who are registered with public employment agencies as seeking employment. The measures may be restricted to specific economic regions.

<sup>3</sup> In the professions, areas of employment or economic regions with an above-average level of unemployment, employers must notify the public employment agencies of vacant positions. Access to information about the notified vacancies shall be restricted for a limited period to persons registered with public employment agencies in Switzerland.

<sup>4</sup> The public employment agency shall within a short period of time provide the employers with the relevant details of persons registered as seeking employment. The employer shall invite suitable candidates for an interview or an aptitude test. The results shall be communicated to the public employment agencies.

<sup>5</sup> Where vacant positions in accordance with paragraph 3 are filled by persons registered as seeking employment with public employment agencies, it is not required to notify the public employment agency of the vacant positions.

<sup>6</sup> The Federal Council may specify additional exceptions to the obligation to give notice of vacant positions in accordance with paragraph 3, in particular in order to take account of the special situation of family businesses or in relation to persons who previously worked for the same employer; before issuing the implementing provisions, it shall consult the cantons and social partners. Furthermore, it shall regularly draw up lists of professions and areas of employment with above-average levels of unemployment in which the obligation to give notice of vacant positions applies.

<sup>7</sup> If the requirements of paragraph 2 are met, a canton may request the Federal Council to introduce an obligation to give notice of vacant positions.

<sup>8</sup> If the measures under paragraphs 1–5 do not achieve the desired effect or should new problems arise, the Federal Council, having consulted the cantons and social partners, shall submit proposals for additional measures to the Federal Assembly. In the event of serious problems, in particular problems caused by cross-border commuters, a canton may request the Federal Council to introduce further measures.

<sup>28</sup> Inserted by No I of the FA of 16 Dec. 2016 (Controlling Immigration and Improving Implementation of the Free Movement Agreements), in force since 1 July 2018 (AS 2018 733; BBl 2016 3007).



**Art. 22<sup>29</sup>** Salary and employment conditions and compensation for expenses incurred by posted employees

<sup>1</sup> Foreign nationals may only be admitted in order to work if:

- a. the salary and employment conditions customary for the location, profession and sector are satisfied; and
- b. the level of compensation under paragraph 2 is customary for the location, profession and sector.

<sup>2</sup> The employer shall compensate employees posted to Switzerland for expenses they incur in providing a cross-border service or in connection with a posting as part of an operational transfer, such as travel expenses and board and lodging. These compensation payments are not regarded as part of the salary.

<sup>3</sup> In the case of long-term postings, the Federal Council may issue provisions on the duration of the obligation to compensate under paragraph 2.

**Art. 23** Personal requirements

<sup>1</sup> Short stay and residence permits for work purposes may only be granted to managers, specialists and other qualified workers.

<sup>2</sup> In deciding whether to grant residence permits, the professional qualifications of applicants and their professional and social adaptability, language skills and age must also indicate that there is a prospect of lasting integration in the Swiss job market and the social environment.

<sup>3</sup> By way of derogation from paragraphs 1 and 2, the following applicants may be admitted:

- a. investors and entrepreneurs who maintain existing jobs or create new jobs;
- b. recognised persons from the world of science, culture and sport;
- c. persons with special professional knowledge or skills, provided there is a need for their admission;
- d. persons who are part of an executive transfer between internationally active companies;
- e. persons whose activity in Switzerland is indispensable for economically significant international business relationships.

**Art. 24** Accommodation

Foreign nationals may only be admitted in order to work if suitable accommodation for them is available.

<sup>29</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Arrangements and Information Systems), in force since 1 April 2020 (AS 2019 1413, 2020 881; BBl 2018 1685).

**Art. 25** Admission of cross-border commuters

<sup>1</sup> Foreign nationals may only be admitted as cross-border commuters in order to work if:

- a. they have a permanent right of residence in a neighbouring state and they have had their place of residence for a minimum of six months in the neighbouring border zone; and
- b. they work within the Swiss border zone.

<sup>2</sup> Articles 20, 23 and 24 are not applicable.

**Art. 26** Admission for cross-border services

<sup>1</sup> Foreign nationals may only be admitted to provide a temporary cross-border service if their activity is in the general interests of the economy.

<sup>2</sup> The requirements of Articles 20, 22 and 23 apply *mutatis mutandis*.

**Art. 26a<sup>30</sup>** Admission of caregivers and teachers

<sup>1</sup> Foreign nationals may be admitted as religious caregivers or teachers or as teachers of their native language and culture if, in addition to meeting the requirements of Articles 18–24, they:

- a. are familiar with the social and legal value system in Switzerland and are capable of imparting this knowledge to the foreign nationals that they care for and teach; and
- b. they are able to communicate in the national language spoken at their place of work.

<sup>2</sup> In deciding whether to grant short stay permits, the competent authorities may derogate from the requirement under paragraph 1 letter b.

**Section 2 Admission for Residence without Gainful Employment****Art. 27** Education and training

<sup>1</sup> Foreign nationals may be admitted for education or training purposes if:<sup>31</sup>

- a. the management of the educational establishment confirms that the person concerned is eligible for education or training;
- b. suitable accommodation is available;
- c. the required financial means are available; and

<sup>30</sup> Inserted by No I 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>31</sup> Amended by No I of the FA of 18 June 2010 (Simplified Admission for Foreign Nationals with University Degrees), in force since 1 Jan. 2011 (AS 2010 5957; BBl 2010 427 445).

d.<sup>32</sup> they fulfil the personal and educational requirements for the planned education or training course.

<sup>2</sup> In the case of minors, their supervision must be guaranteed.

<sup>3</sup> A continued stay in Switzerland following completion or discontinuation of the education or training course is governed by the general admission requirements contained in this Act.<sup>33</sup>

#### **Art. 28** Retired persons

Foreign nationals who are no longer gainfully employed may be admitted if:

- a. they have reached a minimum age set by the Federal Council;
- b. they have special personal relations to Switzerland; and
- c. they have the required financial means.

#### **Art. 29** Medical treatment

Foreign nationals may be admitted for medical treatment. Financing and return must be guaranteed.

#### **Art. 29a**<sup>34</sup> Persons seeking employment

Foreign nationals residing in Switzerland solely in order to seek employment, and their family members, are not entitled to social assistance.

### **Section 3 Derogations from the Admission Requirements**

#### **Art. 30**

<sup>1</sup> Derogations from the admission requirements (Art. 18–29) are permitted in order to:

- a. regulate the employment of foreign nationals admitted under the provisions on family reunification, unless they have a right to work (Art. 46);
- b. take account of serious cases of personal hardship or important public interests;
- c. regulate the period of stay of foster children;

<sup>32</sup> Amended by No I of the FA of 18 June 2010 (Simplified Admission for Foreign Nationals with University Degrees), in force since 1 Jan. 2011 (AS 2010 5957; BBl 2010 427 445).

<sup>33</sup> Inserted by No I of the FA of 18 June 2010 (Simplified Admission for Foreign Nationals with University Degrees), in force since 1 Jan. 2011 (AS 2010 5957; BBl 2010 427 445).

<sup>34</sup> Inserted by No I of the FA of 16 Dec. 2016 (Controlling Immigration and Improving Implementation of the Free Movement Agreements), in force since 1 July 2018 (AS 2018 733; BBl 2016 3007).

- d. protect persons from exploitation who are particularly at risk in view of their work;
- e.<sup>35</sup> regulate the period of stay of victims and witnesses of trafficking in human beings and of persons who are cooperating with the prosecution authorities as part of a witness protection programme organised by Swiss or foreign authorities or by an international criminal court;
- f. permit periods of stay as part of relief and development projects in the interests of economic and technical cooperation;
- g.<sup>36</sup> facilitate international economic, scientific and cultural exchange as well as basic and continuing professional education and training;
- h. simplify the transfer of senior management staff and essential specialists within internationally active companies;
- i.<sup>37</sup> ...
- j. permit au-pair workers recruited through a recognised organisation, to stay in Switzerland period of stay for education and training;
- k. facilitate the re-admission of foreign nationals who held a residence or settlement permit;
- l. regulate the employment and the participation in employment programmes of asylum seekers (Art. 43 of the Asylum Act of 26 June 1998<sup>38</sup>, AsylA), temporarily admitted persons (Art. 85) and persons in need of protection (Art. 75 AsylA).

<sup>2</sup> The Federal Council shall establish the general conditions and regulate the procedure.

## Section 4 Stateless Persons

### Art. 31

<sup>1</sup> Any person recognised as stateless by Switzerland has the right to a residence permit in the canton in which they are lawfully residing.

<sup>2</sup> If the stateless person satisfies the criteria in Article 83 paragraph 7, the provisions on temporarily admitted persons of Article 83 paragraph 8 apply.

<sup>3</sup> Stateless persons in accordance with paragraphs 1 and 2 and stateless persons who are subject to a legally enforceable expulsion order under Articles 66a or 66a<sup>bis</sup>

<sup>35</sup> Amended by Annex No 1 of the FA of 23 Dec. 2011 on Extra-Procedural Witness Protection, in force since 1 Jan. 2013 (AS **2012** 6715; BBl **2011** 1).

<sup>36</sup> Amended by Annex No 1 of the FA of 20 June 2014 on Continuing Education and Training, in force since 1 Jan. 2017 (AS **2016** 689; BBl **2013** 3729).

<sup>37</sup> Repealed by No I of the FA of 18 June 2010 (Simplified Admission for Foreign Nationals with University Degrees), with effect from 1 Jan. 2011 (AS **2010** 5957; BBl **2010** 427 445).

<sup>38</sup> SR **142.31**

SCC<sup>39</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>40</sup> may work anywhere in Switzerland. Article 61 AsylA<sup>41</sup> applies by analogy.<sup>42</sup>

## Chapter 6 Regulation of the Period of stay

### Art. 32 Short stay permit

<sup>1</sup> The short stay permit is granted for limited periods of stay of up to one year.

<sup>2</sup> It is granted for a specific purpose of stay and may be made subject to additional conditions.

<sup>3</sup> It may be extended by up to two years. A change of job is only possible for good cause.

<sup>4</sup> The short stay permit may only be granted again after an appropriate interruption of stay in Switzerland.

### Art. 33 Residence permit

<sup>1</sup> The residence permit is granted for periods of stay with of more than a year.

<sup>2</sup> It is granted for a specific purpose of stay and may be made subject to additional conditions.

<sup>3</sup> It is subject to a time limit and may be extended, provided there are no grounds for revocation in terms of Article 62 paragraph 1<sup>43</sup>.

<sup>4</sup> When the residence permit is granted or extended, the integration of the person concerned will be taken into account to determine the period of validity.<sup>44</sup>

<sup>5</sup> The granting and extension of the residence permit may be linked to the conclusion of an integration agreement if there is a special need for integration in accordance with the criteria set out in Article 58a.<sup>45</sup>

### Art. 34 Settlement permit

<sup>1</sup> The settlement permit is granted for an unlimited duration and without conditions.

<sup>2</sup> Foreign nationals may be granted a settlement permit if:

<sup>39</sup> SR 311.0

<sup>40</sup> SR 321.0

<sup>41</sup> SR 142.31

<sup>42</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>43</sup> Term in accordance with No IV 3 of the FA of 19 June 2015 (Amendment to the Law of Criminal Sanctions), in force since 1 Jan. 2018 (AS 2016 1249; BBl 2012 4721). This amendment has been made throughout the text.

<sup>44</sup> Inserted by No I 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>45</sup> Inserted by No I of the FA of 16 Dec. 2016 (Integration), in force since 1 Jan. 2019 (AS 2017 6521, 2018 3171; BBl 2013 2397, 2016 2821).

- a. they have resided in Switzerland for a minimum of ten years in total on the basis of a short stay or residence permit and have held a residence permit without interruption for the last five years;
- b.<sup>46</sup> there are no grounds for revocation in terms of Article 62 or 63 paragraph 2; and
- c.<sup>47</sup> they are integrated.

<sup>3</sup> The settlement permit may be granted after a shorter qualifying period if there is good cause.

<sup>4</sup> Foreign nationals may be granted a settlement permit if they have resided in Switzerland for the past five years without interruption while holding a residence permit, if they meet the requirements of paragraph 2 letters b and c, and if they are able to communicate well in the national language spoken at their place of residence.<sup>48</sup>

<sup>5</sup> Temporary periods of stay, in particular for education or training (Art. 27), do not count towards the uninterrupted period of stay in the last five years in accordance with paragraphs 2 letter a and 4. Periods of stay for education or training (Art. 27) are included if the person concerned, after their completion, held a settlement permit for an uninterrupted period of two years.<sup>49</sup>

<sup>6</sup> If the settlement permit has been revoked in accordance with Article 63 paragraph 2 and replaced by a residence permit, the settlement permit may be granted again at the earliest five years after integration has been successful.<sup>50</sup>

### **Art. 35** Cross-border commuter permit

<sup>1</sup> The cross-border commuter permit is granted for employment in a border zone (Art. 25).

<sup>2</sup> Persons with a cross-border commuter permit must return to their place of residence abroad at least once a week; the cross-border commuter permit may be made subject to additional conditions.

<sup>3</sup> It is subject to a time limit and may be extended.

<sup>4</sup> After an uninterrupted period of employment of five years, the holder has the right to extend a cross-border commuter permit, provided there are no grounds for revocation in terms of Article 62 paragraph 1.

<sup>46</sup> Amended by No I 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>47</sup> Inserted by No I 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>48</sup> Amended by No I 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>49</sup> Amended by No I of the FA of 18 June 2010 (Simplified Admission for Foreign Nationals with University Degrees), in force since 1 Jan. 2011 (AS 2010 5957; BBl 2010 427 445).

<sup>50</sup> Inserted by No I of the FA of 16 Dec. 2016 (Integration), in force since 1 Jan. 2019 (AS 2017 6521, 2018 3171; BBl 2013 2397, 2016 2821).

**Art. 36** Place of residence

Persons with a short stay, residence or settlement permit are free to choose their place of residence within the canton that granted the permit.

**Art. 37** Change of the place of residence to another canton

<sup>1</sup> Persons with a short stay permit or a residence permit who would like to relocate their place of residence to another canton must apply for the appropriate permit from the new canton beforehand.

<sup>2</sup> Persons with a residence permit are entitled to move to another canton provided they are not unemployed and there are no grounds for revocation in terms of Article 62 paragraph 1.

<sup>3</sup> Persons with a settlement permit are entitled to move to another canton, provided there are no grounds for revocation in terms of Article 63.

<sup>4</sup> No permit is required for a temporary stay in another canton.

**Art. 38** Gainful employment

<sup>1</sup> Persons with a short stay permit who are admitted in order to be self-employed or to engage in salaried employment may work as authorised anywhere in Switzerland. A change of job may be approved, if there is good cause and the requirements of Articles 22 and 23 are fulfilled.

<sup>2</sup> Persons with a residence permit who are admitted in order to be self-employed or to engage in salaried employment may work anywhere in Switzerland. They require no additional authorisation to change jobs.

<sup>3</sup> Persons with a residence permit may be authorised to become self-employed if the requirements of Article 19 letters a and b are fulfilled.

<sup>4</sup> Persons with a settlement permit may be self-employed or engage in salaried employment anywhere in Switzerland.

**Art. 39** Employment of cross-border commuters

<sup>1</sup> Persons with a cross-border commuter permit may work temporarily outside the border zone. If they want to move the focus of their employment to the border zone of another canton, they must apply for a permit from the new canton beforehand. After working for an uninterrupted period of five years, cross border commuters are entitled to change cantons.

<sup>2</sup> Persons with a cross-border commuter permit may be authorised to change jobs if the requirements in terms of Articles 21 and 22 are fulfilled. After working for an uninterrupted period of five years, cross border commuters are entitled to change jobs.

<sup>3</sup> Persons with a cross-border commuter permit may be authorised to become self-employed, if the requirements in terms of Article 19 letters a and b are fulfilled.

**Art. 40** Permit-granting authority and preliminary decision based on the employment market

<sup>1</sup> The permits in terms of Articles 32–35 and 37–39 are granted by the cantons. The Confederation remains responsible for quotas (Art. 20) as well as for derogations from the admission requirements (Art. 30) and for the approval procedure (Art. 99).

<sup>2</sup> If a foreign national is not entitled to work, the competent cantonal authority is required to issue a preliminary decision based on the employment market in order to authorise employment, a change of job, or a change to self-employment.

<sup>3</sup> If a canton submits an application to grant a short stay or residence permit in terms of the federal quotas, the SEM shall issue a preliminary decision based on the employment market.

**Art. 41** Identity cards

<sup>1</sup> Foreign nationals normally receive a corresponding identity card with the permit.

<sup>2</sup> Temporarily admitted persons (Art. 83) an identity card that indicates their legal status.

<sup>3</sup> Identity cards for persons with a settlement permit are issued for five years for control purposes.

<sup>4</sup> The identity card may carry a data chip. This contains the portrait photograph and fingerprints of the holder and the data contained in the machine-readable zone.<sup>51</sup>

<sup>5</sup> The Federal Council specifies which persons are issued with an identity card with a data chip and which data must be stored on the chip.<sup>52</sup>

<sup>6</sup> The SEM specifies the form and the content of identity cards. It may delegate the production of identity cards wholly or partly to third parties.<sup>53</sup>

**Art. 41a**<sup>54</sup> Security and reading of the data chip

<sup>1</sup> The data chip must be protected against counterfeiting and its unauthorised reading. The Federal Council shall determine the technical requirements.

<sup>2</sup> The Federal Council is authorised to enter into agreements with the states bound by any of the Schengen Association Agreements and with other states on the reading of

<sup>51</sup> Amended by Art. 2 No I of the FD of 18 June 2010 (Development of the Schengen Acquis and Introduction of Biometric Data into Foreign National Identity Cards), in force since 24 Jan. 2011 (AS 2011 175; BBl 2010 51).

<sup>52</sup> Inserted by Art. 2 No I of the FD of 18 June 2010 (Development of the Schengen Acquis and Introduction of Biometric Data into Foreign National Identity Cards), in force since 24 Jan. 2011 (AS 2011 175; BBl 2010 51).

<sup>53</sup> Inserted by Art. 2 No I of the FD of 18 June 2010 (Development of the Schengen Acquis and Introduction of Biometric Data into Foreign National Identity Cards), in force since 24 Jan. 2011 (AS 2011 175; BBl 2010 51).

<sup>54</sup> Inserted by Art. 2 No I of the FD of 18 June 2010 (Development of the Schengen Acquis and Introduction of Biometric Data into Foreign National Identity Cards), in force since 24 Jan. 2011 (AS 2011 175; BBl 2010 51).



the fingerprints stored on the data chip, provided the states concerned guarantee a level of data protection equivalent to that in Switzerland.

**Art. 41<sup>b</sup>**<sup>55</sup> Office issuing biometric identity cards

<sup>1</sup> The office entrusted with issuing biometric identity cards and the general contractors concerned must prove that:

- a. they have the required specialist knowledge and qualifications;
- b. they guarantee the secure, high quality and punctual production of identity cards in accordance with the specifications;
- c. they guarantee compliance with the data protection requirements; and
- d. they have sufficient financial resources.

<sup>2</sup> Beneficial owners, shareholders and members of the board or an equivalent management body, executive managers and other persons who have or could have a significant influence on the undertaking or production of foreign national identity cards must be of good reputation. Security screening in accordance with Article 6 of the Ordinance of 19 December 2001<sup>56</sup> on Personnel Security Screening may be carried out.

<sup>3</sup> The SEM may at any time request the documents necessary to verify compliance with the requirements listed in paragraphs 1 and 2. If the issuing office is part of a corporate group, the requirements apply to the entire group.

<sup>4</sup> The provisions of paragraphs 1–3 apply to service providers and suppliers if the products or services provided are essential for the production of the identify cards.

<sup>5</sup> The Federal Council shall specify the additional requirements to be met by the issuing office, general contractors, service providers and suppliers.

## Chapter 7 Family Reunification

**Art. 42** Family members of Swiss nationals

<sup>1</sup> The foreign spouse and unmarried children under 18 of a Swiss national who live with the Swiss national are entitled to be granted a residence permit and to have their residence permit extended.

<sup>2</sup> Foreign family members of Swiss nationals are entitled are entitled to be granted a residence permit and to have their residence permit extended if they are in the possession of a settlement permit from a country with which an agreement on the free movement of persons has been concluded. Family members are:

<sup>55</sup> Inserted by Art. 2 No 1 of the FD of 18 June 2010 (Development of the Schengen Acquis and Introduction of Biometric Data into Foreign National Identity Cards), in force since 24 Jan. 2011 (AS 2011 175; BBl 2010 51).

<sup>56</sup> [AS 2002 377, 2005 4571, 2006 4177 Art. 13 4705 No II 1, 2008 4943 No I 3 5747 Annex No 2, 2009 6937 Annex 4 No II 2. AS 2011 1031 Art. 31 para. 1]. See now the O of 4 March 2011 (SR 120.4).

- a. the spouse and the relatives in the descending line who are under 21 or who are dependants;
- b. the relatives of either spouse in the ascending line who are dependants.

<sup>3</sup> After a law-abiding and uninterrupted period of stay of five years, a foreign spouse is entitled to be granted a settlement permit if the integration criteria set out in Article 58a are met.<sup>57</sup>

<sup>4</sup> Children under twelve are entitled to be granted a settlement permit.

**Art. 43**<sup>58</sup> Spouses and children of persons with a settlement permit

<sup>1</sup> The foreign spouse and unmarried children under 18 of a person with a settlement permit are entitled to be granted a residence permit and to have their residence permit extended provided:

- a. they live with that person;
- b. suitable accommodation is available;
- c. they do not depend on social assistance;
- d. they are able to communicate in the national language spoken at their place of residence; and
- e. the family member they are joining is not claiming supplementary benefits under the Federal Act of 6 October 2006<sup>59</sup> on Benefits supplementary to the Old Age, Survivors' and Invalidity Insurance (SBA) or would not be entitled to claim such benefits due to family reunification.

<sup>2</sup> In order to obtain a residence permit, it is sufficient to register for a language support programme as an alternative to meeting the requirement set out in paragraph 1 letter d.

<sup>3</sup> In the case of unmarried children under the age of 18, the requirement in paragraph 1 letter d does not apply.

<sup>4</sup> The granting and extension of the residence permit may be linked to the conclusion of an integration agreement if there is a special need for integration in accordance with the criteria set out in Article 58a.

<sup>5</sup> After a law-abiding and uninterrupted period of stay of five years, spouses are entitled to be granted a settlement permit if the integration criteria set out in Article 58a are met.

<sup>6</sup> Children under twelve are entitled to be granted a settlement permit.

<sup>57</sup> Amended by No I 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>58</sup> Amended by No I 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>59</sup> SR 831.30

**Art. 44**<sup>60</sup> Spouses and children of persons with a residence permit

The foreign spouse and unmarried children under 18 of a person with a residence permit may be granted a residence permit or an extension thereof if:

- a. they live with the permit holder;
- b. suitable housing is available;
- c. they do not depend on social assistance;
- d. they are able to communicate in the national language spoken at their place of residence; and
- e. the family member they are joining is not claiming supplementary benefits according to the SBA<sup>61</sup> or would not be entitled to claim such benefits due to family reunification.

<sup>2</sup> In order to obtain a residence permit, it is sufficient to register for a language support programme as an alternative to meeting the requirement set out in paragraph 1 letter d.

<sup>3</sup> In the case of unmarried children under the age of 18, the requirement laid out in paragraph 1 letter d does not apply.

<sup>4</sup> The granting and extension of the residence permit may be linked to the conclusion of an integration agreement if there is a special need for integration in accordance with the criteria set out in Article 58a.

**Art. 45** Spouses and children of persons with a short stay permit

The foreign spouses and unmarried children under 18 of a person with a short stay permit may be granted a short stay permit, if:

- a. they live with the permit holder;
- b. suitable housing is available;
- c. they do not depend on social assistance; and
- d.<sup>62</sup> the family member they are joining is not claiming supplementary benefits according to the SBA<sup>63</sup> or would not be entitled to claim such benefits due to family reunification.

**Art. 45a**<sup>64</sup> Annulment of marriage

If, on assessing the reunification of spouses in accordance with Articles 42–45, the competent authorities have reason to believe that there are grounds under Article

<sup>60</sup> Amended by No I 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>61</sup> SR 831.30

<sup>62</sup> Inserted by No I 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>63</sup> SR 831.30

<sup>64</sup> Inserted by No I I of the FA of 15 June 2012 on Measures against Forced Marriages, in force since 1 July 2013 (AS 2013 1035; BBl 2011 2185).

105 numbers 5 or 6 of the Civil Code<sup>65</sup> (CC) for the marriage to be annulled, they shall report this to the competent authority under Article 106 CC. The request for the reunification of spouses is 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.

**Art. 46** Employment of spouses and children

The spouse and children of a Swiss national or of a person with a settlement permit or a residence permit (Art. 42–44) may work on a salaried or self-employed basis anywhere in Switzerland.

**Art. 47** Time limit for family reunification

<sup>1</sup> The right to family reunification must be exercised within five years. Children over twelve must be reunified with their family within twelve months.

<sup>2</sup> The foregoing time limits do not apply to family reunification in terms of Article 42 paragraph 2.

<sup>3</sup> The time limits for family members of:

- a. Swiss nationals in accordance with Article 42 paragraph 1 begin on their entry or with the constitution of the family relationship;
- b. foreign nationals begin with the granting of a residence or settlement permit or with the constitution of the family relationship.

<sup>4</sup> A subsequent family reunification shall be authorised only if there are important family reasons therefor. If necessary, children over 14 shall be consulted on family reunification.

**Art. 48** Children fostered with a view to adoption

<sup>1</sup> Foster children are entitled to receive a residence permit and to have their residence permit extended if:

- a. their adoption is planned in Switzerland;
- b. the requirements under civil law for the adoption of foster children are fulfilled; and
- c. their entry for the purpose the adoption was lawful.

<sup>2</sup> If the adoption falls through, the foster children are entitled to an extension of their residence permit and, five years after entry, they are entitled to be granted a settlement permit.

**Art. 49** Exemptions from requirement of cohabitation

The requirement of cohabitation in terms of Articles 42–44 does not apply if good cause is shown for living separately and the family household continues to exist.

<sup>65</sup> SR 210

**Art. 49a**<sup>66</sup> Exception to the requirement of proof of language proficiency

<sup>1</sup> The requirement of Articles 43 paragraph 1 letter d and 44 paragraph 1 letter d may be waived where there is good cause.

<sup>2</sup> The following shall be regarded as good cause, in particular: a disability, illness or other restriction leading to a substantial impairment of the ability to learn a language.

**Art. 50** Dissolution of the family household

<sup>1</sup> After the dissolution of the marriage or of the family household, the right of a spouse and the children to be granted a residence permit and to have their residence permit extended in accordance with Articles 42 and 43 subsists if:

- a.<sup>67</sup> the marriage lasted at least three years and the integration criteria set out in Article 58a are met; or
- b. important personal reasons make an extended residency in Switzerland necessary.

<sup>2</sup> There are important personal reasons in terms of paragraph 1 letter b in particular if a spouse has been the victim of marital violence or did not marry of his or her own free will and social reintegration in the country of origin appears to be seriously prejudiced.<sup>68</sup>

<sup>3</sup> The time limit for being granted a settlement permit is governed by Article 34.

**Art. 51** Expiry of the right to family reunification

<sup>1</sup> The rights in terms of Article 42 expire if:

- a. they are exercised unlawfully, in particular to circumvent the regulations of this Act and of its implementing provisions on admission and residence;
- b. there are grounds for revocation in terms of Article 63.

<sup>2</sup> The rights in terms of Articles 43, 48 and 50 expire if:

- a. they are exercised unlawfully, in particular to circumvent the regulations of this Act and of its implementing provisions on admission and residency;
- b.<sup>69</sup> there are grounds for revocation in terms of Article 62 or 63 paragraph 2.

<sup>66</sup> Inserted by No I 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>67</sup> Amended by No I 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>68</sup> Amended by No I 1 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>69</sup> Amended by No I of the FA of 16 Dec. 2016 (Integration), in force since 1 Jan. 2019 (AS 2017 6521, 2018 3171; BBl 2013 2397, 2016 2821).

**Art. 52** Registered partnership

The provisions of this Chapter on foreign spouses apply *mutatis mutandis* to registered partnerships of same-sex couples.

**Chapter 8 Integration****Section 1 Encouraging Integration<sup>70</sup>****Art. 53<sup>71</sup>** Principles

<sup>1</sup> In fulfilling their tasks, the Confederation, cantons and communes shall take account of integration concerns and of protection against discrimination.

<sup>2</sup> They shall create favourable regulatory conditions for equal opportunities and for the participation of the foreign population in public life. They shall make use of the potential of the foreign population, take account of diversity and encourage individual responsibility.

<sup>3</sup> They shall in particular encourage foreign nationals to develop their language skills and other basic skills, to advance professionally and to take preventive health care measures; they shall also support efforts that facilitate co-existence and mutual understanding between the Swiss and the foreign population.

<sup>4</sup> The authorities of the Confederation, cantons and communes, social partners, non-governmental organisations and expatriate' organisations shall cooperate to encourage integration.

<sup>5</sup> The cantonal social assistance authorities shall register recognised refugees and temporarily admitted persons who are unemployed with the public employment agencies.

**Art. 53a<sup>72</sup>** Target groups

<sup>1</sup> The Federal Council shall determine which groups of persons require integration support. It shall consult the cantons and the communal associations in advance.

<sup>2</sup> Priority shall be given to addressing the concerns related to the integration of women, children and young people.

<sup>70</sup> Inserted by No I 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>71</sup> Amended by No III 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>72</sup> Inserted by No I of the FA of 16 Dec. 2016 (Integration), in force since 1 Jan. 2019 (AS 2017 6521, 2018 3171; BBl 2013 2397, 2016 2821).

**Art. 54**<sup>73</sup> Integration support within standard structures

Integration support shall be provided within existing standard structures at federal, cantonal and communal level, namely:

- a. in pre-school, school and extracurricular care and education services;
- b. in the world of work;
- c. in social security institutions;
- d. in healthcare;
- e. in spatial planning, urban and neighbourhood development;
- f. in sport, the media and culture.

**Art. 55**<sup>74</sup> Specific approaches to integration support

The specific approaches to encouraging integration at federal, cantonal and communal level shall complement the integration support provided in the standard structures in cases where such support is not accessible or where there are gaps in provision.

**Art. 55a**<sup>75</sup> Measures for persons with special integration needs

The cantons shall provide appropriate integration measures for persons with special integration needs as soon as possible. The Confederation supports the cantons in this task.

**Art. 56**<sup>76</sup> Allocation of tasks

<sup>1</sup> The Federal Council shall determine the integration policy within the remit of the Confederation. It shall ensure that the federal offices, together with the competent cantonal authorities, take measures to encourage integration and to prevent discrimination.

<sup>2</sup> The SEM shall coordinate the measures by the federal offices to encourage integration and to prevent discrimination, in particular in the areas of social security, vocational education and training, continuing education, and healthcare. The federal offices shall involve the SEM in activities that may have an impact on integration.

<sup>3</sup> The SEM shall ensure there is an exchange of information and experiences with the cantons, communes and other parties involved.

<sup>73</sup> Amended by No I 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>74</sup> Amended by No I 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>75</sup> Inserted by No I 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>76</sup> Amended by No I 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>4</sup> The cantons shall determine the integration policy within their remit. They shall ensure that the cantonal authorities, together with the competent communal authorities, take measures to encourage integration and to prevent discrimination. They are the SEM's contact points for integration issues and shall ensure there is an exchange of information and experiences with the communes.

<sup>5</sup> In cooperation with the cantons, the SEM shall periodically review the integration of the foreign population and guarantee quality assurance in the measures to encourage integration.

**Art. 57<sup>77</sup>** Provision of information and advice

<sup>1</sup> The Confederation, cantons and communes shall provide information and advice to foreign nationals on living and working conditions in Switzerland, and in particular on their rights and obligations.

<sup>2</sup> The competent authorities shall provide foreign nationals with information on programmes for encouraging integration.

<sup>3</sup> The cantons are responsible for providing initial information to foreign nationals who have newly arrived from abroad. The Confederation shall support the cantons in this task.

<sup>4</sup> The Confederation, cantons and communes shall inform the population about integration policy and the special situation of foreign nationals.

<sup>5</sup> The Confederation, cantons and communes may delegate the tasks set out in paragraphs 1–4 to third parties.

**Art. 58<sup>78</sup>** Financial contributions

<sup>1</sup> The Confederation shall grant financial contributions to promote integration in accordance with paragraphs 2 and 3. These contributions supplement the payments made by the cantons to promote integration. It shall in particular subsidise projects that support the acquisition of a national language. Contributions are normally only granted if the cantons, communes or third parties share the costs appropriately.

<sup>2</sup> The contributions for temporarily admitted persons, recognised refugees and vulnerable persons with residence permits whose social assistance costs are reimbursed to the cantons by the Confederation under Article 87 of this Act and Articles 88 and 89 of the AsyIA<sup>79</sup> shall be granted to the cantons as flat-rate payments for integration or funding for cantonal integration programmes. They may be made dependent on the achievement of socio-political goals and be restricted to specific groups.

<sup>3</sup> The other contributions shall be granted for funding cantonal integration programmes and programmes and projects of national importance that help to promote

<sup>77</sup> Amended by No I 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>78</sup> Amended by No I 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>79</sup> SR 142.31



the integration of foreign nationals irrespective of their status. The coordination and conduct of programme and project activities may be delegated to third parties.

<sup>4</sup> The Federal Council shall fix the level of the federal contributions under paragraphs 2 and 3.

<sup>5</sup> The Federal Council, in consultation with the cantons, shall indicate the areas requiring aid and regulate the details of the procedure under paragraphs 2 and 3.

## **Section 2<sup>80</sup> Integration Requirements**

### **Art. 58a** Integration criteria

<sup>1</sup> When assessing integration, the competent authority shall take the following criteria into account:

- a. respect for public safety, security and order;
- b. respect for the values of the Federal Constitution;
- c. language skills; and
- d. participation in working life or efforts to acquire an education.

<sup>2</sup> Due account shall be taken of the situation of persons who because of disability or illness or other important personal circumstances are unable to meet or have difficulty meeting the integration criteria referred to in paragraph 1 letters c and d.

<sup>3</sup> The Federal Council shall determine which language skills are required when granting or renewing a permit.

### **Art. 58b** Agreements and recommendations relating to integration

<sup>1</sup> The integration agreement sets out the objectives, measures and time frame for individually agreed integration support. It also regulates financing.

<sup>2</sup> In particular, it may contain objectives for acquiring language skills, for integration at school or at work, for economic integration and for acquiring knowledge of living conditions, the economic system and the legal system in Switzerland.

<sup>3</sup> If the competent authorities require the conclusion of an integration agreement, the residence permit shall not be issued or renewed until the agreement has been concluded.

<sup>4</sup> The competent authorities may issue recommendations to persons to whom Article 2 paragraphs 2 and 3 and Article 42 apply.

<sup>80</sup> Inserted by No I of the FA of 16 Dec. 2016 (Integration), in force since 1 Jan. 2019 (AS 2017 6521, 2018 3171; BBl 2013 2397, 2016 2821).

## Chapter 9 Travel Documents and Ban on Travel<sup>81</sup>

### Art. 59 Issue of travel documents<sup>82</sup>

<sup>1</sup> The SEM may issue travel documents<sup>83</sup> to foreign nationals without identification documents.

<sup>2</sup> Foreign nationals are entitled to travel documents if:

- a. they meet refugee status in accordance with the Agreement of 28 July 1951<sup>84</sup> on the Legal Status of Refugees;
- b. they are recognised as stateless persons by Switzerland in accordance with the Treaty of 28 September 1954<sup>85</sup> on the Legal Status of Stateless Persons;
- c. they do not have identification documents but hold a settlement permit.

<sup>3</sup> Any person who has seriously or repeatedly violated or represents a threat to public security and order in Switzerland or abroad, or who represents a threat to Switzerland's internal or external security, or who is subject to a legally enforceable order for expulsion from Switzerland under Article 66a or 66a<sup>bis</sup> SCC<sup>86</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>87</sup> does not have a right to travel documents.<sup>88</sup>

<sup>4</sup> ...<sup>89</sup>

<sup>5</sup> and <sup>6</sup> ...<sup>90</sup>

### Art. 59a<sup>91</sup> Data chip

<sup>1</sup> Travel documents for foreign nationals may be furnished with a data chip. The data chip may contain a digitalised facial image, the fingerprints of the holder and further personal data, as well as details of the travel document. The data specified in Article

<sup>81</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>82</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>83</sup> Term in accordance with 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). This amendment has been made throughout the text.

<sup>84</sup> SR **0.142.30**

<sup>85</sup> SR **0.142.40**

<sup>86</sup> SR **311.0**

<sup>87</sup> SR **321.0**

<sup>88</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>89</sup> Repealed by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), with effect from 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>90</sup> Inserted by Art. 2 No 2 of the FD of 13 June 2008 on the Approval and Implementation of the Exchange of Notes between Switzerland and the EU on Biometric Passports and Travel Documents (AS **2009** 5521, **2011** 4033; BBl **2007** 5159). Repealed by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), with effect from 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>91</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

4 paragraph 1 letter g of the Federal Act of 20 June 2003<sup>92</sup> on the Information System on Matters relating to Foreign Nationals and Asylum may also be stored on the chip. Article 2a of the Federal Identity Documents Act of 22 June 2001<sup>93</sup> (IDA) applies *mutatis mutandis*.

<sup>2</sup> The Federal Council shall determine the types of travel documents for foreign nationals that will be furnished with a data chip and what data is to be stored thereon.

**Art. 59<sup>b</sup>**<sup>94</sup> Biometric data

<sup>1</sup> The task of recording biometric data and forwarding identity card data to the issuing body may be delegated wholly or in part to third parties. Article 6a IDA<sup>95</sup> applies by analogy.

<sup>2</sup> SEM and the cantonal authorities responsible for dealing with applications for the issue of travel documents may process biometric data already recorded in the Central Migration Information System (ZEMIS) in order to issue or renew a travel document.

<sup>3</sup> The biometric data required for the issue of a travel document shall be updated every five years. The Federal Council may specify a shorter period for the updating of data if this is required due to changes in the facial features of the person concerned.

**Art. 59<sup>c</sup>**<sup>96</sup> Travel ban for refugees

<sup>1</sup> Refugees are forbidden to travel to their native country or country of origin. If there is a justified suspicion that this ban on travel will be disregarded, SEM may ban all refugees from the native country or country of origin concerned from travelling to other states, and in particular to states neighbouring their native country or country of origin.

<sup>2</sup> SEM may authorise a person to travel to a state subject to a travel ban in accordance with paragraph 1 second sentence if there is good cause for doing so.

<sup>92</sup> SR 142.51

<sup>93</sup> SR 143.1

<sup>94</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>95</sup> SR 143.1

<sup>96</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Arrangements and Information Systems), in force since 1 April 2020 (AS 2019 1413, 2020 881; BBl 2018 1685).

## Chapter 10 End of the Period of Stay

### Section 1 Return and Reintegration Assistance

#### Art. 60

<sup>1</sup> The Confederation may facilitate the independent and proper exit of foreign nationals by providing return and reintegration assistance.

<sup>2</sup> The following persons may claim return and reintegration assistance:

- a. persons who left their native country or country of origin due to a serious general danger, in particular due to war, civil war, or a situation of general violence or were unable to return there for the duration of the danger, provided their residency was regulated in accordance with this Act and they have been required to leave Switzerland;
- b. persons covered by Article 30 paragraph 1 letters d and e;
- c.<sup>97</sup> temporarily admitted persons who have left Switzerland of their own volition or whose temporary admission has been revoked in accordance with Article 84 paragraph 2.

<sup>3</sup> Return and reintegration assistance includes:

- a. return counselling in accordance with Article 93 paragraph 1 letter a AsyIA<sup>98</sup>;
- a<sup>bis</sup>. access to projects in Switzerland aiming to preserve the ability to return in accordance with Article 93 paragraph 1 letter b AsyIA;
- b. participation in projects in the native country, country of origin or third country that facilitate return and reintegration in accordance with Article 93 paragraph 1 letter c AsyIA;
- c. financial support in individual cases to facilitate integration or to provide medical care in the native country, country of origin or third country in accordance with Article 93 paragraph 1 letter d AsyIA.<sup>99</sup>

<sup>4</sup> The Federal Council shall regulate the requirements and the procedure regarding the payment and accounting of the contributions.

<sup>97</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>98</sup> SR **142.31**

<sup>99</sup> Amended by No IV 2 of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 3709).

## Section 2 Expiry and Revocation of Permits and Expiry of Right of Residence<sup>100</sup>

### Art. 61 Expiry of permits

<sup>1</sup> A permit expires:

- a. on notice of departure abroad;
- b. on the grant of a permit in another canton;
- c. on the expiry of the term of validity of the permit;
- d. on expulsion in terms of Article 68;
- e.<sup>101</sup> on the holder becoming subject to a legally enforceable order for expulsion from Switzerland under Article 66a SCC<sup>102</sup> or Article 49a MCC<sup>103</sup>;
- f.<sup>104</sup> on the enforcement of an order for expulsion from Switzerland under Article 66a<sup>bis</sup> SCC or 49a<sup>bis</sup> MCC.

<sup>2</sup> If a foreign national leaves Switzerland without giving notice of departure, a short stay permit expires after three months, and a residence or settlement permit after six months. On request, a settlement permit may remain valid for a further four years.

### Art. 61a<sup>105</sup> Expiry of the right of residence of EU and EFTA citizens

<sup>1</sup> The right of residence of citizens of EU and EFTA member states with a short-stay permit shall expire six months after the involuntary termination of their employment. The right of residence of citizens of EU and EFTA member states with a residence permit shall expire six months after the involuntary termination of their employment if employment ends within the first twelve months of their residence.

<sup>2</sup> If unemployment benefit continues to be paid on expiry of the six-month period in accordance with paragraph 1, the right of residence expires when the benefit is no longer paid.

<sup>100</sup> Amended by No I of the FA of 16 Dec. 2016 (Controlling Immigration and Improving Implementation of the Free Movement Agreements), in force since 1 July 2018 (AS 2018 733; BBl 2016 3007).

<sup>101</sup> Inserted by Annex No I 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 offences (AS 2016 2329; BBl 2013 5975). Amended by No IV 3 of the FA of 19 June 2015 (Amendment to the Law of Criminal Sanctions), in force since 1 Jan. 2018 (AS 2016 1249; BBl 2012 4721).

<sup>102</sup> SR 311.0

<sup>103</sup> SR 321.0

<sup>104</sup> Inserted by Annex No I 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 offences), in force since 1 Oct. 2016 (AS 2016 2329; BBl 2013 5975).

<sup>105</sup> Inserted by No I of the FA of 16 Dec. 2016 (Controlling Immigration and Improving Implementation of the Free Movement Agreements), in force since 1 July 2018 (AS 2018 733; BBl 2016 3007).

<sup>3</sup> There is no right to social assistance in the period from the termination of employment until the expiry of the right of residence in accordance with paragraphs 1 and 2.

<sup>4</sup> In the event of involuntary termination of employment following the first twelve months of residence, the right of residence of citizens of EU and EFTA member states with a residence permit expires six months after the termination of their employment. If unemployment benefit continues to be paid on expiry of this six-month period, the right of residence expires six months after the benefit is no longer paid.

<sup>5</sup> Paragraphs 1–4 do not apply in the event of termination of employment due to temporary unfitness for work because of illness, accident or invalidity, nor in the case of persons who hold a right to remain under the Agreement of 21 June 1999<sup>106</sup> on Freedom of Movement (AFMP) between the Swiss Confederation on the one hand and the European Community and their Member States on the other or under the Convention of 4 January 1960<sup>107</sup> establishing the European Free Trade Association (EFTA Convention).

**Art. 62**<sup>108</sup>      Revocation of permits and other rulings

<sup>1</sup> The competent authority may revoke permits, with the exception of a settlement permit, and other rulings under this Act if the foreign national:

- a. or their representative in the permit procedure makes false statements or conceals material facts;
- b. has been given a long custodial sentence or has been made subject to a criminal measure in terms of Articles 59–61 or 64 of the SCC<sup>109</sup>;
- c. has seriously or repeatedly violated or represents a threat to public security and order in Switzerland or abroad or represents a threat to internal or external security;
- d. fails to fulfil an obligation linked to the decision;
- e. or a person they must care for is dependent on social assistance;
- f.<sup>110</sup> has attempted to obtain Swiss citizenship unlawfully or his or her Swiss citizenship has been revoked based on a legally binding ruling issued in connection with a declaration of nullity under Article 36 of the Swiss Citizenship Act of 20 June 2014<sup>111</sup>;

<sup>106</sup> SR **0.142.112.681**

<sup>107</sup> SR **0.632.31**

<sup>108</sup> Amended by No IV 3 of the FA of 19 June 2015 (Amendment to the Law of Criminal Sanctions), in force since 1 Jan. 2018 (AS **2016** 1249; BBI **2012** 4721).

<sup>109</sup> SR **311.0**

<sup>110</sup> Inserted by Annex No II 1 of the Swiss Citizenship Act of 20 June 2014, in force since 1 Jan. 2018 (AS **2016** 2561; BBI **2011** 2825).

<sup>111</sup> SR **141.0**

g.<sup>112</sup> does not comply with an integration agreement without due cause.

<sup>2</sup> Revocation is not permitted if justified solely by conviction for an offence for which a sentence or measure has been imposed, where the court has refrained from imposing an order for expulsion from Switzerland.

**Art. 63** Revocation of a settlement permit

<sup>1</sup> A settlement permit may be revoked only if:

- a.<sup>113</sup> the requirements of Article 62 paragraph 1 letter a or b are fulfilled;
- b. the foreign national has seriously violated or represents a threat to public security and order in Switzerland or abroad or represents a threat to internal or external security;
- c. the foreign national or a person they must care for is dependent permanently and to a large extent on social assistance;
- d.<sup>114</sup> the foreign national has attempted to obtain Swiss citizenship unlawfully or his or her Swiss citizenship has been revoked based on a legally binding ruling issued in connection with a declaration of nullity under Article 36 of the Swiss Citizenship Act of 20 June 2014<sup>115</sup>;
- e.<sup>116</sup> ...

<sup>2</sup> A settlement permit may be revoked and replaced by a residence permit if the residence criteria referred to in Article 58a have not been met.<sup>117</sup>

<sup>3</sup> Revocation is not permitted if justified solely by conviction for an offence for which a sentence or measure has been imposed, where the court has refrained from imposing an order for expulsion from Switzerland.<sup>118</sup>

<sup>112</sup> Inserted by No I of the FA of 16 Dec. 2016 (Integration), in force since 1 Jan. 2019 (AS 2017 6521, 2018 3171; BBl 2013 2397, 2016 2821). Correction by the FA Drafting Committee of 10 Aug. 2018, published on 18 Sept. 2018 (AS 2018 3213).

<sup>113</sup> Amended by No IV 3 of the FA of 19 June 2015 (Amendment to the Law of Criminal Sanctions), in force since 1 Jan. 2018 (AS 2016 1249; BBl 2012 4721).

<sup>114</sup> Inserted by Annex No II 1 of the Swiss Citizenship Act of 20 June 2014, in force since 1 Jan. 2018 (AS 2016 2561; BBl 2011 2825).

<sup>115</sup> SR 141.0

<sup>116</sup> Originally: let. d. Repealed by No IV 3 of the FA of 19 June 2015 (Amendment to the Law of Criminal Sanctions), with effect from 1 Jan. 2018 (AS 2016 1249; BBl 2012 4721).

<sup>117</sup> Amended by No I 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>118</sup> Inserted by Annex No I 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 offences), in force since 1 Oct. 2016 (AS 2016 2329; BBl 2013 5975).

### Section 3 Procedures to Remove and Keep People Away

#### Art. 64<sup>119</sup> Removal order

<sup>1</sup> The competent authorities shall issue an ordinary removal order if:

- a. a foreign national does not possess a required permit;
- b. a foreign national does not fulfil or no longer fulfils the entry requirements (Art. 5);
- c. a foreign national is refused a permit, or the permit is revoked or not extended following a permitted period of stay.

<sup>2</sup> Where foreign nationals who are illegally resident in Switzerland hold a valid residence document for another State that is bound by one of the Schengen-Association Agreements<sup>120</sup> (a Schengen State), they must be requested without any formal procedure to proceed immediately to that State. If they fail to comply with this request, an order in accordance with paragraph 1 must be issued. If immediate departure is required on grounds of public security and order or internal or external security, an order must be issued without a prior request to leave.

<sup>3</sup> An appeal against orders under paragraph 1 letters a and b must be filed within five working days of notification of the order. The appeal does not have suspensive effect. The appellate authority shall decide within ten days on whether suspensive effect will apply.

<sup>4</sup> The competent cantonal authorities shall immediately appoint a representative for any unaccompanied minor foreign national to safeguard the minor's interests during the removal proceedings.

<sup>5</sup> The Federal Council shall determine the role, responsibilities and duties of the representative mentioned in paragraph 4.<sup>121</sup>

#### Art. 64a<sup>122</sup> Removal under the Dublin Association Agreements

<sup>1</sup> If a different state that is bound by one of the Dublin Association Agreements (para. 4) is responsible for conducting an asylum procedure on the basis of Regula-

<sup>119</sup> Amended by Art. 2 No 1 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>120</sup> These Agreements are listed in Annex 1 No 1.

<sup>121</sup> Inserted by Annex No 1 I 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>122</sup> Inserted by 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). Amended by Art. 2 No 1 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).



tion (EC) No. 604/2013<sup>123</sup> (Dublin State), the SEM shall issue a removal order against a person who is residing illegally in Switzerland.<sup>124</sup>

<sup>2</sup> An appeal must be filed within five working days of notification of the order. The appeal does not have suspensive effect. The foreign national may apply for the order to be suspended within the deadline for filing the appeal. The Federal Administrative Court shall decide on the matter within five days of receipt of the application. If the removal order is not suspended within this period, it may be enforced.

<sup>3</sup> The canton of residence of the foreign national concerned is responsible for the enforcement of the removal order and, if necessary, for the payment and funding of social and emergency assistance.

<sup>3bis</sup> In the case of unaccompanied minors, Article 64 paragraph 4 applies.<sup>125</sup>

<sup>4</sup> The Dublin Association Agreements are listed in Annex 1 no. 2.

**Art. 64b**<sup>126</sup> Removal order on standard form

Where a person has entered Switzerland illegally, they are notified of the removal order by means of a standard form.

**Art. 64c**<sup>127</sup> Removal without formal procedure

<sup>1</sup> Foreign nationals shall be removed without being subjected to any formal procedure if:

- a. they are being readmitted by Belgium, Germany, Estonia, France, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Austria, Poland, Sweden, Slovakia, Slovenia, Spain or Hungary on the basis of a readmission agreement;

<sup>123</sup> Council Regulation (EC) 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>124</sup> Amended by Annex No I 1 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>125</sup> Inserted by Annex No I 1 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>126</sup> Inserted by Art. 2 No 1 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>127</sup> Inserted by Art. 2 No 1 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).

b.<sup>128</sup> they have been refused entry previously in accordance with Article 14 of the Schengen Borders Code<sup>129</sup>.

<sup>2</sup> If requested immediately by the person concerned, an order shall be issued on a standard form (Art. 64b).

**Art. 64d<sup>130</sup>** Departure deadline and immediate enforcement

<sup>1</sup> On issuing the removal order, an appropriate departure deadline of between seven and thirty days must be set. A longer period must be set or the departure deadline extended if special circumstances such as the family situation, health problems or a long period of stay so require.

<sup>2</sup> The removal order must be enforced immediately or a departure deadline of less than seven days may be set where:

- a. the person concerned represents a threat to public security and order or represents a threat to internal or external security;
- b. specific indications lead to the belief that the person concerned intends to evade deportation;
- c. an application for a permit is refused on the basis that it is clearly unjustified or an abuse of procedure;
- d. the person concerned is being readmitted by a State under Article 64c paragraph 1 letter a on the basis of a readmission agreement;
- e.<sup>131</sup> the person concerned was previously refused entry in accordance with Article 14 of the Schengen Borders Code<sup>132</sup> (Art. 64c para. 1 let. b);
- f. the person concerned is being removed under the Dublin Association Agreements (Art. 64a).

<sup>3</sup> The following specific indications in particular lead to the belief that a person intends to evade deportation:

- a. The person fails to cooperate in accordance with Article 90.
- b. The person's previous conduct leads to the conclusion that they wish to defy official orders.
- c. The person enters Swiss territory despite a ban on entry.<sup>133</sup>

<sup>128</sup> Amended by Annex No 1 of the FD of 15 Dec. 2017 (Adoption of Regulation [EU] 2016/1624 on the European Border and Coast Guard), in force since 15 Sept. 2018 (AS 2018 3161; BBl 2017 4155).

<sup>129</sup> See footnote to Art. 7 para. 3.

<sup>130</sup> Inserted by Art. 2 No 1 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>131</sup> Amended by Annex No 1 of the FD of 15 Dec. 2017 (Adoption of Regulation [EU] 2016/1624 on the European Border and Coast Guard), in force since 15 Sept. 2018 (AS 2018 3161; BBl 2017 4155).

<sup>132</sup> See footnote to Art. 7 para. 3.

<sup>133</sup> Inserted by No 1 of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

**Art. 64**<sup>e134</sup> Obligations on giving notice of a removal order

On giving notice of a removal order, the competent authority may require the foreign national concerned:

- a. to report to an authority regularly;
- b. to provide appropriate financial security;
- c. to hand in travel documents.

**Art. 64**<sup>f135</sup> Translation of the removal order

<sup>1</sup> The competent authority shall ensure that, if requested, the removal order is translated in writing or verbally into a language understood by the person concerned or which he or she may be assumed to understand.

<sup>2</sup> If notice is given of the removal order by means of a standard form under Article 64b, no translation is made. The person concerned shall be provided with an information sheet with an explanation of the removal order.

**Art. 65**<sup>136</sup> Refusal of entry and removal at the airport

<sup>1</sup> If entry is refused at the border control at the airport, the foreign national must leave Switzerland immediately.

<sup>2</sup> The authority responsible for the border control shall on SEM's behalf issue a reasoned and appealable decision within 48 hours on a form in accordance with Annex V Part B of the Schengen Borders Code<sup>137</sup>. A written objection may be filed with SEM against this decision within 48 hours of notification thereof. The objection does not have suspensive effect. SEM shall decide on the objection within 48 hours.<sup>138</sup>

<sup>2bis</sup> An appeal may be filed against SEM's objection decision within 48 hours of notification thereof. The appeal does not have suspensive effect. The appellate authority shall decide on the appeal within 72 hours.<sup>139</sup>

<sup>134</sup> Inserted by Art. 2 No 1 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>135</sup> Inserted by Art. 2 No 1 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>136</sup> Amended by Art. 2 of the FD of 13 June 2008 on the Approval and the Implementation of the Exchange of Notes between Switzerland and the European Community on the Acceptance of the Schengen Borders Code, in force since 12 Dec. 2008 (AS 2008 5629 5405 Art. 2 let. b; BBl 2007 7937).

<sup>137</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ. L 77 of 23.3.2016, p. 1; last amended by Regulation (EU) 2017/458, OJ. L 74 of 18.03.2017, p. 1.

<sup>138</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>139</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>3</sup> Persons subject to a removal order are permitted to remain in the airport international transit zone for a maximum of 15 days in order to prepare for their onward journey, provided deportation (Article 69) or detention pending deportation or coercive detention (Art. 76, 77 and 78) is not ordered. The provisions on temporary admission (Article 83) and on the filing of an asylum application (Article 22 AsylA<sup>140</sup>) are reserved.<sup>141</sup>

**Art. 66**<sup>142</sup>

**Art. 67**<sup>143</sup> Ban on entry

<sup>1</sup> The SEM shall, subject to paragraph 5, order a ban on entry against foreign nationals who have been issued with a removal order if:

- a. the removal order is enforced immediately in accordance with Article 64d paragraph 2 letters a–c;
- b. the person does not leave by the deadline set.

<sup>2</sup> It<sup>144</sup> may order a ban on entry against foreign nationals who:

- a. have violated or represent a threat to public security and order in Switzerland or abroad;
- b. have incurred social assistance costs;
- c. have had to be taken into detention in preparation for departure or pending deportation or have been placed in coercive detention (Art. 75–78).

<sup>3</sup> The ban on entry shall be ordered for a maximum duration of five years. It may be ordered for a longer period if the person concerned represents a serious risk to public security or order.

<sup>4</sup> The Federal Office of Police (fedpol) may order a ban on the entry of any foreign national in order to safeguard Switzerland's internal or external security; it shall consult the Federal Intelligence Service (FIS) beforehand. fedpol may order a ban on entry for a period of more than five years or in serious cases for an unlimited period.

<sup>5</sup> The authority issuing the ban on entry may by way of exception refrain from imposing a ban on entry on humanitarian grounds or for other good cause or revoke the ban permanently or temporarily. In reaching its decision, the authority must in particular consider whether grounds for issuing the ban on entry and the need to

<sup>140</sup> SR 142.31

<sup>141</sup> Amended by 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).

<sup>142</sup> Repealed by Art. 2 No 1 of the FD of 18 June 2010 on the Adoption of the EC Directive on the Return of Illegal Immigrants (Directive 2008/115/EC), with effect from 1 Jan. 2011 (AS 2010 5925; BBl 2009 8881).

<sup>143</sup> Amended by Art. 2 No 1 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>144</sup> Term in accordance with No I 1 para. 1 of the FA of 15 June 2012 on Measures against Forced Marriages, in force since 1 July 2013 (AS 2013 1035; BBl 2011 2185).

protect public security and order and to safeguard Switzerland's internal or external security outweigh the private interests of the person concerned in not being subject to the ban.<sup>145</sup>

**Art. 68** Expulsion

<sup>1</sup> fedpol may order the expulsion of a foreign national in order to safeguard the internal or the external security of Switzerland; it shall consult the FIS beforehand.<sup>146</sup>

<sup>2</sup> In cases of expulsion, an appropriate departure deadline must be set.

<sup>3</sup> An expulsion order shall be combined with a limited or unlimited ban on entry. The authority issuing the order may temporarily revoke the ban on entry for good cause.

<sup>4</sup> If the person concerned has seriously or repeatedly violated or represents a threat to public security and order or represents a threat to internal or external security, expulsion may be enforced immediately.

**Art. 68a**<sup>147</sup> Alert in the Schengen Information System

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

<sup>3</sup> The SEM may supply biometric data to the SIS that is already available in the automated fingerprint identification system under Article 354 SCC (AFIS) or in ZEMIS. The supply of data may be automated.

<sup>4</sup> ...

<sup>5</sup> In connection with its alerts, fedpol may supply supply biometric data to the SIS that is already available in the AFIS. The supply of data may be automated. If no biometric data are available, fedpol may order the retroactive recording of the data from the authorities that detect a hit on these alerts.

<sup>6</sup> ...

<sup>145</sup> Amended by Annex No I 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 offences), in force since 1 Oct. 2016 (AS 2016 2329; BBl 2013 5975).

<sup>146</sup> Amended by No 12 of the O of 12 Dec. 2008 on the Amendment of Statutory Provisions due to the Transfer of the Intelligence Units of the Service for Analysis and Prevention to the DDPS, in force since 1 Jan. 2009 (AS 2008 6261).

<sup>147</sup> Inserted by Annex 1 No 1 of the FedD of 18 Dec. 2020 on the Approval and Implementation of the Council of Europe Convention on the Prevention of Terrorism and its Additional Protocol and the Strengthening of Criminal Justice Instruments for combating Terrorism and Organised Crime (SIS), para 3 and 5 in force since 1 July 2021 (AS 2021 365; BBl 2020 3465).

## Section 4 Deportation and International Return Interventions<sup>148</sup>

### Art. 69 Ordering deportation

<sup>1</sup> The competent cantonal authority shall deport foreign nationals if:

- a. they fail to comply with the departure deadline;
- b. if their removal or expulsion may be enforced immediately;
- c.<sup>149</sup> they are being held in detention in accordance with Articles 76 and 77 and a legally binding expulsion or removal order or a legally binding decision on expulsion under Article 66a or 66a<sup>bis</sup> SCC<sup>150</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>151</sup> has been issued.

<sup>2</sup> In the case of foreign nationals who are able to travel lawfully to more than one state, the competent authority may deport them to the country of their choice.

<sup>3</sup> The competent authority may postpone deportation for an appropriate period if special circumstances such as the ill-health of the person concerned or a lack of transport so require. The competent authority shall confirm the postponement of deportation to the person concerned in writing.<sup>152</sup>

<sup>4</sup> The competent authority shall ensure before the deportation of unaccompanied foreign minors that he or she will be returned in the State of return to a family member, a nominated guardian or reception facilities that guarantee the protection of the child.<sup>153</sup>

### Art. 70 Search

<sup>1</sup> During expulsion or removal proceedings, the competent cantonal authority may arrange for the person concerned as well as the belongings they are carrying to be searched in order to seize travel and identity documents. The search may be conducted only by a person of the same sex.

<sup>2</sup> If the court of first instance has issued a decision, the judicial authority may order a search of a dwelling or of other premises if it is suspected that a person subject to a removal or expulsion order may be hiding there, or that travel and identity documents required for the procedure and enforcement are hidden there.<sup>154</sup>

<sup>148</sup> Amended by Annex No 1 of the FD of 15 Dec. 2017 (Adoption of Regulation [EU] 2016/1624 on the European Border and Coast Guard), in force since 15 Sept. 2018 (AS 2018 3161; BBl 2017 4155).

<sup>149</sup> Amended by No 1 of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>150</sup> SR 311.0

<sup>151</sup> SR 321.0

<sup>152</sup> Inserted by Art. 2 No 1 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>153</sup> Inserted by Art. 2 No 1 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>154</sup> Amended by Annex No 1 of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325).

**Art. 71** Federal support for the implementation authorities

The Federal Department of Justice and Police (FDJP) shall support the cantons responsible for enforcing the removal or the expulsion of foreign nationals or the enforcement of an order for expulsion from Switzerland under Article 66a or 66a<sup>bis</sup> SCC<sup>155</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>156</sup>, in particular by:<sup>157</sup>

- a. assisting in obtaining travel documents;
- b. making travel arrangements;
- c.<sup>158</sup> ensuring cooperation between the cantons concerned and the FDFA.

**Art. 71a**<sup>159</sup> International return interventions

<sup>1</sup> The SEM and the cantons shall work together in the case of international return interventions on the basis of Regulation (EU) 2016/1624<sup>160</sup>.

<sup>2</sup> The FDJP may enter into agreements with the competent European Union agency for the surveillance of the Schengen external borders with regard to the deployment of personnel from the SEM and the cantons in connection with international return interventions and the deployment of third parties to monitor returns.

<sup>3</sup> The FDJP shall enter into an agreement with the cantons on the modalities of the deployment of personnel.

**Art. 71a**<sup>bis 161</sup> Supervision of deportation procedures and international return interventions

<sup>1</sup> The Federal Council shall regulate the procedure and the responsibilities for supervising deportation procedures and international return interventions.

<sup>2</sup> It may delegate tasks relating to the supervision of deportation procedures and international return interventions to third parties.

<sup>155</sup> SR 311.0

<sup>156</sup> SR 321.0

<sup>157</sup> Amended by Annex No 1 of the FD of 15 Dec. 2017 (Adoption of Regulation [EU] 2016/1624 on the European Border and Coast Guard), in force since 15 Sept. 2018 (AS 2018 3161; BBI 2017 4155).

<sup>158</sup> Amended by 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; BBI 2013 2561).

<sup>159</sup> Inserted by Art. 2 No 1 of the FD of 18 June 2010 on the Adoption of the EC-Return Directive (Directive 2008/115/EG) (AS 2010 5925; BBI 2009 8881). Amended by Annex No 1 of the FD of 15 Dec. 2017 (Adoption of Regulation [EU] 2016/1624 on the European Border and Coast Guard), in force since 15 Sept. 2018 (AS 2018 3161; BBI 2017 4155).

<sup>160</sup> Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC. Amended by OJ. L 251 of 16.9.2016, p.1.

<sup>161</sup> Inserted by Annex No 1 of the FD of 15 Dec. 2017 (Adoption of Regulation [EU] 2016/1624 on the European Border and Coast Guard), in force since 15 Sept. 2018 (AS 2018 3161; BBI 2017 4155).

**Art. 71<sup>b162</sup>** Disclosure of medical data for the assessment of fitness to travel

<sup>1</sup> The attending medical professional shall on request disclose the medical data required to assess the fitness to travel of persons subject to a legally binding removal or expulsion order to the following authorities insofar as these authorities require the data to fulfil their statutory duties:

- a. the cantonal authorities responsible for removal or expulsion;
- b. employees of the SEM who are responsible for the centralised organisation and coordination of the compulsory execution of removal and expulsion orders;
- c. the medical professionals responsible on behalf of the SEM for medical supervision on execution of removal and expulsion orders at the time of departure.

<sup>2</sup> The Federal Council regulates the retention and deletion of the data.

**Art. 72<sup>163</sup>** COVID-19 test on deportation

<sup>1</sup> In order to ensure the enforcement of removal or expulsion or expulsion from Switzerland under Article 66a or 66a<sup>bis</sup> SCC<sup>164</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>165</sup>, foreign nationals are required to undergo a COVID-19 test if this is necessary in order to comply with the entry requirements of the person's native country or country of origin or of the competent Dublin State or the requirements of the airline concerned.

<sup>2</sup> The competent authorities shall inform the person concerned in advance about this requirement and about the possibility of the compulsory conduct of tests under paragraph 3.

<sup>3</sup> If the person concerned refuses to undergo a COVID-19 test, the competent authorities for the enforcement of removal or expulsion from Switzerland may conduct the test against the person's will, unless deportation can be enforced by other less stringent means. While conducting the test, no force may be used that could endanger the health of the person concerned. The compulsory conduct of COVID-19 tests is not permitted in the case of children and young persons under the age of 15.

<sup>4</sup> The COVID-19 tests shall be conducted by medical personnel who have been specifically trained for the purpose. They shall use the least invasive form of test suitable for the person concerned. If the personnel take the view that conducting the test could harm the health of the person concerned, they shall not conduct the test.

<sup>162</sup> Inserted by Annex No 1 of the FA of 25 Sept. 2015, in force since 1 Jan. 2018 (AS 2016 3101, 2017 6171; BBl 2014 7991).

<sup>163</sup> Amended by No 1 of the FA of 1 Oct. 2021, in force since 2 Oct. 2021 till 31 Dec. 2022 (AS 2021 587; BBl 2021 1901).

<sup>164</sup> SR 311.0

<sup>165</sup> SR 321.0



## Section 5 Coercive Measures

### Art. 73 Temporary detention

<sup>1</sup> The competent authority of the Confederation or the canton may detain persons who do not hold a short stay, residence or settlement permit:

- a. to notify them of a decision in connection with their residence status;
- b. to determine their identity or nationality, as far as their personal cooperation is required.

<sup>2</sup> The person may be detained only for the duration of the required cooperation or questioning and the required transport if necessary, and for a maximum of three days.

<sup>3</sup> If a person is detained, they must:

- a. be informed of the reason for their detention;
- b. be permitted to contact the persons guarding them if they require help.

<sup>4</sup> If detention is expected last longer than 24 hours, the person concerned shall be given the opportunity beforehand to attend to or have someone else attend to urgent personal matters.

<sup>5</sup> On request, the competent judicial authority must review the legality of the detention.

<sup>6</sup> The duration of detention shall not be deducted from the duration of any detention pending deportation, in preparation for departure, or coercive detention.

### Art. 74 Restriction and exclusion orders

<sup>1</sup> The competent cantonal authority may require a person not to leave the area they were allocated to or not to enter a specific area if:

- a. they do not hold a short stay, residence or settlement permit and they disrupt or represent a threat to public security and order; this measure serves in particular to combat illegal drug trafficking; or
- b.<sup>166</sup> they are subject to a legally binding expulsion or removal order and specific indications lead to the belief that the person concerned will not leave before the departure deadline or has failed to observe the departure deadline.
- c.<sup>167</sup> deportation has been postponed (Art. 69 para. 3).

<sup>166</sup> Amended by Art. 2 No 1 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>167</sup> Inserted by Art. 2 No 1 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>1bis</sup> The competent cantonal authority shall require a person who is accommodated in a special centre under Article 24a AsylA<sup>168</sup> not to leave the area they were allocated to or not to enter a specific area.<sup>169</sup>

<sup>2</sup> These measures shall be ordered by the authority of the canton that is responsible for the implementation of removal or expulsion. In the case of persons staying in federal centres, the canton where the centre is located is responsible. The prohibition from entering a specific area may also be issued by the authority of the canton where this area is located.<sup>170</sup>

<sup>3</sup> Appeals may be lodged with a cantonal judicial authority against the ordering of these measures. The appeal has no suspensive effect.

#### **Art. 75** Detention in preparation for departure

<sup>1</sup> To facilitate the conduct of removal proceedings or criminal proceedings in which the potential penalty includes an order for expulsion from Switzerland under Article 66a or 66a<sup>bis</sup> SCC<sup>171</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>172</sup>, the competent cantonal authority may detain a person who does not hold a short stay, residence or settlement permit while preparing to decide on that person's residence status for a maximum of six months if they:<sup>173</sup>

- a.<sup>174</sup> refuse during asylum proceedings, removal proceedings or or criminal proceedings in which the potential penalty includes an order for expulsion from Switzerland under Article 66a or 66a<sup>bis</sup> SCC or Article 49a or 49a<sup>bis</sup> MCC to disclose their identity, submit several applications for asylum using various identities or repeatedly fail to comply with a summons without sufficient reason or ignore other instructions issued by the authorities in the asylum procedure;
- b. leave an area allocated to them in accordance with Article 74 or enter an area from which they are excluded;
- c. enter Swiss territory despite a ban on entry and cannot be immediately removed;
- d. were removed and submitted an application for asylum following a legally binding revocation (Art. 62 and 63) or a non-renewal of the permit due to violation of or representing a threat to the public security and order or due to representing a threat to internal or external security;

<sup>168</sup> SR **142.31**

<sup>169</sup> Inserted by Annex No 1 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

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

<sup>171</sup> SR **311.0**

<sup>172</sup> SR **321.0**

<sup>173</sup> Amended by Annex No I 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 offences), in force since 1 Oct. 2016 (AS **2016** 2329; BBl **2013** 5975).

<sup>174</sup> Amended by Annex No I 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 offences), in force since 1 Oct. 2016 (AS **2016** 2329; BBl **2013** 5975).

- e. submit an application for asylum after expulsion (Art. 68);
- f. stay unlawfully in Switzerland and submit an application for asylum with the obvious intention of avoiding the imminent enforcement of a removal or expulsion order; such an intention shall be suspected if it were possible and reasonable to file the asylum application earlier and if the application is submitted in close chronological relation to detention, criminal proceedings, the implementation of a penalty or the issue of a removal order;
- g. seriously threaten other persons or considerably endanger the life and limb of other persons and are therefore being prosecuted or have been convicted;
- h. have been convicted of a felony.

1bis ...<sup>175</sup>

<sup>2</sup> The competent authority shall decide on the residence status of the person held in detention without delay.

#### **Art. 76** Detention pending deportation

<sup>1</sup> If the court of first instance has issued an expulsion or removal order or an order for expulsion from Switzerland under Article 66a or 66a<sup>bis</sup> SCC<sup>176</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>177</sup>, the competent authority may ensure the enforcement of the decision by:<sup>178</sup>

- a. leaving the person concerned in detention if, based on Article 75, they are already in detention;
- b. detaining the person concerned if:
  - 1.<sup>179</sup> there are grounds for doing so in terms of Article 75 paragraph 1 letters a, b, c, f, g or h,
  - 2.<sup>180</sup> ...
  - 3.<sup>181</sup> specific indications lead to the belief that they are seeking to evade deportation, in particular because they fail to comply with the obligation

<sup>175</sup> Inserted by Art. 2 No 1 of the FD of 18 June 2010 on the Adoption of the EC Directive on the Return of Illegal Immigrants (Directive 2008/115/EC) (AS 2010 5925; BBl 2009 8881). Repealed by Annex No 1 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), with effect from 1 July 2015 (AS 2015 1841; BBl 2014 2675)

<sup>176</sup> SR 311.0

<sup>177</sup> SR 321.0

<sup>178</sup> Amended by No IV 1 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>179</sup> Amended by Annex No 1 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>180</sup> Repealed by Annex No 1 of the FA of 14 Dec. 2012, with effect from 1 Feb. 2014 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325).

<sup>181</sup> Amended by Annex No 1 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

to cooperate in accordance with Article 90 of this Act as well as Article 8 paragraph 1 letter a or paragraph 4 AsylA<sup>182</sup>,

4. their previous conduct leads to the conclusion that they will refuse to comply with official instructions,
- 5.<sup>183</sup> the decision to remove the person concerned is issued in a federal centre and enforcement of the removal is imminent.
- 6.<sup>184</sup> ...

<sup>1bis</sup> The detention order in Dublin cases is governed by Article 76a.<sup>185</sup>

<sup>2</sup> Detention in terms of paragraph 1 letter b number 5 may last a maximum of 30 days.<sup>186</sup>

<sup>3</sup> The days in detention count towards the maximum duration in terms of Article 79.<sup>187</sup>

<sup>4</sup> The required arrangements for the enforcement of the removal, expulsion or the order for expulsion from Switzerland under Article 66a or 66a<sup>bis</sup> SCC or Article 49a or 49a<sup>bis</sup> MCC must be taken without delay.<sup>188</sup>

#### **Art. 76a**<sup>189</sup> Detention under the Dublin procedure

<sup>1</sup> The competent authority may order the detention of the foreign national concerned to ensure removal to the Dublin State responsible for the asylum proceedings, if in the case concerned:

<sup>182</sup> SR **142.31**

<sup>183</sup> Amended by Annex No 1 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BB1 **2014** 7991).

<sup>184</sup> Inserted by Art. 2 No 1 of the FD of 18 June 2010 on the Adoption of the EC Directive on the Return of Illegal Immigrants (Directive 2008/115/EC) (AS **2010** 5925; BB1 **2009** 8881). Repealed by Annex No I 1 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), with effect from 1 July 2015 (AS **2015** 1841; BB1 **2014** 2675).

<sup>185</sup> Inserted by Annex No I 1 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; BB1 **2014** 2675).

<sup>186</sup> Amended by Annex No I 1 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; BB1 **2014** 2675).

<sup>187</sup> Amended by Annex No I 1 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; BB1 **2014** 2675).

<sup>188</sup> Amended by Annex No I 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 offences), in force since 1 Oct. 2016 (AS **2016** 2329; BB1 **2013** 5975).

<sup>189</sup> Inserted by Annex No I 1 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; BB1 **2014** 2675).

- a. there are specific indications that the person intends to evade removal;
- b. detention is proportional; and
- c. less coercive alternative measures cannot be applied effectively (Art. 28 para. 2 der Regulation [EU] No 604/2013<sup>190</sup>).

<sup>2</sup> The following specific indications suggest that the person concerned intends to evade removal:

- a. The person concerned disregards official orders in the asylum or removal proceedings, in particular by refusing to disclose their identity, thus failing to comply with their duty to cooperate under Article 8 paragraph 1 letter a AsyIA<sup>191</sup> or by repeatedly failing to comply with a summons without sufficient excuse.
- b. Their conduct in Switzerland or abroad leads to the conclusion that they wish to defy official orders.
- c. They submit two or more asylum applications under different identities.
- d. They leave the area that they are allocated to or enter an area from which they are excluded under Article 74.
- e. They enter Swiss territory despite a ban on entry and cannot be removed immediately.
- f. They stay unlawfully in Switzerland and submit an application for asylum with the obvious intention of avoiding the imminent enforcement of removal.
- g. They seriously threaten other persons or considerably endanger the life and limb of other persons and are therefore being prosecuted or have been convicted.
- h. They have been convicted of a felony.
- i. They deny to the competent authority that they hold or have held a residence document and/or a visa in a Dublin State or have submitted an asylum application there.

<sup>3</sup> The person concerned may remain or be placed in detention from the date of the detention order for a maximum duration of:

- a. seven weeks while preparing the decision on responsibility for the asylum application; this includes submitting the request to take charge to the other Dublin State, waiting for the response or tacit acceptance, and drafting and giving notice of the decision;

<sup>190</sup> See footnote to Art. 64a para. 1.

<sup>191</sup> SR 142.31

- b. five weeks during proceedings under Article 5 of Regulation (EC) No 1560/2003<sup>192</sup>;
- c. six weeks to ensure enforcement from notice being given of the removal or expulsion decision or the date on which the suspensive effect of any appeal against a first instance decision on removal or expulsion ceases to apply and the transfer of the person concerned to the competent Dublin State.

<sup>4</sup> If a person refuses to board the means of transport being used to effect the transfer to the competent Dublin State, or if they prevent the transfer in any other way through their personal conduct, they may, in order to guarantee the transfer, be placed in detention if a detention order under paragraph 3 letter c is no longer possible and a less restrictive measure will not achieve a satisfactory result. The person may be detained until transfer is again possible, but no longer than six weeks. The period of detention may be extended with the consent of a judicial authority if the person concerned remains unprepared to modify their conduct. The maximum duration of this period of detention is three months.

<sup>5</sup> The days in detention count towards the maximum duration in terms of Article 79.

**Art. 77** Detention pending deportation due to lack of cooperation in obtaining travel documents

<sup>1</sup> The competent cantonal authority may detain a person to ensure the enforcement of their removal or expulsion if:

- a. an enforceable decision has been made;
- b. they have not left Switzerland by the appointed deadline; and
- c. the cantonal authority has had to obtain travel documents for this person.

<sup>2</sup> Detention may last a maximum of 60 days.

<sup>3</sup> The required arrangements for the enforcement of the removal or expulsion must be made without delay.

**Art. 78** Coercive detention

<sup>1</sup> If a person does not fulfil their obligation to leave Switzerland by the appointed deadline and if the legally enforceable removal or expulsion order or legally enforceable order for expulsion from Switzerland under Article 66a or 66a<sup>bis</sup> SCC<sup>193</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>194</sup> cannot be enforced due to their personal conduct, they may be detained to ensure the obligation to leave Switzerland is complied with,

<sup>192</sup> Commission Regulation (EC) No 1560/2003 of 2 Sept. 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 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, OJ L 222 of 5.9.2003, p. 3.

<sup>193</sup> SR 311.0

<sup>194</sup> SR 321.0

provided it is not permitted to order detention pending deportation and a more lenient measure would lead to the goal.<sup>195</sup>

<sup>2</sup> Detention may be ordered for one month. It may, however, be extended by two months with consent of the cantonal judicial authority if the person concerned remains unwilling to change their conduct and leave the country. Article 79 remains reserved.<sup>196</sup>

<sup>3</sup> Detention and its extension are ordered by the authorities of the canton which is responsible for enforcing the removal or expulsion order. If the person concerned is already in detention based on Articles 75, 76 or 77, they may be left in detention if the requirements of paragraph 1 are fulfilled.<sup>197</sup>

<sup>4</sup> The first-time detention order must be reviewed at the latest after 96 hours by a judicial authority on the basis of an oral hearing. At the request of the detainee, the extension of detention must be reviewed by the judicial authority within eight working days on the basis of an oral hearing. The power of review is governed by Article 80 paragraphs 2 and 4.

<sup>5</sup> The conditions of detention are governed by Article 81.

<sup>6</sup> The detention order is revoked if:

- a. the person concerned is unable to leave Switzerland independently and in the proper manner, even though they have fulfilled the obligations to cooperate specified by the authorities;
- b. they leave Switzerland as ordered;
- c. detention pending deportation is ordered;
- d. a request for release from detention is granted.

**Art. 79**<sup>198</sup> Maximum term of detention

<sup>1</sup> Detention in preparation for departure, detention pending deportation in accordance with Articles 75–77 and coercive detention in accordance with Article 78 must not together exceed the maximum term of detention of six months.

<sup>2</sup> The maximum term of detention may be extended with the consent of the cantonal judicial authority for a specific period, but in no case for more than twelve months

<sup>195</sup> Amended by Annex No I 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 offences), in force since 1 Oct. 2016 (AS 2016 2329; BBl 2013 5975).

<sup>196</sup> Amended by Art. 2 No 1 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>197</sup> Amended by Annex No I 1 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>198</sup> Amended by Art. 2 No 1 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).

and in the case of minors aged between 15 and 18, by a maximum of six months where:

- a. the person concerned fails to cooperate with the competent authority;
- b. the provision of the documents required for departure by a State that is not a Schengen State is delayed.

#### **Art. 80** Detention order and detention review

<sup>1</sup> Detention shall be ordered by the authorities of the canton responsible for enforcing the removal or expulsion order. In the case of persons staying in federal centres, the canton where the centre is located is responsible for ordering detention in preparation for departure. In cases covered by Article 76 paragraph 1 letter b number 5, detention shall be ordered by the canton where the centre is located.<sup>199</sup>

<sup>1bis</sup> In cases under Article 76 paragraph 1 letter b number 5, detention is ordered by the canton in which the the federal centres are located; if in accordance with Article 46 paragraph 1<sup>bis</sup> third sentence AsylA<sup>200</sup> a canton other than the canton where the centres are located is responsible for executing removal, that canton is also responsible for ordering detention.<sup>201</sup>

<sup>2</sup> The legality and the appropriateness of detention must be reviewed at the latest within 96 hours by a judicial authority on the basis of an oral hearing. If detention pending deportation has been ordered in accordance with Article 77, the detention review procedure shall be carried out in writing.<sup>202</sup>

<sup>2bis</sup> In the case of detention under Article 76 paragraph 1 letter b number 6, the legality and the appropriateness of detention shall be reviewed at the request of the detainee by a judicial authority in a written procedure. This review may be requested at any time.<sup>203</sup>

<sup>3</sup> The judicial authority may dispense with an oral hearing if deportation is anticipated within eight days of the detention order and the person concerned has expressed their consent in writing. If deportation cannot be carried out by this deadline, an oral hearing must be scheduled at the latest twelve days after the detention order.

<sup>4</sup> When reviewing the decision to issue, extend or revoke a detention order, the judicial authority shall also take account of the detainee's family circumstances and the circumstances behind the enforcement of detention. In no event may any detention order in preparation for departure, detention pending deportation or coercive

<sup>199</sup> Amended by Annex No 1 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>200</sup> SR **142.31**

<sup>201</sup> Inserted by Annex No 1 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).

<sup>202</sup> Amended by Art. 2 No 1 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>203</sup> Inserted by Art. 2 No 1 of the FD of 18 June 2010 on the Adoption of the EC Directive on the Return of Illegal Immigrants (Directive 2008/115/EC) (AS **2010** 5925; BBl **2009** 8881). Amended by Annex No 1 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS **2016** 3101, **2018** 2855; BBl **2014** 7991).



detention be issued in respect of children or young people who have not yet attained the age of 15.<sup>204</sup>

<sup>5</sup> The detainee may submit a request for release from detention one month after the detention review. The judicial authority must issue a decision on the request on the basis of an oral hearing within eight working days. A further request for release in the case of detention in accordance with Article 75 may be submitted after one month or in the case of detention in accordance with Article 76, after two months.

<sup>6</sup> The detention order shall be revoked if:

- a. the reason for detention ceases to apply or the removal or expulsion order proves to be unenforceable for legal or practical reasons;
- b. a request for release from detention is granted;
- c. the detainee becomes subject to a custodial sentence or measure.

**Art. 80a**<sup>205</sup> Detention order and detention review under the Dublin procedure

<sup>1</sup> The following authorities are responsible for issuing detention orders under Article 76a:

- a.<sup>206</sup> in the case of persons accommodated in a federal centre: the canton responsible for enforcing removal under Article 46 paragraph 1<sup>bis</sup> third sentence AsylA<sup>207</sup>, and in other cases the canton in which the federal centre is located;
- b. in the case of persons that have been allocated to a canton or resident in a canton who have not submitted an asylum application (Art. 64a): the canton concerned.

<sup>2</sup> ...<sup>208</sup>

<sup>3</sup> The legality and appropriateness of detention shall be reviewed at the request of the detainee by a judicial authority in a written procedure. This review may be requested at any time.<sup>209</sup>

<sup>4</sup> The detainee may apply for release from detention at any time. The judicial authority must decide on the application within eight working days in a written procedure.

<sup>5</sup> The detention of children and young persons under 15 years of age is not permitted.

<sup>204</sup> Second sentence amended by No I of the FA of 26 Sept. 2014, in force since 1 March 2015 (AS 2015 533; BBl 2014 3373).

<sup>205</sup> Inserted by Annex No I 1 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>206</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>207</sup> SR 142.31

<sup>208</sup> Repealed by Annex No 1 of the FA of 25 Sept. 2015, with effect from 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>209</sup> Amended by Annex No 1 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>6</sup> In the case of a detention order in respect of an unaccompanied minor seeking asylum, the representative under Article 64a paragraph 3<sup>bis</sup> of this Act or under Article 17 paragraph 3 AsylA will be informed in advance.

<sup>7</sup> The detention order shall be revoked if:

- a. the reason for detention ceases to apply or the removal or expulsion order proves to be unenforceable for legal or practical reasons;
- b. a request for release from detention is granted;
- c. the detainee becomes subject to a custodial sentence or measure.

<sup>8</sup> When reviewing the decision to issue, extend or revoke a detention order, the judicial authority shall also take account of the detainee's family circumstances and the circumstances behind the enforcement of detention.

#### **Art. 81<sup>210</sup>** Conditions of detention

<sup>1</sup> The cantons shall ensure that a person in Switzerland designated by the detainee is notified. Detainees may communicate with their legal representatives as well as with their family members and consular authorities both verbally and in writing.

<sup>2</sup> Detention shall take place in detention facilities intended for the enforcement of preparatory detention, detention pending deportation and coercive detention. If this not possible in exceptional cases, in particular because of insufficient capacity, detained foreign nationals must be accommodated separately from persons in pre-trial detention or who are serving a sentence.<sup>211</sup>

<sup>3</sup> The needs of vulnerable persons, unaccompanied minors and families with minor children must be taken into account in the detention arrangements.<sup>212</sup>

<sup>4</sup> The detention arrangements are otherwise governed by:

- a. Article 16 paragraph 3 and 17 of Directive 2008/115/EC<sup>213</sup> for returns to a third country;
- b. Article 28 paragraph 4 of Regulation (EU) No 604/2013<sup>214</sup> for Dublin transfers;

<sup>210</sup> Amended by Art. 2 No 1 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>211</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>212</sup> Amended by Annex No I 1 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>213</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 Dec. 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Amended by OJ L 348 of 24.12.2008, p. 98.

<sup>214</sup> See footnote to Art. 64a para. 1.

c.<sup>215</sup> in accordance with Article 37 of the Convention of 20 November 1989<sup>216</sup> on the Rights of the Child.<sup>217</sup>

**Art. 82<sup>218</sup>** Funding by the Confederation

<sup>1</sup> The Confederation may wholly or partially finance the construction or establishment of cantonal detention centres that are used exclusively for detaining persons in preparation for departure or pending deportation, or placing persons in coercive detention or for short-term detention and which are of a certain size. The calculation of contributions and the procedure are governed *mutatis mutandis* by Sections 2 and 6 of the Federal Act of 5 October 1984<sup>219</sup> on Federal Subsidies for the Execution of Sentences and Measures.

<sup>2</sup> The Confederation shall contribute to the cantons' operating costs for detaining persons in preparation for departure or pending deportation, or placing persons in coercive detention by making a flat-rate daily payment. The flat-rate payment shall be made in the case of:

- a. asylum seekers;
- b. refugees and other foreign nationals who are detained in connection with the revocation of temporary admission;
- c. foreign nationals whose detention has been ordered by the SEM in connection with a removal order;
- d. refugees who are expelled in accordance with Article 65 AsyIA<sup>220</sup>.

## Chapter 11 Temporary Admission

**Art. 83** Order for temporary admission

<sup>1</sup> If the enforcement of removal or expulsion is not possible, not permitted or not reasonable, the SEM shall order temporary admission.

<sup>2</sup> Enforcement is not possible if the foreign national is unable to travel or be brought either to their native country or to their country of origin or a third country.

<sup>215</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>216</sup> SR 0.107

<sup>217</sup> Inserted by Annex No I 1 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>218</sup> Amended by Annex No 1 of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325).

<sup>219</sup> SR 341

<sup>220</sup> SR 142.31

<sup>3</sup> Enforcement is not permitted if Switzerland's obligations under international law prevent the foreign national from making an onward journey to their native country, to their country of origin or to a third country.

<sup>4</sup> Enforcement may be unreasonable for foreign nationals if they are specifically endangered by situations such as war, civil war, general violence and medical emergency in their native country or country of origin.

<sup>5</sup> The Federal Council shall designate native countries or countries of origin or areas of these countries to which return is reasonable. If foreign nationals being removed or expelled come from one of these countries or from a member state of the EU or EFTA, enforcement of removal or expulsion is reasonable.<sup>221</sup>

<sup>5bis</sup> The Federal Council shall periodically review the decision under paragraph 5.<sup>222</sup>

<sup>6</sup> Temporary admission may be requested by the cantonal authorities.

<sup>7</sup> Temporary admission shall not be ordered in terms of paragraphs 2 and 4 if the person removed or expelled:

- a.<sup>223</sup> has been sentenced to a long-term custodial sentence in Switzerland or abroad or has been made subject to a criminal law measure in terms of Article 59–61 or 64 of the SCC<sup>224</sup>;
- b. has seriously or repeatedly violated or represented a threat to public security and order in Switzerland or abroad or represented a threat to internal or the external security; or
- c. has made their removal or expulsion impossible due to their own conduct.

<sup>8</sup> Refugees for whom there are reasons for refusing asylum in accordance with Articles 53 and 54 AsyIA<sup>225</sup> shall be granted temporary admission.

<sup>9</sup> Temporary admission shall not be granted or shall expire if an order for expulsion from Switzerland under Article 66a or 66a<sup>bis</sup> SCC or Article 49a or 49a<sup>bis</sup> MCC<sup>226</sup> becomes legally enforceable.<sup>227</sup>

<sup>10</sup> The cantonal authorities may conclude integration agreements with temporarily admitted persons if there is a special need for integration in accordance with the criteria set out in Article 58a.<sup>228</sup>

<sup>221</sup> Amended by Annex No 1 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 provision to this amendment at the end of the text.

<sup>222</sup> Inserted by Annex No 1 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 provision to this amendment at the end of the text.

<sup>223</sup> Amended by Annex No I 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 offences), in force since 1 Oct. 2016 (AS **2016** 2329; BBl **2013** 5975).

<sup>224</sup> SR **311.0**

<sup>225</sup> SR **142.31**

<sup>226</sup> SR **321.0**

<sup>227</sup> Inserted by Annex No I 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 offences), in force since 1 Oct. 2016 (AS **2016** 2329; BBl **2013** 5975).

**Art. 84** Termination of temporary admission

<sup>1</sup> The SEM periodically examines whether the requirements for temporary admission are still met.

<sup>2</sup> The SEM shall revoke temporary admission and order the enforcement of removal or expulsion if the requirements no longer met.

<sup>3</sup> At the request of the cantonal authorities, fedpol or the FIS, the SEM may revoke temporary admission due to the unreasonableness or impossibility of enforcement (Art. 83 paras 2 and 4) and order the enforcement of removal if there are grounds in terms of Article 83 paragraph 7.<sup>229</sup>

<sup>4</sup> Temporary admission expires in the event of definitive departure, an unauthorised stay abroad of more than two months, or on the granting of a residence permit.<sup>230</sup>

<sup>5</sup> Applications for a residence permit made by temporarily admitted foreign nationals who have resided in Switzerland for more than five years are closely examined with regard to integration, family circumstances and the reasonableness of return to the country of origin.

**Art. 85** Regulation of temporary admission

<sup>1</sup> The permit for temporarily admitted persons (Art. 41 para. 2) is issued by the canton of residence for a maximum of twelve months for control purposes and is extended subject to the reservation of Article 84.

<sup>2</sup> For the allocation of temporarily admitted persons, Article 27 AsyLA<sup>231</sup> applies *mutatis mutandis*.

<sup>3</sup> Temporarily admitted persons must submit their application to move to another canton to the SEM. The SEM shall make a final decision subject to the reservation of paragraph 4 on the change of canton after hearing the cantons concerned.

<sup>4</sup> The decision on the change of canton may only be contested on the ground that it violates the principle of family unity.

<sup>5</sup> Temporarily admitted persons are free to choose their place of residence within their current canton or the canton to which they are allocated. The cantonal authorities may allocate a place or residence or accommodation to temporarily admitted persons who are not recognised as refugees, and who are in receipt of social assistance.<sup>232</sup>

<sup>228</sup> Inserted by No I 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>229</sup> Amended by No I 2 of the Ordinance of 12 Dec. 2008 on the Amendment of Statutory Provisions due to the Transfer of the Intelligence Units of the Service for Analysis and Prevention to the DDPS, in force since 1 Jan. 2009 (AS 2008 6261).

<sup>230</sup> Amended by Annex No 1 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 142.31

<sup>232</sup> Second sentence inserted by Annex No 1 of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325).

6 ...<sup>233</sup>

<sup>7</sup> Spouses and unmarried children under 18 years of temporarily admitted persons and temporarily admitted refugees may be reunited with the temporarily admitted persons or refugees at the earliest three years after the order for temporary admission and included in that order if:

- a. they live with the temporarily admitted persons or refugees;
- b. suitable housing is available;
- c. the family does not depend on social assistance;
- d.<sup>234</sup> they can communicate in the national language spoken at the place of residence; and
- e.<sup>235</sup> the family member they are joining is not claiming annual supplementary benefits under the SBA<sup>236</sup> or would not be entitled to receive such benefits because of family reunification.

<sup>7bis</sup> In order to be granted temporary, it is sufficient to register for a language support programme as an alternative to meeting the requirement set out in under paragraph 7 letter d.<sup>237</sup>

<sup>7ter</sup> In the case of single children under the age of 18, the requirement set out in paragraph 7 letter d does not apply. The requirement of Article 49a paragraph 2 may be also waived for good cause.<sup>238</sup>

<sup>8</sup> If, on assessing the reunification of spouses in accordance with Articles 42–45, the SEM has reason to believe that there are grounds under Article 105 numbers 5 or 6 CC<sup>239</sup> for the marriage to be annulled, they shall report this to the competent authority under Article 106 CC. The request for the reunification of spouses is 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>240</sup>

<sup>233</sup> Repealed by No I of the FA of 16 Dec. 2016 (Integration), with effect from 1 Jan. 2019 (AS **2017** 6521, **2018** 3171; BBl **2013** 2397, **2016** 2821).

<sup>234</sup> Inserted by No I 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>235</sup> Inserted by No I 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>236</sup> SR **831.30**

<sup>237</sup> Inserted by No I 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>238</sup> Inserted by No I 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>239</sup> SR **210**

<sup>240</sup> Inserted by No I 1 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. 85a**<sup>241</sup> Right to work

<sup>1</sup> Temporarily admitted persons may work anywhere in Switzerland if the salary and employment conditions customary for the location, profession and sector are satisfied (Art. 22).

<sup>2</sup> The employer must report the start or end of employment to the cantonal authority responsible for the place of work in advance. The report must, in particular, contain the following information:

- a. the identity and salary of the employed person;
- b. the activity carried out;
- c. the place of work.

<sup>3</sup> The employer must include a declaration in the report, stating that he is aware of the salary and employment conditions customary for the location, profession and sector, and that he is committed to observing them.

<sup>4</sup> The authority referred to in paragraph 2 shall immediately send a copy of the report to the supervisory bodies responsible for verifying compliance with the salary and employment conditions.

<sup>5</sup> The Federal Council shall designate the competent supervisory bodies.

<sup>6</sup> It shall regulate the reporting procedure.

**Art. 86** Social assistance and health insurance

<sup>1</sup> The cantons shall regulate the terms and the payment of social assistance and emergency aid for temporarily admitted persons. The provisions of Articles 80a–84 AsyLA<sup>242</sup> relating to asylum seekers apply. Support for temporarily admitted persons is normally provided in the form of benefits in kind. The level of support is less than that offered to persons resident in Switzerland.<sup>243</sup>

<sup>1bis</sup> The same provisions on social assistance standards apply to the following persons as for refugees who have been granted asylum in Switzerland:

- a. temporarily admitted refugees;
- b. refugees subject to a legally enforceable expulsion order under Article 66a or 66a<sup>bis</sup> SCC<sup>244</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>245</sup>;
- c. stateless persons in accordance with Article 31 paragraphs 1 and 2; and
- d. stateless persons subject to a legally enforceable expulsion order under Article 66a or 66a<sup>bis</sup> SCC or Article 49a or 49a<sup>bis</sup> MCC.<sup>246</sup>

<sup>241</sup> Inserted by No I 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>242</sup> SR 142.31

<sup>243</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>244</sup> SR 311.0

<sup>245</sup> SR 321.0

<sup>246</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>2</sup> In relation to compulsory health insurance for temporarily admitted persons, the corresponding provisions for asylum seekers in accordance with the AsyLA and the Federal Act of 18 March 1994<sup>247</sup> on Health Insurance apply.

### Art. 87 Federal subsidies

<sup>1</sup> The Confederation pays the cantons:

- a.<sup>248</sup> a flat-rate payment for every temporarily admitted person in accordance with Articles 88 paragraphs 1 and 2 and 89 AsyLA<sup>249</sup>;
- b.<sup>250</sup> a flat-rate payment in accordance with Articles 88 paragraph 3 and 89 AsyLA for every temporarily admitted refugee and every stateless person in accordance with Article 31 paragraph 2;
- c.<sup>251</sup> the flat-rate payment in accordance with Article 88 paragraph 4 AsyLA for persons whose preliminary admission has been revoked in a legally binding decision, unless this payment was made previously;
- d.<sup>252</sup> a flat-rate payment in accordance with Articles 88 paragraph 3 and 89 AsyLA for every stateless person in accordance with Article 31 paragraph 1 and every stateless person subject to a legally enforceable expulsion order under Article 66a or 66a<sup>bis</sup> SCC<sup>253</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>254</sup>.

<sup>2</sup> The assumption of departure costs and payment of return assistance are governed by Articles 92 and 93 AsyLA.

<sup>3</sup> Flat-rate payments in terms of paragraph 1 letters a and b are made for a maximum of seven years after entry.<sup>255</sup>

<sup>4</sup> Flat-rate payments in terms of paragraph 1 letter d are made for a maximum of five years after recognition of statelessness.<sup>256</sup>

<sup>247</sup> SR **832.10**

<sup>248</sup> Amended by Annex No I of the FA of 14 Dec. 2012, in force since 1 Jan. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>249</sup> SR **142.31**

<sup>250</sup> Amended by Annex 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> Inserted by No IV 2 of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 3709).

<sup>252</sup> Inserted by Annex No 1 of the FA of 25 Sept. 2015 (AS **2016** 3101, **2017** 6171; BBl **2014** 7991). Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685)

<sup>253</sup> SR **311.0**

<sup>254</sup> SR **321.0**

<sup>255</sup> Amended by Annex No 1 of the FA of 25 Sept. 2015, in force since 1 Jan. 2018 (AS **2016** 3101, **2017** 6171; BBl **2014** 7991).

<sup>256</sup> Inserted by Annex No 1 of the FA of 25 Sept. 2015, in force since 1 Jan. 2018 (AS **2016** 3101, **2017** 6171; BBl **2014** 7991).



**Art. 88<sup>257</sup>** Special charge on assets

<sup>1</sup> Temporarily admitted persons shall be subject to the obligation to pay the special charge on assets in accordance with Article 86 AsyIA<sup>258</sup>. The provisions of the 2<sup>nd</sup> section of Chapter 5, Chapter 10 and Article 112a of the AsyIA apply.

<sup>2</sup> The obligation to pay the special charge applies for a maximum of ten years from the date of entry.

**Art. 88a<sup>259</sup>** Registered partnerships

The provisions of this Chapter on foreign spouses apply *mutatis mutandis* to registered same-sex partnerships.

**Chapter 12 Obligations****Section 1****Obligations of Foreign Nationals, Employers and Recipients of Services****Art. 89** Possession of a valid identity document

Foreign nationals must be in possession of a valid identity document recognised in terms of Article 13 paragraph 1 during their stay in Switzerland.

**Art. 90** Obligation to cooperate

Foreign nationals and third parties involved in proceedings under this Act are obliged to cooperate in determining the relevant circumstances necessary to apply this Act. They must in particular:

- a. provide accurate and complete information about circumstances, which are essential for the regulation of the period of stay;
- b. submit the required evidence without delay or make every effort to obtain it within a reasonable period;
- c. obtain identity documents (Art. 89) or assist the authorities in obtaining these documents.

**Art. 91** Duty of care of employers and of recipients of services

<sup>1</sup> Before a foreign national begins employment, an employer must inspect their identity card or check with the competent authorities to ascertain that the said foreign national is entitled to work in Switzerland.

<sup>257</sup> Amended by No I of the FA of 16 Dec. 2016 (Integration), in force since 1 Jan. 2018 (AS 2017 6521; BBI 2013 2397, 2016 2821).

<sup>258</sup> SR 142.31

<sup>259</sup> Inserted by No I 1 of the FA of 15 June 2012 on Measures against Forced Marriages, in force since 1 July 2013 (AS 2013 1035; BBI 2011 2185).

<sup>2</sup> Any person who obtains a cross-border service must inspect the identity card of the person providing the service or check with the competent authorities to ascertain that this person is entitled to work in Switzerland.

## Section 2 Obligations of Carriers<sup>260</sup>

### Art. 92<sup>261</sup> Duty of care

<sup>1</sup> Air carriers transporting persons must take all reasonable measures to ensure that they only transport persons who possess the required travel documents, visas and residence documents to enter the Schengen area or to travel through international transit zones of the airports.

<sup>2</sup> The Federal Council shall regulate the extent of the duty of care.

### Art. 93<sup>262</sup> Obligation to provide assistance and to cover costs

<sup>1</sup> The air carrier is obliged at the request of the competent federal or cantonal authorities to provide immediate assistance to any passengers that it is carrying who are denied entry to the Schengen area.<sup>263</sup>

<sup>2</sup> The obligation to provide assistance covers:

- a. the immediate transport of the person concerned from Switzerland to their country of origin, to the state issuing the travel documents or to another state where their admission is guaranteed;
- b. the uncovered costs of the required attendance as well as the customary subsistence and care costs until departure from or entry into Switzerland.

<sup>3</sup> If the air carrier is unable to provide evidence that it has fulfilled its duty of care, it must additionally bear:<sup>264</sup>

- a. the uncovered subsistence and care costs that have been covered by the Confederation or the canton for a period of stay of up to six months, including the costs for detention under the law on foreign nationals;
- b. the attendance costs;
- c. the deportation costs.

<sup>260</sup> Amended by No I 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>261</sup> Amended by 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).

<sup>262</sup> Amended by Art. 127 below, in force since 12 Dec. 2008 (AS 2008 5405 Art. 2 let. a).

<sup>263</sup> Amended by 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).

<sup>264</sup> Amended by 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).

<sup>4</sup> Paragraph 3 does not apply if the person being transported has been granted entry to Switzerland in terms of Article 22 AsylA<sup>265</sup>. The Federal Council may provide for further exceptions, in particular for exceptional circumstances such as war or natural disasters.<sup>266</sup>

<sup>5</sup> The Federal Council may stipulate a flat-rate charge based on the expected costs.

<sup>6</sup> It may request security for the payment of costs.

**Art. 94**<sup>267</sup> Cooperation with the authorities

<sup>1</sup> The air carriers shall cooperate with the competent federal and cantonal authorities. The modalities of this cooperation may be stipulated in the operating licence or in an agreement between the SEM and the carrier.

<sup>2</sup> The following may also be stipulated in the operating licence or agreement in particular:

- a. special measures by air carriers to ensure compliance with the duty of care under Article 92;
- b. the introduction of flat-rate payments instead of subsistence and care costs under Article 93.

<sup>3</sup> If special measures under paragraph 2 letter a are stipulated, the operating licence or the agreement may provide that any amount that an air carrier must pay under Article 122a paragraph 1 be reduced by up to a half.

**Art. 95**<sup>268</sup> Other carriers

The Federal Council may make other commercial carriers subject to Articles 92–94, 122a and 122c if Swiss national borders become a Schengen external border. In doing so, it shall take account of the requirements of Article 26 of the Convention of 19 June 1990<sup>269</sup> implementing the Schengen Agreement (Schengen Convention).

<sup>265</sup> SR 142.31

<sup>266</sup> Amended by No I 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>267</sup> Amended by 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).

<sup>268</sup> Amended by 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).

<sup>269</sup> Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ. L 239 of 22.9.2000, p. 19.

## Section 3<sup>270</sup> Obligations of Airport Operators

### Art. 95a Provision of accommodation by airport operators

Airport operators are obliged to provide suitable and reasonably priced accommodation at the airport for foreign nationals whose entry or onward journey is refused at the airport until removal or entry.

## Chapter 13 Tasks and Responsibilities of the Authorities

### Art. 96 Exercise of discretion

<sup>1</sup> In exercising discretion, the competent authorities shall take account of public interests and personal circumstances as well as the integration of foreign nationals.<sup>271</sup>

<sup>2</sup> If a measure is competent, but the circumstances are not appropriate, the person concerned may be issued with a warning on pain of this penalty.

### Art. 97 Administrative assistance and disclosure of personal data<sup>272</sup>

<sup>1</sup> The authorities entrusted with the implementation of this Act shall support each other in the fulfilment of their tasks. They shall provide the required information and on request allow the inspection of official files.

<sup>2</sup> Other authorities of the Confederation, the cantons and the communes are obliged to disclose data and information required for the implementation of this Act at the request of the authorities mentioned in paragraph 1.

<sup>3</sup> The Federal Council shall determine what data must be reported to the authorities mentioned in paragraph 1 in the case of:

- a. the opening of criminal investigations;
- b. civil and criminal judgements;
- c. changes in connection with civil status or in the case of refusal to permit a marriage;
- d. a claim for social assistance;
- d<sup>bis</sup>.<sup>273</sup> a claim for unemployment benefit;

<sup>270</sup> Inserted by Annex No 1 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 this text.

<sup>271</sup> Amended by 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>272</sup> For data in connection with illegal employment, Arts. 11 and 12 of the FA of 17 June 2005 on Illegal Employment (SR 822.41) apply.

<sup>273</sup> Inserted by 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).

- d<sup>ter.274</sup> a claim for supplementary benefits in accordance with the SBA<sup>275</sup>;
- d<sup>quater.276</sup> disciplinary measures by school authorities;
- d<sup>quinquies.277</sup> measures taken by child and adult protection authorities;
- e.<sup>278</sup> other decisions indicating a special need for integration in accordance with the criteria set out in Article 58a;
- f.<sup>279</sup> ...

<sup>4</sup> If an authority in accordance with paragraph 1 receives data pursuant to Article 26a SBA about a claim for supplementary benefits, it shall automatically notify the body responsible for determining and paying out the supplementary benefits of the possibility that the residence permit will not be extended or will be revoked.<sup>280</sup>

#### **Art. 98** Allocation of tasks

- <sup>1</sup> The SEM is responsible for all tasks that are not expressly reserved to other federal authorities or the cantonal authorities.
- <sup>2</sup> The Federal Council shall regulate the entry and exit, admission as well as residency of the persons benefiting from privileges, immunities and facilities in accordance with Article 2 paragraph 2 of the Host State Act of 22 June 2007<sup>281, 282</sup>
- <sup>3</sup> The cantons shall designate the authorities who are responsible for the tasks that have been entrusted to them.

#### **Art. 98a<sup>283</sup>** Use of police control and restraint techniques and police measures by the enforcement authorities

The persons entrusted with the enforcement of this Act may use police control and restraint techniques and police measures in order to fulfil their duties, provided it is

<sup>274</sup> Inserted by No III 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>275</sup> SR 831.30

<sup>276</sup> Inserted by No I 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>277</sup> Inserted by No I 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>278</sup> Inserted by Annex No 1 of the FA of 14 Dec. 2012 (AS 2013 4375; BBl 2010 4455, 2011 7325). Amended by No I 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>279</sup> Inserted by No I of the FA of 16 Dec. 2016 (Controlling Immigration and Improving Implementation of the Free Movement Agreements (AS 2018 733; BBl 2016 3007)). Repealed by No III 1 of the FA of 16 Dec. 2016 (Integration), with effect from 1 Jan. 2019 (AS 2017 6521, 2018 3171; BBl 2013 2397, 2016 2821).

<sup>280</sup> Inserted by No I of the FA of 16 Dec. 2016 (Controlling Immigration and Improving Implementation of the Free Movement Agreements), in force since 1 July 2018 (AS 2018 733; BBl 2016 3007).

<sup>281</sup> SR 192.12

<sup>282</sup> Amended by Art. 35 of the Host State Act of 22 June 2007, in force since 1 Jan. 2008 (AS 2007 6637; BBl 2006 8017).

<sup>283</sup> Inserted by Annex No 2 of the Use of Force Act of 20 March 2008, in force since 1 Jan. 2009 (AS 2008 5463; BBl 2006 2489).

justified by the legal interests to be protected. The Use of Force Act of 20 March 2008<sup>284</sup> applies.

**Art. 98b**<sup>285</sup> Delegation of duties to third parties in the visa procedure

<sup>1</sup> The FDFA in consultation with the SEM may authorise third parties to carry out the following tasks in relation to the visa procedure:

- a. arrangement of appointments with a view to granting a visa;
- b. receiving documents (visa application form, passport, supporting documents);
- c. charging of fees;
- d. recording of biometrical data for the central visa information system;
- e. returning passports to their holders at the end of the procedure.

<sup>2</sup> The FDFA and the SEM shall ensure that the third parties to whom duties are delegated comply with the regulations on data protection and security.

<sup>3</sup> The Federal Council shall determine the conditions under which third parties may be delegated duties in accordance with paragraph 1.

**Art. 99**<sup>286</sup> Approval procedure

<sup>1</sup> The Federal Council shall determine the cases in which the granting of short stay, residence and settlement permits and cantonal preliminary labour market decisions are to be submitted to SEM for approval.

<sup>2</sup> SEM may refuse to approve the decision of a cantonal administrative or appellate authority or make the decision subject to a time limit or to conditions and requirements.

**Art. 100** International agreements<sup>287</sup>

<sup>1</sup> The Federal Council shall encourage bilateral and multilateral migration partnerships with other states. It may conclude agreements to improve cooperation in the field of migration as well as to reduce illegal migration and its negative consequences.

<sup>284</sup> SR 364

<sup>285</sup> Inserted by Art. 2 No 1 of the FD of 11 Dec. 2009 (Approval and Implementation of the Exchanges of Notes relating to the Visa Information System), in force since 1 Jan. 2011 (AS 2010 2063 5761; BBl 2009 4245).

<sup>286</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>287</sup> Amended by No I 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>2</sup> The Federal Council may conclude agreements with foreign states or international organisations on:<sup>288</sup>

- a. the requirement to obtain a visa and the conduct of border controls;
- b. the readmission and transit of persons residing without authorisation in Switzerland;
- c. the transit with police escort of persons in terms of readmission and transit agreements including the legal status of persons accompanying the contractual parties;
- d. the period of residence required before a settlement permit is granted;
- e. basic and advanced professional training;
- f. the recruitment of employees;
- g. cross-border services;
- h. the legal status of persons in accordance with Article 98 paragraph 2.

<sup>3</sup> In the case of readmission and transit agreements, it may in terms of its responsibilities grant or withhold services and advantages. In doing so, it shall take account of obligations under international law as well as the all the relations Switzerland has with the affected state.<sup>289</sup>

<sup>4</sup> The responsible departments may enter into agreements with foreign authorities or international organisations on the technical implementation of agreements in accordance with paragraph 2.<sup>290</sup>

<sup>5</sup> Until the conclusion of a readmission agreement within the meaning of paragraph 2 letter b, the FDJP may enter into agreements with the competent foreign authorities and in consultation with the FDFA in which organisational issues connected with the return of foreign nationals to their native countries and with return assistance and reintegration are regulated.<sup>291</sup>

<sup>288</sup> Amended by No I 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>289</sup> Amended by No I 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>290</sup> Amended by No I 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>291</sup> Inserted by No I of the FA of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), (AS 2008 5407 5405 Art. 2 let. c; BBl 2007 7937). Amended by Annex No 1 of the FD of 15 Dec. 2017 (Adoption of Regulation [EU] 2016/1624 on the European Border and Coast Guard), in force since 15 Sept. 2018 (AS 2018 3161; BBl 2017 4155).

**Art. 100a**<sup>292</sup> Use of documentation advisers

- <sup>1</sup> In order to combat illegal migration, use may be made of documentation advisers.
- <sup>2</sup> Documentation advisers shall in particular provide support in checking documents to the authorities responsible for border controls, air carriers and foreign representations. They shall act only in an advisory capacity and shall not exercise any sovereign function.
- <sup>3</sup> The Federal Council may enter into agreements on the use of documentation advisers with foreign States.

**Art. 100b**<sup>293</sup> Federal Commission on Migration<sup>294</sup>

- <sup>1</sup> The Federal Council shall appoint an advisory commission comprising foreign and Swiss nationals.
- <sup>2</sup> The Commission shall deal with social, economic, cultural, political, demographic and legal issues that arise from the entry, residence and return of all foreign nationals, including asylum seekers.
- <sup>3</sup> It shall work with the competent authorities of the Confederation, the cantons and the communes and with non-governmental organisations involved in migration matters; these include the cantonal and communal commissions for foreign nationals involved in integration. It shall participate in the international exchange of views and experiences.
- <sup>4</sup> The Commission may be consulted on questions of principle relating to the promotion of integration. It is entitled to request financial contributions from the SEM for conducting integration projects of national importance.
- <sup>5</sup> The Federal Council may assign additional tasks to the Commission.

<sup>292</sup> Inserted by No 1 of 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>293</sup> Inserted by 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>294</sup> The name was amended on 1 Jan. 2016 pursuant to Art. 20 para. 2 of the Publications Ordinance of 7 Oct. 2015 (SR **170.512.1**).



## Chapter 14 Data Processing and Data Protection<sup>295</sup>

### Section 1 General<sup>296</sup>

#### Art. 101<sup>297</sup> Data processing

The SEM, the cantonal immigration authorities and, where it has jurisdiction, the Federal Administrative Court may process or instruct someone else to process personal data, including particularly sensitive data and personality profiles of foreign nationals as well third parties involved in procedures in accordance with this Act, insofar as they need this data to fulfil their statutory duties.

#### Art. 102 Data collection for the purpose of identification and determining age<sup>298</sup>

<sup>1</sup> When verifying entry requirements and in procedures concerning foreign nationals, the competent authorities may in individual cases collect and record biometric data pertaining to foreign nationals for identification purposes. For specific categories of persons, collection and recording may be carried out systematically.<sup>299</sup>

<sup>1bis</sup> If there are indications that an alleged foreign minor has reached the age of majority, the competent authorities may arrange an expert report on that person's age.<sup>300</sup>

<sup>2</sup> The Federal Council shall determine the categories of persons for which data may be recorded systematically and which biometric data shall be collected in accordance with paragraph 1, and shall regulate access to this data.<sup>301</sup>

#### Art. 102a<sup>302</sup> Biometric data for identity cards

<sup>1</sup> The competent authority may save and store the biometric data required for the issue of the foreign national identity cards.

<sup>295</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>296</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>297</sup> Amended by No I of the Ordinance of the Federal Assembly of 20 Dec. 2006 on the Adaptation of Legislation to the Provisions of the Federal Supreme Court Act and the Federal Administrative Court Act, in force since 1 Jan. 2008 (AS **2006** 5599; BBl **2006** 7759).

<sup>298</sup> Amended by Annex No 1 of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>299</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Arrangements and Information Systems), in force since 1 April 2020 (AS **2019** 1413, **2020** 881; BBl **2018** 1685).

<sup>300</sup> Inserted by Annex No 1 of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS **2013** 4375 5357; BBl **2010** 4455, **2011** 7325).

<sup>301</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Arrangements and Information Systems), in force since 1 April 2020 (AS **2019** 1413, **2020** 881; BBl **2018** 1685).

<sup>302</sup> Inserted by Art. 2 No I of the FD of 18 June 2010 (Development of the Schengen Acquis and Introduction of Biometric Data into Foreign National Identity Cards), in force since 24 Jan. 2011 (AS **2011** 175; BBl **2010** 51).

<sup>2</sup> The task of recording biometric data and forwarding identity card data to the issuing body may be delegated wholly or in part to third parties.<sup>303</sup>

<sup>3</sup> The competent authority may process biometric data already recorded in ZEMIS in order to issue or renew a travel document.<sup>304</sup>

<sup>4</sup> The biometric data required for the issue of an identity card shall be updated every five years. The Federal Council may specify a shorter period for the updating of data if this is required due to changes in the facial features of the person concerned.<sup>305</sup>

**Art. 102b<sup>306</sup>** Verifying the identity of the identity card holder

<sup>1</sup> The following authorities are authorised to read the data stored on the chip in order to verify the identity of the holder or verify that the document is genuine:

- a. the Border Guard;
- b. the cantonal and communal police;
- c. the cantonal and communal migration authorities.

<sup>2</sup> The Federal Council may authorise airlines, airport operators and other agencies that must verify the identity of persons to read the fingerprints stored on the data chip in order to carry out checks on persons.

## Section 2

### **Passenger Data, Monitoring and Controls at Airports and Air Carriers' Duty to provide Data<sup>307</sup>**

**Art. 103** Monitoring of arrivals at the airport

<sup>1</sup> The arrival of flight passengers may be monitored using technical identification procedures. The authorities responsible for border controls (Art. 7 and 9) shall use the collected data:<sup>308</sup>

- a. to determine the air carrier involved and the place of departure of foreign nationals who do not fulfil the entry requirements;
- b. to check all incoming persons against the data stored in the search systems.

<sup>303</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>304</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>305</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>306</sup> Inserted by Art. 2 No I of the FD of 18 June 2010 (Development of the Schengen Acquis and Introduction of Biometric Data into Foreign National Identity Cards), in force since 24 Jan. 2011 (AS **2011** 175; BBl **2010** 51).

<sup>307</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>308</sup> Second sentence amended in accordance with Art. 127 below, in force since 12 Dec. 2008 (AS **2008** 5405 Art. 2 let. a).

<sup>2</sup> The competent authorities shall notify the FIS if they discover a specific threat to internal or the external security during this monitoring. They may forward the corresponding data with the report.<sup>309</sup>

<sup>3</sup> The collected data must be erased within 30 days. If it is required for pending criminal, asylum proceedings or proceedings under the law on foreign nationals, the Federal Council may provide for specific data to be stored for a longer period.

<sup>4</sup> The Confederation may pay the cantons where the international airports are located contributions to the costs of supervision in accordance with paragraph 1.

<sup>5</sup> The Federal Council shall regulate the specifications that a facial recognition system must satisfy, as well as the details of the monitoring procedure and the passing on of information to the FIS.<sup>310</sup>

**Art. 103a**<sup>311</sup> Automated border controls at airports

<sup>1</sup> The authorities responsible for border controls at airports may operate an automated border control procedure. This has the aim of simplifying checks on participants when they enter and leave the Schengen area.

<sup>2</sup> Exclusively entitled to participate in the automated border control procedure are persons who:

a. hold Swiss citizenship; or

b.<sup>312</sup> hold rights under the AFMP<sup>313</sup> or the EFTA Convention<sup>314</sup>.

<sup>3</sup> Participation requires a biometric passport or a participation card on which biometric data is stored. In order to issue the participation card, the authorities responsible for border controls may record biometric data.

<sup>4</sup> On crossing the border, the data held in the biometric passport or on the participation card may be compared with the data in the computerised police search system (RIPOL) and the Schengen Information System (SIS).

<sup>5</sup> The authorities responsible for border controls shall operate an information system for the processing of personal data relating to those persons who require a participation card for the automated border control procedure. The information system shall not contain any biometric data. The persons concerned shall be informed in advance of the purpose of the data processing and the categories of data recipient.

<sup>309</sup> Amended by No I 2 of the Ordinance of 12 Dec. 2008 on the Amendment of Statutory Provisions due to the Transfer of the Intelligence Units of the Service for Analysis and Prevention to the DDPS, in force since 1 Jan. 2009 (AS **2008** 6261).

<sup>310</sup> Amended by No I 2 of the Ordinance of 12 Dec. 2008 on the Amendment of Statutory Provisions due to the Transfer of the Intelligence Units of the Service for Analysis and Prevention to the DDPS, in force since 1 Jan. 2009 (AS **2008** 6261).

<sup>311</sup> Inserted by No I of 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>312</sup> Amended by No I of the FA of 16 Dec. 2016 (Controlling Immigration and Improving Implementation of the Free Movement Agreements), in force since 1 July 2018 (AS **2018** 733; BBl **2016** 3007).

<sup>313</sup> SR **0.142.112.681**

<sup>314</sup> SR **0.632.31**

<sup>6</sup> The Federal Council shall regulate the registration procedure, the requirements for participation in the automated border control procedure, the organisation and operation of the information system and the list of personal data to be processed in the information system.

**Art. 103b**<sup>315</sup> Information system on refusals of entry

<sup>1</sup> The SEM shall maintain an internal information system on refusals of entry in accordance with Article 65 (INAD System). It shall be used when imposing penalties for violations of the duty of care under Article 122a, and to compile statistics.

<sup>2</sup> The system shall contain the following data on persons who have been refused entry to the Schengen area:

- a. surname, first name, sex, date of birth, nationality;
- b. details of the flight;
- c. reason why entry was refused;
- d. details of proceedings for violations of the duty of care under Article 122a in connection with the person concerned.

<sup>3</sup> The data recorded in the system shall be anonymised after two years.

**Art. 104**<sup>316</sup> Air carriers' duty to provide data

<sup>1</sup> In order to improve border controls and to combat unlawful entry into the Schengen area and transit through the international transit zones of the airports, at the request of the border control authorities SEM may require air carriers to provide personal data on the passengers it is carrying and data on the flight to the SEM or to the authority responsible for the border controls. The data must be transmitted immediately after departure.<sup>317</sup>

<sup>1bis</sup> SEM may extend the duty to provide data to other flights:

- a. at the request of fedpol: to combat international organised crime and terrorism;
- b. at the request of the FIS: to respond to threats to internal and external security that arise from terrorism, espionage and preparations for illegal trading in weapons and radioactive materials and illegal technology transfers.<sup>318</sup>

<sup>315</sup> Inserted by 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).

<sup>316</sup> Amended by 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).

<sup>317</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>318</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

ter The data must be transmitted immediately after departure.<sup>319</sup>

<sup>2</sup> The order to provide data must contain:

- a. the airports or states of departure;
- b. the data categories in accordance with paragraph 3;
- c. the technical details on data transmission.

<sup>3</sup> The duty to provide data applies to the following data categories:

- a. biographical data (surname, first name(s), sex, date of birth, nationality) of the persons being carried;
- b. number, issuing state, type and expiry date of the travel document held;
- c. number, issuing state, type and expiry date of the visa or residence document held provided the air carrier has this data;
- d. airport of departure, transfer airports or airport of destination in Switzerland, together with details of the flight itinerary booked for the persons concerned insofar as known to the air carrier;
- e. code of transport;
- f. number of persons carried on the flight concerned;
- g. planned date and time of departure and arrival.

<sup>4</sup> The air carriers shall inform the persons concerned in accordance with Article 18a of the Federal Act of 19 June 1992<sup>320</sup> on Data Protection.

<sup>5</sup> Orders imposing or lifting the duty to provide data are made as general rulings and are published in the Federal Gazette. Appeals against such rulings do not have suspensive effect.

<sup>6</sup> Air carriers may retain the data in accordance with paragraph 3 solely for evidentiary purposes. They must erase the data:

- a. when it is established that the SEM will not open proceedings for a violation of the duty to provide data, or two years after the date of the flight at the latest;
- b. on the day after the ruling in application of Article 122b takes full legal effect.

**Art. 104a**<sup>321</sup> Passenger information system

<sup>1</sup> The SEM shall maintain a passenger information system (API System) in order to:

- a. improve border controls;

<sup>319</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>320</sup> SR **235.1**

<sup>321</sup> Inserted by 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).

- b. combat unlawful entry into the Schengen area and transit through the international transit zones of the airports;
- c. combat international organised crime and terrorism, espionage and preparations for illegal trading in weapons and radioactive materials and illegal technology transfers.<sup>322</sup>

<sup>1bis</sup> The API System contains the data in accordance with Article 104 paragraph 3 and the results of comparisons in accordance with paragraph 4.<sup>323</sup>

<sup>2</sup> In order to check whether air carriers are fulfilling their duty to provide data, and to enforce penalties under Article 122*b*, the SEM may retrieve data in accordance with Article 104 paragraph 3 from the API System.<sup>324</sup>

<sup>3</sup> In order to improve border controls and to combat unlawful entry into the Schengen area and transit through the international transit zones of the airports, the authorities responsible for checks on persons at the Schengen external borders may retrieve data in accordance with Article 104 paragraph 3 from the API System.<sup>325</sup>

<sup>3bis</sup> If it is suspected that a person is preparing for or committing offences under Article 104 paragraph 1<sup>bis</sup> letter a, fedpol may retrieve the data in accordance with Article 104 paragraph 3.<sup>326</sup>

<sup>4</sup> The data in accordance with Article 104 paragraph 3 letters a and b shall be automatically and systematically compared with the data from RIPOL, the SIS, the ZEMIS and the Interpol database for stolen and lost documents (ASF-SLTD).<sup>327</sup>

<sup>5</sup> The data in accordance with Article 104 paragraph 3 and the results of the comparisons in accordance with paragraph 4 may only be used following the arrival of the flight concerned in order to conduct criminal or asylum proceedings, or proceedings under the law on foreign nationals. It must be erased:

- a. when it is established that no proceedings of this type will be conducted, or two years after the date of the flight concerned at the latest;
- b. on the day after the ruling in proceedings of this type takes full legal effect.

<sup>6</sup> The data may be retained in anonymised form for statistical purposes beyond the deadlines set out in paragraph 5.

<sup>322</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>323</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>324</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>325</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>326</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>327</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

**Art. 104b**<sup>328</sup> Automatic transmission of data from the API System

<sup>1</sup> The data in accordance with Article 104 paragraph 3 shall be transmitted automatically in electronic form to the FIS.

<sup>2</sup> The FIS may process the data in order to fulfil its duties under Article 104a paragraph 1 letter c.

**Art. 104c**<sup>329</sup> Access to passenger data in individual cases

<sup>1</sup> In order to conduct border controls, to combat illegal migration or to enforce removal orders, air carriers must on request provide the authorities responsible for border controls with passenger lists.

<sup>2</sup> The passenger lists must contain the following data:

- a. surname, first name(s), address, date of birth, nationality and passport number of the persons being carried;
- b. airport of departure, transfer airports and airport of destination;
- c. details of the travel agent through which the flight was booked.

<sup>3</sup> The duty to provide the passenger lists ends six months after the flight takes place.

<sup>4</sup> The authority responsible for border controls shall delete the data within 72 hours of receipt.

**Section 3 Disclosure of Personal Data Abroad**<sup>330</sup>**Art. 105** Disclosure of personal data abroad

<sup>1</sup> In order to fulfil their duties, and in particular to combat criminal offence in terms of this Act, the SEM and the competent authorities of the cantons may disclose personal data of foreign nationals to foreign authorities and international organisations entrusted with corresponding duties provided such authorities and organisation guarantee a level of data protection equivalent to that in Switzerland.

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

- a. biographical data (surname, first name, alias, date of birth, place of birth, sex, nationality, last address in the native country or country of origin) of the foreign national and, if necessary, of the next of kin;
- b. information about the passport or other identity cards;
- c. biometric data;

<sup>328</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>329</sup> Originally Art. 104b. Inserted by 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).

<sup>330</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

- d. further data required for the identification of a person;
- e. information on the state of health, as far as this is in the interests of the person concerned and the person has been informed about this;
- f. the data required for ensuring entry to the destination country as well as for the security of the accompanying persons;
- g. information on the places of stay and routes travelled;
- h. information on the regulation of the period of stay and the visas granted.

**Art. 106** Disclosure of personal data to the native country or country of origin  
 For the implementation of removals or expulsions to the native country or country of origin, the authority responsible for organising the departure may only disclose the following data to foreign authorities if this does not put the foreign national or the next of kin at risk:

- a. biographical data (surname, first name, alias, date of birth, place of birth, sex, nationality, last address in the native country or country of origin) of the foreign national and, if necessary, of the next of kin;
- b. information about the passport or other identity cards;
- c. biometric data;
- d. further data required for the identification of a person;
- e. information on the state of health, as far as this is in the interests of the person concerned and the person has been informed about this;
- f. the data required for ensuring entry to the destination country as well as for the security of the accompanying persons.

**Art. 107** Disclosure of personal data under readmission and transit agreements

<sup>1</sup> In order to implement the readmission and transit agreements mentioned in Article 100, the SEM and the competent authorities of the cantons may also disclose the required personal data to states that do not provide a level of data protection equivalent to that in Switzerland.

<sup>2</sup> For the purpose of the readmission of its citizens, the following data may be disclosed to another contracting state:

- a. biographical data (surname, first name, alias, date of birth, place of birth, sex, nationality, last address in the native country or country of origin) of the foreign national and, if necessary, of the next of kin;
- b. information about the passport or other identity cards;
- c. biometric data;
- d. further data required for the identification of a person;



- e. information on the state of health, as far as this is in the interests of the person concerned;
- f. the data required for ensuring entry to the destination country as well as for the security of the accompanying persons;
- g. information on criminal proceedings, insofar as this is required in specific cases to process readmission and to safeguard public security and order in the native country and provided the person is not endangered as a result; Article 2 of the Federal Act of 20 March 1981<sup>331</sup> on International Mutual Assistance in Criminal Matters applies *mutatis mutandis*.

<sup>3</sup> For the purpose of the transit of members of third countries, the following data may be disclosed to the other contracting state:

- a. data in accordance with paragraph 2;
- b. information on the places of stay and routes travelled;
- c. information on the regulation of the period of stay and the visas granted.

<sup>4</sup> Purpose limitation, any security measures and the competent authorities must be defined in the readmission or transit agreement.

**Art. 108–109**<sup>332</sup>

## Chapter 14a Information Systems<sup>333</sup>

### Section 1

#### Central Visa information System and National Visa System<sup>334</sup>

**Art. 109a**<sup>335</sup> Consultation of data in the Central Visa Information System

<sup>1</sup> The Central Visa Information System (C-VIS) contains the visa data from all the states to which Regulation (EC) No. 767/2008<sup>336</sup> applies.

<sup>331</sup> SR 351.1

<sup>332</sup> See Art. 126 para. 6 below.

<sup>333</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>334</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS 2019 1413; BBl 2018 1685).

<sup>335</sup> Inserted by Art. 2 No 1 of the FD of 11 Dec. 2009 on the Approval and Implementation of the Exchange of Notes between Switzerland and the EU on the Adoption of the Regulation and Decision concerning the Visa Information System (VIS), in force since 11 Oct. 2011 (AS 2010 2063, 2011 4449; BBl 2009 4245).

<sup>336</sup> Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ. L 218 of 13.8.2008, p. 60.

<sup>2</sup> The following authorities may consult C-VIS data online:

- a.<sup>337</sup> the SEM, Swiss representations abroad and missions, the cantonal migration authorities responsible for the visa and the communal authorities to which the cantons have delegated these responsibilities, the State Secretariat and the Directorate of Political Affairs of the FDFA, the Border Guard and the border posts of the cantonal police authorities: in the course of the visa procedure;
- b.<sup>338</sup> the SEM: to determine the state responsible for assessing an asylum application under Regulation (EC) No. 604/2013<sup>339</sup> and in the course of assessing an asylum application if Switzerland is responsible for its processing;
- c. the Border Guard and the cantonal police authorities responsible for checks at the Schengen external borders: to conduct checks at the external border crossing points and on Swiss sovereign territory;
- d.<sup>340</sup> the Border Guard and the cantonal and communal police authorities that conduct checks on persons: to identify persons who do not or who no longer fulfil the requirements for entry into Swiss sovereign territory or for a stay in Switzerland.

<sup>3</sup> The following authorities may request specific C-VIS data from the central access point under paragraph 4 in application of Decision 2008/633/JI<sup>341</sup> in order to prevent detect or investigate terrorist offences or other serious criminal offences:

- a. fedpol;
- b. FIS;
- c. the Office of the Attorney General of Switzerland;
- d. the cantonal police and prosecution authorities and the police authorities of the cities of Zurich, Winterthur, Lausanne, Chiasso and Lugano.

<sup>4</sup> The central access point in accordance with Article 3 paragraph 3 of Decision 2008/633/JI is the fedpol operations centre.

<sup>337</sup> Amended by No I of the FA of 26 Sept. 2014, in force since 1 March 2015 (AS **2015** 533; BBl **2014** 3373).

<sup>338</sup> Amended by Annex No I 1 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>339</sup> See footnote to Art. 64a para. 1.

<sup>340</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Arrangements and Information Systems), in force since 1 April 2020 (AS **2019** 1413, **2020** 881; BBl **2018** 1685).

<sup>341</sup> Council Decision 2008/633/JI of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Euro-pol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, OJ. L 218 of 13.8.2008, p. 129.

**Art. 109b**<sup>342</sup> National visa system

<sup>1</sup> The SEM shall operate a national visa system. The system serves the registration of visa applications and the issue of visas granted by Switzerland. In particular, it contains the data transmitted via the national interface (N-VIS) to the C-VIS.

<sup>2</sup> The national visa system contains the following categories of data on visa applicants:

- a. alphanumerical data on the applicant and on the visa that has been applied for, granted, denied, cancelled, revoked or extended;
- b. the applicants' photographs and fingerprints;
- c. the links between certain visa applications;
- d.<sup>343</sup> the data from RIPOL and from the ASF-SLTD to which the visa authorities have access;
- e.<sup>344</sup> the data from SIS to which the visa authorities have access, provided an alert has been issued under Chapter 4 of Regulation (EC) No 1987/2006<sup>345</sup> and the requirements of Article 32 paragraph 1 of this EC Regulation have been met.

<sup>2bis</sup> The national visa system also contains a subsystem with the files on the visa applicants in electronic form.<sup>346</sup>

<sup>3</sup> The SEM, Swiss representations abroad and missions, cantonal migration authorities responsible for visas and the communal authorities to which the cantons have delegated these responsibilities, the State Secretariat and the Directorate of Political Affairs of the FDFA and the Border Guard and the border posts of the cantonal police authorities that issue exceptional visas may enter, modify and delete data in the national visa system in order to fulfil their duties under the visa procedure.<sup>347</sup> They must enter and process the data transmitted to the C-VIS in accordance with Regulation (EC) No 767/2008<sup>348</sup>.

<sup>342</sup> Inserted by Art. 2 No 1 of the FD of 11 Dec. 2009 on the Approval and Implementation of the Exchange of Notes between Switzerland and the EU on the Adoption of the Regulation and Decision concerning the Visa Information System (VIS), in force since 20 Jan. 2014 (AS 2010 2063, 2014 1; BBl 2009 4245).

<sup>343</sup> Inserted by 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).

<sup>344</sup> Inserted by 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).

<sup>345</sup> Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II), amended by OJ. L 381 of 28.12.2006, p. 4.

<sup>346</sup> Inserted by 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).

<sup>347</sup> Amended by No I of the FA of 26 Sept. 2014, in force since 1 March 2015 (AS 2015 533; BBl 2014 3373).

<sup>348</sup> Regulation (EC) No 767/2008 of the European Parliament and the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ. L 218 of 13.8.2008, p. 60.

**Art. 109c**<sup>349</sup> Consultation of the national visa system

The SEM may grant the following authorities online access to the data in the national visa system:

- a. the Border Guard and the border posts of the cantonal police authorities: to carry out checks on persons and to issue exceptional visas;
- b. the Swiss representations abroad and the Swiss Missions: to verify visa applications;
- c. the State Secretariat and the Directorate of Political Affairs of the FDFA: to verify visa applications for which the FDFA is responsible;
- d. the Central Compensation Office: to assess applications for benefits and to allocate and check OASI insurance numbers;
- e.<sup>350</sup> the cantonal and communal migration authorities and the cantonal and communal police authorities: to fulfil their duties in the field of immigration;
- f. the competent federal authorities in the field of internal security, international mutual legal assistance and policing:
  1. in order to identify persons in connection with the exchange of police intelligence, security and criminal police duties, extradition proceedings, administrative and mutual legal assistance, law enforcement and the enforcement of penalties on behalf of others, combating money laundering, drug trafficking and organised crime, checking identity documents, tracing missing persons and checking entries in the computerised police search system under the Federal Act of 13 June 2008<sup>351</sup> on the Federal Police Information Systems,
  2. in order to check measures banning entry in order to safeguard Switzerland's internal and external security under the Federal Act of 21 March 1997<sup>352</sup> on Measures to Safeguard Internal Security;
- g. the Federal Appellate Authorities: for the preparatory briefing procedure for appeals;
- h. the civil register offices and their supervisory authorities: to identify persons in connection with changes in civil status, to prepare for a marriage ceremony or the registration of a same-sex partnership, and to prevent circumvention of the law on foreign nationals in accordance with Article 97a paragraph 1 CC<sup>353</sup> and Article 6 paragraph 2 of the Same-Sex Partnership Act of 18 June 2004<sup>354</sup>.

<sup>349</sup> Inserted by Art. 2 No 1 of the FD of 11 Dec. 2009 on the Approval and Implementation of the Exchanges of Notes between Switzerland and the EU on the Adoption of the Regulation and Decision concerning the Visa Information System (VIS), in force since 20 Jan. 2014 (AS **2010** 2063, **2011** 4449, **2014** 1; BBl **2009** 4245).

<sup>350</sup> Amended by No 1 of the FA of 14 Dec. 2018 (Procedural Arrangements and Information Systems), in force since 1 April 2020 (AS **2019** 1413, **2020** 881; BBl **2018** 1685).

<sup>351</sup> SR **361**

<sup>352</sup> SR **120**

<sup>353</sup> SR **210**

<sup>354</sup> SR **211.231**

**Art. 109d**<sup>355</sup> Exchange of information with EU member states to which Regulation (EC) No. 767/2008 not yet applies

Member states of the EU to which Regulation (EC) No. 767/2008<sup>356</sup> not yet applies may send their requests for information to the authorities under Article 109a paragraph 3.

**Art. 109e**<sup>357</sup> Implementing provisions for the C-VIS

The Federal Council shall regulate:

- a. the administrative units under Article 109a paragraphs 2 and 3 and 109b paragraph 3 to which the powers mentioned therein apply;
- b. the procedure by which authorities obtain C-VIS data under Article 109a paragraph 3;
- c. the extent of online access to the C-VIS and auf das national visa system;
- d. the procedure for exchanging information under Article 109d;
- f. the storage of the data and procedure for its deletion;
- g. the modalities with regard to data security;
- h. cooperation with the cantons;
- i. responsibility for data processing;
- j. the list of offences under Article 109a paragraph 3.

## Section 2<sup>358</sup>

### Information System for Return Procedures

**Art. 109f** Principles

<sup>1</sup> SEM shall operate an information system in order to fulfil its tasks in connection with the enforcement of removal, expulsion under this Act or judicial expulsion

<sup>355</sup> Inserted by Art. 2 No 1 of the FD of 11 Dec. 2009 on the Approval and Implementation of the Exchange of Notes between Switzerland and the EU on the Adoption of the Regulation and Decision concerning the Visa Information System (VIS) (AS 2010 2063; BBl 2009 4245). Amended by No I of the FA of 16 Dec. 2016 (Controlling Immigration and Improving Implementation of the Free Movement Agreements), in force since 1 July 2018 (AS 2018 733; BBl 2016 3007).

<sup>356</sup> Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ. L 218 of 13.8.2008, p. 60.

<sup>357</sup> Inserted by Art. 2 No 1 of the FD of 11 Dec. 2009 on the Approval and Implementation of the Exchange of Notes between Switzerland and the EU on the Adoption of the Regulation and Decision concerning the Visa Information System (VIS), in force since 11 Oct. 2011 (AS 2010 2063, 2014 1; BBl 2009 4245).

<sup>358</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Arrangements and Information Systems), in force since 1 April 2020 (AS 2019 1413, 2020 881; BBl 2018 1685).

under Article 66a or 66a<sup>bis</sup> SCC<sup>359</sup> or Article 49a or 49a<sup>bis</sup> MCC<sup>360</sup> as well as voluntary return, including the return assistance and counselling (eRetour System).

<sup>2</sup> The information system assists with:

- a. the processing of personal data pertaining to foreign nationals in connection with the enforcement of removal, expulsion or judicial expulsion orders, voluntary return or return assistance or counselling, including the processing of sensitive personal data;
- b. the administration and supervision of the various phases of the removal, expulsion or judicial expulsion process and the tasks related to return, including return assistance and counselling and the financial payments associated with return;
- c. the production of statistics.

#### **Art. 109g**      Content

<sup>1</sup> The information system contains data on foreign nationals:

- a. whose removal, expulsion or judicial expulsion is to be enforced;
- b. who leave Switzerland voluntarily;
- c. who have requested counselling on return or have received return assistance.

<sup>2</sup> It contains the following categories of data:

- a. the surname and first name(s), date of birth and address (basic data), sex, place of birth, nationality, ethnicity, religion, mother tongue and civil status of the foreign national and the names of his or her parents;
- b. the biometric data;
- c. the part of the electronic file relating to return under Article 4 paragraph 1 letter d of the Federal Act of 20 June 2003<sup>361</sup> on the Information System on Matters relating to Foreign Nationals and Asylum;
- d. the form of removal or voluntary return, the travel document used and the financial payments disbursed on departure;
- e. the data on counselling on return and the granting of return assistance;
- f. the data on measures to obtain travel documents;
- g. the data required for the administration and supervision of the various phases of departure from Switzerland;
- h. the medical data required to assess the person's fitness to travel;
- i. the result of searches in RIPOL and the SIS;
- j. the location, duration and form of detention;

<sup>359</sup> SR 311.0

<sup>360</sup> SR 321.0

<sup>361</sup> SR 142.51

- k. the person's behavioural characteristics and the compulsory measures that may be or have been ordered during the flight;
- l. details of the flight tickets and the itinerary;
- m. data on the persons entrusted with accompanying the person concerned for medical, social or policing reasons;
- n. the data required to prepare cost statements and make payments in connection with the return.

<sup>3</sup> The personal data under paragraph 2 letters a–c and j are copied automatically from ZEMIS. If these data are modified in the information system, the updated data are automatically copied into ZEMIS.

<sup>4</sup> SEM shall inform persons whose data is recorded in the system of the reason for processing these data, the data categories and the data recipient.

**Art. 109h** Data processing

Provided it is necessary for them to carry out their tasks, the following persons and agencies shall have access to the information system, but limited to the date mentioned in brackets:

- a. SEM employees:
  - 1. to obtain travel documents for the return, to organise departure and to grant return assistance (data under Art. 109g para. 2),
  - 2. to prepare the cost statement (basic data under Art. 109g para. 2 let. a and data under Art. 109g para. 2 let. c–h and j–n);
- b. the cantonal authorities entrusted with carrying out the return procedure in order to report cases that require support from SEM under Article 71 (data under Art. 109g para. 2);
- c. the cantonal authorities responsible for return assistance (data under Art. 109g para. 2 let. a–h and k–n);
- d. the cantonal authorities responsible for cost statement (basic data under Art. 109g para. 2 let. a and data under Art. 109g para. 2 let. c–g, j and l–n);
- e. the cantonal police authorities for accompanying persons being removed or expelled (basic data under Art. 109g para. 2 let. a and data under Art 109g para. 2 let. b, d, g and i–n);
- f. the cantonal police authorities at the airports and the Border Guard for tasks related to checks on departure (basic data under Art. 109g para. 2 let. a and data under Art. 109g para. 2 let. b, d, g and i–n);
- g. third parties delegated tasks under Article 109i.

**Art. 109i** Third parties delegated tasks

<sup>1</sup> SEM and the cantonal authorities entrusted with carrying out the return procedure may in providing return assistance delegate specific tasks to the return counselling agencies (Art. 93 para. 1 let. a AsylA<sup>362</sup>) and international organisations (Art. 93 para. 3 AsylA). They may delegate tasks to other third parties in connection with organising the return under Article 71 letter b of this Act.

<sup>2</sup> SEM may grant third parties that have been delegated tasks access to the data in the Information System that they require to fulfil their mandate:

- a. for tasks in connection with return assistance and counselling;
- b. for tasks related to preparing for departure at the airport;
- c. for assessing the fitness of the person concerned to travel and for deciding on any medical assistance required.

<sup>3</sup> SEM shall ensure that the third parties comply with the regulations on data protection and on information technology security.

<sup>4</sup> The Federal Council shall decide which categories personal data in the information system may be processed by the third parties that have been delegated tasks mentioned in paragraph 1 above.

**Art. 109j** Supervision and implementation

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

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

- a. the organisation and operation of the system;
- b. the catalogue of data for the systems and the extent of access rights granted to the authorities mentioned in Article 109h;
- c. the technical and organisational aspects of measures to prevent unauthorised processing;
- d. the retention period for and the destruction of the data.



### Section 3 Personal File and Documentation System<sup>363</sup>

#### Art. 110<sup>364</sup> ...<sup>365</sup>

The SEM in cooperation with the Federal Administrative Court and the competent cantonal authorities shall maintain an automated personal file and documentation system.

#### Art. 111 Information systems for travel documents

<sup>1</sup> The SEM shall maintain an information system for the issue of Swiss travel documents and return visas to foreign nationals (the ISR) in accordance with Article 59.<sup>366</sup>

<sup>2</sup> The ISR shall contain the following data:

- a.<sup>367</sup> the surname, first name, sex, date of birth, place of birth, nationality, address, height, facial image, name and first name of parents, surnames of parents at birth, signature, file number and personal number;
- b. information on the application, such as the date of receipt of application and decision on the application;
- c. information on the travel document, such as the date of issue and term of validity;
- d. the signatures and names of the statutory representative in the case of travel documents issued to minors or incapacitated persons;
- e. combined surnames, religious names or pseudonyms as well as information on special characteristics such as disabilities, prostheses or implants provided the applicant requests that the travel document contain this information;
- f. information on lost travel documents.

<sup>363</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>364</sup> Amended by No I 1 of the Ordinance of the Federal Assembly of 20 Dec. 2006 on the Adaptation of Legislation to the Provisions of the Federal Supreme Court Act and the Federal Administrative Court Act, in force since 1 Jan. 2008 (AS **2006** 5599; BBl **2006** 7759).

<sup>365</sup> Removed by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), with effect from 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>366</sup> Amended by Art. 2 No 2 of the FD of 13 June 2008 on the Approval and Implementation of the Exchange of Notes between Switzerland and the EU on Biometric Passports and Travel Documents, in force since 1 Oct. 2011 (AS **2009** 5521, **2011** 4033; BBl **2007** 5159).

<sup>367</sup> Amended by Art. 2 No 2 of the FD of 13 June 2008 on the Approval and Implementation of the Exchange of Notes between Switzerland and the EU on Biometric Passports and Travel Documents, in force since 1 Oct. 2011 (AS **2009** 5521, **2011** 4033; BBl **2007** 5159).

<sup>3</sup> To check whether an alert has been issued in respect of the applicant due to a felony or a misdemeanour, the RIPOLE computerised search system automatically conducts a search.<sup>368</sup>

<sup>4</sup> The data collected in accordance with paragraph 2 shall be processed by employees of the SEM who deal with issuing Swiss travel documents and return visas.<sup>369</sup>

<sup>5</sup> The SEM may make the data that it has collected in accordance with paragraph 2 accessible to the following authorities or offices through a retrieval process, insofar as they need the data for the fulfilment of their duties:<sup>370</sup>

- a. the office responsible for issuing travel documents;
- b. the border posts of the cantonal police authorities and the Border Guard, in order to carry out checks on persons;
- c. the police stations designated by the cantons to carry out checks on persons and to record reports of lost travel documents;
- d.<sup>371</sup> the authorities or agencies appointed by the cantons to accept applications for the issue of travel documents;
- e.<sup>372</sup> the authorities or agencies appointed by the cantons to take portrait photographs or fingerprints

<sup>6</sup> The Federal Council shall issue the implementing provisions.

## Chapter 14<sup>b373</sup>

### Data Protection under the Schengen Association Agreement

#### Art. 111a Disclosure of personal data to the member states of the Schengen Association Agreement

The disclosure of personal data to the competent authorities of states that are bound by one of the Schengen Association Agreements is regarded as equivalent to the disclosure of personal data between federal bodies.

<sup>368</sup> Amended by Annex 1 No 2 of the FA of 13 June 2008 on the Federal Police Information Systems, in force since 5 Dec. 2008 (AS **2008** 4989; BBl **2006** 5061).

<sup>369</sup> Amended by Art. 2 No 2 of the FD of 13 June 2008 on the Approval and Implementation of the Exchange of Notes between Switzerland and the EU on Biometric Passports and Travel Documents, in force since 1 Oct. 2011 (AS **2009** 5521, **2011** 4033; BBl **2007** 5159).

<sup>370</sup> Amended by No I 1 of the FA of 18 June 2010 on the amendment of provisions on the recording of data in relation to migration, in force since 24 Jan. 2011 (AS **2011** 95; BBl **2010** 51).

<sup>371</sup> Inserted by No I 1 of the FA of 18 June 2010 on the amendment of provisions on the recording of data in relation to migration, in force since 24 Jan. 2011 (AS **2011** 95; BBl **2010** 51).

<sup>372</sup> Inserted by No I 1 of the FA of 18 June 2010 on the amendment of provisions on the recording of data in relation to migration, in force since 24 Jan. 2011 (AS **2011** 95; BBl **2010** 51).

<sup>373</sup> Originally: Chapter 14<sup>bis</sup>. Inserted by Art. 127 below, in force since 12 Dec. 2008 (AS **2008** 5405 Art. 2 let. a).

**Art. 111b** Data processing

<sup>1</sup> The SEM is the central authority for consultations in connection with visa applications under the Schengen Association Agreements.

<sup>2</sup> In this capacity, it may use automated procedures to disclose and retrieve in particular the following categories of data:

- a. the diplomatic or consular representation to which a visa application was submitted;
- b. the identity of the person concerned (name, first names, date of birth, place of birth, nationality, place of residence, occupation and employer) as well as, if necessary, the identity of their next of kin;
- c. information about the identity documents;
- d. information about the places of stay and routes travelled.

<sup>3</sup> The Swiss foreign representations may exchange data required at their location for consular cooperation with their partners from states that are bound by a Schengen Association Agreement, and in particular information about the use of forged or falsified documents and about human trafficking networks as well as data of the categories mentioned in paragraph 2.

<sup>4</sup> The Federal Council may adapt the categories of personal data mentioned in paragraph 2 to the latest developments of the Schengen Acquis. For this purpose, it shall consult the Federal Data Protection Commissioner.

**Art. 111c** Exchange of data

<sup>1</sup> The border control authorities and the transport companies may exchange the personal data required in terms of the duty of care under Article 92 and the obligation to provide assistance under Article 93.

<sup>2</sup> For this purpose, they may in particular disclose and retrieve the personal data in accordance with Article 111b paragraph 2 letters b–d.

<sup>3</sup> Articles 111a, 111d and 111f apply *mutatis mutandis*.<sup>374</sup>

**Art. 111d** Disclosure of data to third countries

<sup>1</sup> Personal data may only be disclosed to third countries 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;

<sup>374</sup> Amended by No 1 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; BBI 2009 6749).

- 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>375</sup>

#### **Art. 111e**<sup>376</sup>

#### **Art. 111f** Right to information

The right to information is governed by the federal or cantonal data protection provisions<sup>377</sup>. The proprietor of the data collection shall also furnish information on the details available on the origin of the data.

#### **Art. 111g and 111h**<sup>378</sup>

<sup>375</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>376</sup> Repealed by No 1 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>377</sup> Amended by No 1 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).

<sup>378</sup> Repealed by No 1 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).

**Chapter 14<sup>379</sup> Eurodac****Art. 111<sup>380</sup>**

<sup>1</sup> The border posts and the police authorities in the cantons and communes shall immediately obtain a full set of fingerprints from any foreign national who is over the age of 14, if the person concerned, has entered Switzerland illegally and has not been returned.

- a. enters Switzerland illegally from a state that is not bound by any of the Dublin Association Agreements;
- b. has not been returned or has with a view to deportation been under arrest or in detention for the entire period between their apprehension and their removal.

<sup>2</sup> In addition to the fingerprints, the following data shall be obtained:

- a. the place and date of apprehension in Switzerland;
- b. the sex of the apprehended person;
- c. the date on which the fingerprints were taken;
- d. the Swiss code number for the fingerprints;
- e. the date on which the data was transmitted to the Central Unit.
- f. the user password.

<sup>3</sup> The data recorded under paragraphs 1 and 2 shall be transmitted to the Central Unit within 72 hours of the person concerned being apprehended. If the person concerned is held in detention for longer than 72 hours, the data must be transmitted before they are released.

<sup>4</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>5</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>6</sup> The border posts and the immigration and police authorities in the cantons and communes may obtain a full set of fingerprints from any foreign national who is over the age of 14 and who is residing illegally in Switzerland in order to establish

<sup>379</sup> Originally: Chapter 14<sup>ter</sup>. Inserted by Art. 127 below, in force since 12 Dec. 2008 (AS 2008 5405 Art. 2 let. a).

<sup>380</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).

whether they have already made an application for asylum in another state that is bound by any of the Dublin Association Agreements.

<sup>7</sup> The data obtained in accordance with paragraphs 1, 2 and 6 shall be transmitted to the SEM for passing on to the Central Unit.

<sup>8</sup> The data transmitted in accordance with paragraphs 1 and 2 shall be stored by the Central Unit in the Eurodac database and shall be automatically erased 18 months after the fingerprints are taken. The SEM shall immediately request the Central Unit to erase the data before this date as soon as it is notified that the foreign national concerned:

- a. has been granted a residence permit in Switzerland;
- b. has left the sovereign territory of the states that are bound by any of the Dublin Association Agreements;
- c. has been granted citizenship of a state that is bound by any of the Dublin Association Agreements.

<sup>9</sup> Articles 102*b*–102*g* AsylA<sup>381</sup> apply to the procedures under paragraphs 1–8.

## Chapter 15 Legal Remedies

### Art. 112 ...<sup>382</sup>

<sup>1</sup> The procedure of the federal authorities is governed by the general provisions of the administration of federal justice.

<sup>2</sup> The provisions on time limits do not apply to the procedures in accordance with Articles 65 and 76 paragraph 1 letter b number 5.

### Art. 113 and 114<sup>383</sup>

<sup>381</sup> SR 142.31

<sup>382</sup> Removed by No 11 of the Ordinance of the Federal Assembly of 20 Dec. 2006 on the Adaptation of Legislation to the Provisions of the Federal Supreme Court Act and the Federal Administrative Court Act, with effect from 1 Jan. 2008 (AS 2006 5599; BBl 2006 7759).

<sup>383</sup> Repealed by No 11 Ordinance of the Federal Assembly of 20 Dec. 2006 on the Adaptation of Legislation to the Provisions of the Federal Supreme Court Act and the Federal Administrative Court Act, with effect from 1 Jan. 2008 (AS 2006 5599; BBl 2006 7759).

## Chapter 16 Criminal Provisions and Administrative Penalties

### Section 1 Criminal Provisions<sup>384</sup>

**Art. 115** Unlawful entry, exit, and period of stay and work without a permit

<sup>1</sup> Any person who:

- a. violates the entry regulations contained in Article 5;
- b. stays unlawfully in Switzerland, in particular after the expiry of a period of stay for which a permit was granted or which does not require a permit;
- c. works without authorisation;
- d. fails to enter or leave the country through an authorised border crossing point (Art. 7),

is liable on conviction to a custodial sentence not exceeding one year or to a monetary penalty.

<sup>2</sup> The same penalty applies if, after leaving Switzerland or the international transit zone of the airports, the foreign national enters or makes preparations to enter the sovereign territory of another state in violation of the entry provisions applicable there.<sup>385</sup>

<sup>3</sup> If the offence is committed through negligence, the penalty is a fine.

<sup>4</sup> If removal or expulsion proceedings are pending, criminal proceedings that have been commenced solely in respect of an offence under paragraph 1 letters a, b or d shall be adjourned until the removal or expulsion proceedings have reached a legally binding conclusion. If removal or expulsion proceedings are anticipated, the criminal proceedings may be adjourned.<sup>386</sup>

<sup>5</sup> If a sentence is expected for an offence under paragraph 1 letters a, b or d the imposition or execution of which would preclude the imminent enforcement of a legally binding removal or expulsion order, the competent authority shall refrain from any prosecution, committal to court or the imposition of penalties.<sup>387</sup>

<sup>6</sup> Paragraphs 4 and 5 do not apply if the person concerned has re-entered Switzerland in disregard of a ban on entry or if it has not been possible to enforce a removal or expulsion order because of the person's conduct.<sup>388</sup>

<sup>384</sup> Inserted by 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).

<sup>385</sup> Amended by 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).

<sup>386</sup> Amended by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>387</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

<sup>388</sup> Inserted by No I of the FA of 14 Dec. 2018 (Procedural Regulations and Information Systems), in force since 1 June 2019 (AS **2019** 1413; BBl **2018** 1685).

**Art. 116** Encouraging unlawful entry, exit or an unlawful period of stay

<sup>1</sup> Any person who:

- a. in Switzerland or abroad, facilitates the unlawful entry or departure or the unlawful period of stay in Switzerland of a foreign national or assists a foreign national to prepare for the same;
- a<sup>bis</sup>.<sup>389</sup> from within Switzerland facilitates the unlawful entry or departure or the unlawful period of stay in a Schengen State of a foreign national or assists a foreign national to prepare for the same;
- b. finds foreign nationals employment in Switzerland without the required permit;
- c.<sup>390</sup> facilitates the entry of a foreign national who has left Switzerland or the international transit zone of the airports into the sovereign territory of another state in violation of the entry provisions applicable there or assists that foreign national in preparing for such entry.

is liable on conviction to a custodial sentence not exceeding one year or to a monetary penalty.

<sup>2</sup> In minor cases, a fine may be imposed.

<sup>3</sup> The penalty is a custodial sentence not exceeding five years or a monetary penalty and the custodial sentence must be combined with a fine if the offender:

- a. acts intentionally for their own or another's unlawful financial gain; or
- b. acts for an association or group that was formed for the purpose of the continued perpetration of this offence.

**Art. 117** Employment of foreign nationals without a permit

<sup>1</sup> Any person who as an employer wilfully employs foreign nationals who are not entitled to work in Switzerland, or any person who obtains a cross-border service in Switzerland for which the service provider has no permit is liable on conviction to a custodial sentence not exceeding one year or to a monetary penalty. In serious cases, the penalty is a custodial sentence not exceeding three years or a monetary penalty. The custodial sentence must be combined with a monetary penalty.

<sup>2</sup> Any person who has a legally binding conviction under paragraph 1 and again commits offences under paragraph 1 within five years is liable on conviction to a custodial sentence not exceeding three years or a monetary penalty. The custodial sentence must be combined with a monetary penalty.

<sup>389</sup> Inserted by No 1 of 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>390</sup> Amended by No 1 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).



<sup>3</sup> If the offence is committed through negligence, the penalty is a fine not exceeding 20,000 francs.<sup>391</sup>

**Art. 117a**<sup>392</sup> Breach of obligations to give notice of vacant positions

<sup>1</sup> Any person who wilfully breaches the obligation to give notice of vacant positions (Art. 21a para. 3) or the obligation to conduct an interview or an aptitude test (Art. 21a para. 4) is liable to a fine not exceeding 40 000 francs.

<sup>2</sup> If the offence is committed through negligence, the penalty is a fine not exceeding 20 000 francs.

**Art. 118** Fraudulent conduct towards the authorities

<sup>1</sup> Any person who deceives the authorities responsible for the implementation of this Act by providing false information or withholding essential information and thereby fraudulently secures the grant of a permit for themselves or another or prevents the withdrawal of a permit is liable on conviction to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> Any person who, with the intention of circumventing the regulations on the admission and stay of foreign nationals, marries a foreign national or arranges, encourages or facilitates such a marriage is liable on conviction to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>3</sup> The penalty is a custodial sentence not exceeding five years or a monetary penalty and the custodial sentence must be combined with a monetary penalty if the offender:

- a. acts intentionally for their own or another's unlawful financial gain; or
- b. acts for an association or group that was formed for the purpose of the continued perpetration of this offence.

**Art. 119** Failure to comply with restriction or exclusion orders

<sup>1</sup> Any person who fails to comply with a restriction or exclusion order (Art. 74) is liable on conviction to a custodial sentence not exceeding three years or a monetary penalty.

<sup>2</sup> Prosecution, the committal to court or penalties may be dispensed with if the person concerned:

- a. can be deported immediately;
- b. is in detention in preparation for departure or pending deportation.

<sup>391</sup> Inserted by Annex No 1 of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS 2013 4375 5357; BBl 2010 4455, 2011 7325).

<sup>392</sup> Inserted by No I of the FA of 16 Dec. 2016 (Controlling Immigration and Improving Implementation of the Free Movement Agreements), in force since 1 July 2018 (AS 2018 733; BBl 2016 3007).

**Art. 120** Further offences

<sup>1</sup> Any person who wilfully or through negligence:

- a. violates the requirements to register and give notice of departure (Art. 10–16);
- b. changes jobs without the required permit or changes from salaried to self-employment (Art. 38);
- c. moves their place of residence to another canton without the required permit (Art. 37);
- d. fails to comply with the conditions of the permit (Art. 32, 33 and 35);
- e. fails to comply with the obligation to cooperate in obtaining identity documents (Art. 90 let. c);
- f.<sup>393</sup> fails to comply with the obligation to report under Article 85a paragraph 2 or fails to comply with the conditions relating to the report (Art. 85a paras 2 and 3);
- g.<sup>394</sup> refuses to allow or otherwise prevents verification by a supervisory body under Article 85a para. 4

is liable on conviction to a fine.

<sup>2</sup> In the case of offences against the implementing provisions of this Act, the Federal Council may provide for fines not exceeding 5000 francs.

**Art. 120a–120c**<sup>395</sup>**Art. 120a**<sup>396</sup> Improper processing of personal data in the C-VIS

Any person who processes personal data in the C-VIS for purposes other than those specified in Article 109a shall be liable to a fine.

<sup>393</sup> Inserted by No I 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>394</sup> Inserted by No I 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>395</sup> Inserted by No I of the FA of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements) (AS 2008 5407; BBl 2007 7937). Repealed by No I of the FA of 20 June 2014 (Violations of the Duty of Care and to Report by Air Carriers, Information Systems), with effect from 1 Oct. 2015 (AS 2015 3023; BBl 2013 2561).

<sup>396</sup> Inserted by No I of the FA of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements) (AS 2008 5407 5405 Art. 2 let. c; BBl 2007 7937). Amended by Art. 2 No 1 of the FD of 11 Dec. 2009 on the Approval and Implementation of the Exchange of Notes between Switzerland and the EU on the Adoption of the Regulation and Decision concerning the Visa Information System (VIS), in force since 11 Oct. 2011 (AS 2010 2063, 2011 4449; BBl 2009 4245).

**Art. 120<sup>e397</sup>** Prosecution

<sup>1</sup> The prosecution and trial of offences under Articles 115–120 and 120*d* is the responsibility of the cantons. If an offence has been committed in more than one canton, then the canton that initiates the prosecution has jurisdiction.

<sup>2</sup> ...<sup>398</sup>

**Section 2 Administrative Penalties<sup>399</sup>****Art. 121<sup>400</sup>** Seizure and confiscation of documents

<sup>1</sup> Forged and falsified travel documents and identity papers, and genuine travel documents and identity papers where there is specific evidence that they are being used unlawfully may, as directed by of the SEM, be forfeited to authorities or offices or seized for return to their rightful owners.

<sup>2</sup> The forfeiture or return under paragraph 1 is also possible if there is specific evidence that genuine travel documents and identity papers are intended for persons who are staying unlawfully in Switzerland.

<sup>3</sup> Identity papers under paragraph 1 include identity cards and other documents that indicate the identity of a foreign national.

**Art. 122** Misconduct by employers<sup>401</sup>

<sup>1</sup> If an employer repeatedly violates the provisions of this Act, the competent authority may refuse or only partially authorise the employer's requests for the admission of foreign employees who are not entitled to be granted a permit.

<sup>2</sup> The competent authority may also issue a warning that penalties may be imposed.

<sup>3</sup> An employer who has employed or sought to employ foreign employees who are not entitled to work shall assume any uncovered costs incurred by the community for subsistence, any accident or illness, and the return journey of the persons concerned.

<sup>397</sup> Inserted by Art. 2 No 1 of the FD of 11 Dec. 2009 on the Approval and Implementation of the Exchange of Notes between Switzerland and the EU on the Adoption of the Regulation and Decision concerning the Visa Information System (VIS), in force since 11 Oct. 2011 (AS 2010 2063, 2011 4449; BBI 2009 4245).

<sup>398</sup> Repealed by No I of the FA of 20 June 2014 (Violations of the Duty of Care and to Report by Air Carriers, Information Systems), with effect from 1 Oct. 2015 (AS 2015 3023; BBI 2013 2561).

<sup>399</sup> Inserted by 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 2013 2561). (AS 2015 3023; BBI 2013 2561).

<sup>400</sup> Amended by Annex No 1 of the FA of 14 Dec. 2012, in force since 1 Feb. 2014 (AS 2013 4375 5357; BBI 2010 4455, 2011 7325).

<sup>401</sup> Amended by 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; BBI 2013 2561).

**Art. 122a**<sup>402</sup> Violations of the duty of care by air carriers

<sup>1</sup> Any air carrier that violates its duty of care under Article 92 paragraph 1 shall be required to pay 4000 francs for each person carried who is not in possession of the required travel documents, visa or residence documents. In serious cases, the penalty is 16 000 francs per person. In minor cases, proceedings may be waived.

<sup>2</sup> A violation of the duty of care is presumed if the air carrier carries persons who are not in possession of the travel documents, visas, or residence documents required for entry to the Schengen area or for transit through the international transit zones of the airports and who are refused entry.

<sup>3</sup> There is no violation of the duty of care where:

- a. the air carrier proves that:
  1. the forgery or falsification of a travel document, visa or residence document was not clearly recognisable,
  2. it was not clearly recognisable that a travel document, visa or residence document did not pertain to the person carried,
  3. it was not immediately possible to ascertain the authorised term of stay or points of entry on the basis of the stamps on the travel document,
  4. it took all the organisational measures that can reasonably be required to prevent it from carrying persons that do not possess the travel documents, visas and residence documents required for entry to the Schengen area or for transit through the international transit zones of the airports;
- b. the air carrier provides credible evidence that it was coerced into carrying a person.

<sup>4</sup> The Federal Council may provide for exemptions from the penalty under paragraph 1, in particular in situations of war or natural disaster.

**Art. 122b**<sup>403</sup> Violations by air carriers of the duty to provide data

<sup>1</sup> Any air carrier shall be charged 4000 francs for each flight in respect of which it violates its duty to provide data. In serious cases the penalty is 12 000 francs per flight. In minor cases, proceedings may be waived.

<sup>2</sup> A violation of the duty to provide data is presumed if the air carrier fails to provide the data in accordance with Article 104 paragraph 3 on time, or if the data provided is incomplete or inaccurate.

<sup>3</sup> There is no violation of the duty to provide data where the air carrier proves that:

<sup>402</sup> Inserted by No 1 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).

<sup>403</sup> Inserted by No 1 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).

- a. it was impossible to provide the data in the case concerned for technical reasons for which the carrier was not responsible; or
- b. it took all the organisational measures that can reasonably be required to prevent any violation of the duty to provide data.

**Art. 122c**<sup>404</sup> Common provisions on penalties for air carriers

<sup>1</sup> Articles 122a and 122b apply irrespective of whether the duty of care or duty to provide data was violated in Switzerland or abroad.

<sup>2</sup> The SEM is responsible for imposing penalties for infringements under Articles 122a and 122b.

<sup>3</sup> Proceedings are governed by the Administrative Procedure Act of 20 December 1968<sup>405</sup>. They must be opened:

- a. in cases of a violation of the duty of care: two years at the latest after the refusal of entry in question;
- b. in cases of a violation of the duty to provide data: two years at the latest after the date on which the data should have been provided in accordance with Article 104 paragraph 1.

## Chapter 17 Fees

### Art. 123

<sup>1</sup> A fee may be charged for rulings and official acts in accordance with this Act. Cash outlays in connection with procedures in accordance with this Act may be billed separately.

<sup>2</sup> The Federal Council shall determine the fees of the Confederation as well as the limits for the cantonal fees.

<sup>3</sup> Claims for money made under this Act may be made without any formal procedure. The person concerned may request that a decision be issued.

## Chapter 18 Final Provisions

### Art. 124 Supervision and implementation

<sup>1</sup> The Federal Council shall supervise the implementation of this Act.

<sup>2</sup> The cantons shall issue the required provisions for the implementation of this Act.

<sup>404</sup> Inserted by 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; BBI **2013** 2561).

<sup>405</sup> SR **172.021**

**Art. 125** Repeal and amendment of current legislation

The repeal and the amendment of current legislation are regulated in the Annex.

**Art. 126** Transitional provisions

<sup>1</sup> The previous legislation remains applicable to requests that were filed before commencement of this Act.

<sup>2</sup> The procedure is governed by the new legislation.

<sup>3</sup> The time limits in terms of Article 47 paragraph 1 begin with the commencement of this Act if entry took place or the family ties originated before this time.

<sup>4</sup> The criminal provisions of this Act apply to offences committed before the commencement of this Act provided they are not as severe for the offenders.

<sup>5</sup> Article 107 applies only to readmission and transit agreements concluded after 1 March 1999.

<sup>6</sup> On the commencement of the Federal Act of 20 June 2003<sup>406</sup> on the Information System for Foreign Nationals and Asylum Matters, Articles 108 and 109 shall be repealed.

**Art. 126a**<sup>407</sup> Transitional provisions to the Amendment of 16 December 2005 to the AsylA<sup>408</sup>

<sup>1</sup> If there is a reason to issue an intermediate or final account in accordance with Article 87 of the AsylA in the version of 26 June 1998<sup>409</sup>, before the commencement of the amendment of 16 December 2005 of the AsylA, the intermediate or final account and the netting of the account are effected in accordance with the previous legislation.

<sup>2</sup> The Federal Council shall regulate the accounting procedure as well as the extent and the duration the special charge and the confiscation of assets of temporarily admitted persons who were in employment before the commencement of the Amendment of 16 December 2005 to the AsylA and for whom there was no reason to issue a final account in accordance with paragraph 1 at the time of the amendment of 16 December 2005 of the AsylA.

<sup>3</sup> The new legislation subject to paragraphs 1 and 2 of these transitional provisions applies to the procedures in accordance with Articles 85–87 of the AsylA in its version of 26 June 1998 that were pending at the time of the commencement of the Amendment of 16 December 2005 to the AsylA.

<sup>4</sup> Subject to the paragraphs 5–7, the new legislation applies to persons who were temporarily admitted at the time of the commencement of the Amendment of

<sup>406</sup> SR **142.51**

<sup>407</sup> Inserted by No IV 2 of the FA of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 3709).

<sup>408</sup> SR **142.31**

<sup>409</sup> AS **1999** 2262

16 December 2005 to the AsyLA as well as of this Act. If temporary admission was ordered on the basis of Article 44 paragraph 3 of the AsyLA, it continues to apply.

<sup>5</sup> For persons who were admitted at the time of the commencement of the Amendment of 16 December 2005, the Confederation shall pay the cantons flat-rate payments in accordance with Articles 88 paragraphs 1 and 2 and 89 of the AsyLA for the duration of temporary admission, but for a maximum of seven years from the date of entry. In addition the Confederation shall pay the cantons to a one-time contribution for persons who were temporarily admitted at the time of the commencement of the Amendment of 16 December 2005 to the AsyLA with the intention in particular of facilitating professional integration. The Federal Council shall determine the amount.

<sup>6</sup> The current legislation applies to procedures in accordance with Article 20 paragraph 1 letter b of the Federal Act of 26 March 1931 on the Residence and Settlement of Foreign Nationals (ANAG) in its version of 19 December 2003<sup>410</sup> that are pending at the time of the commencement of the Amendment of 16 December 2005 to the AsyLA.

<sup>7</sup> If temporary admission was revoked in a legally binding decision before the commencement of the Amendment of 16 December 2005 to the AsyLA, the Confederation shall pay the cantons a one-time flat-rate payment of 15 000 francs, provided the persons concerned have not yet left Switzerland.

**Art. 126b**<sup>411</sup> Transitional provision to the Amendment of 11 December 2009

Until the national visa system comes into force, Articles 109c and 120d are worded as follows:

...<sup>412</sup>

**Art. 126c**<sup>413</sup> Transitional provision to the Amendment of 20 June 2014

Administrative criminal proceedings relating to a violation of the duty of care or duty to provide data that are pending when the Amendment of 20 June 2014 to this Act comes into force shall be continued under the previous law.

<sup>410</sup> AS 2004 1633

<sup>411</sup> Inserted by Art. 2 No 1 of the FD of 11 Dec. 2009 on the Approval and Implementation of the Exchange of Notes between Switzerland and the EU on the Adoption of the Regulation and Decision concerning the Visa Information System (VIS), in force since 11 Oct. 2011 (AS 2010 2063, 2011 4449; BBl 2009 4245).

<sup>412</sup> The amendments may be consulted under AS 2011 4449.

<sup>413</sup> Inserted by 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. 126<sup>d414</sup>** Transitional provision to the Amendment of 25 September 2015 to the AsyLA

<sup>1</sup> The previous law applies for no longer than two years to asylum seekers whose application for asylum cannot be processed in the federal centres.

<sup>2</sup> In pending proceedings under Articles 76 paragraph 1 letter b number 5 and 76a paragraph 3, Article 80 paragraph 1 third sentence and paragraph 2<sup>bis</sup>, Article 80a paragraphs 1 and 2 of this Act and Article 108 paragraph 4, 109 paragraph 3, 110 paragraph 4 letter b, 111 letter d AsyLA<sup>415</sup> apply in their previous version.

**Art. 127** Coordination with the Schengen Association Agreements

With the commencement the Schengen Association Agreements, this Act shall be amended as follows:

...<sup>416</sup>

**Art. 128** 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 January 2008<sup>417</sup>  
Articles 92–95, and 127: 12 December 2008<sup>418</sup>

**Transitional Provision to the Amendment of 14 December 2012<sup>419</sup>**

<sup>1</sup> Subject to paragraph 2 below, the new law applies to proceedings that are pending at the time that the Amendment of 14 December 2012 to this act comes into force.

<sup>2</sup> Article 83 paragraphs 5 and 5<sup>bis</sup> of this Act does not apply to proceedings that are pending at the time that the Amendment of 14 December 2012 to this act comes into force.

<sup>3</sup> Airport operators are responsible for making accommodation at the airport in accordance with Article 95a available within two years of the Amendment of 14 December 2012 to this Act coming into force.

<sup>414</sup> Inserted by Annex No 1 of the FA of 25 Sept. 2015, in force since 1 March 2019 (AS 2016 3101, 2018 2855; BBl 2014 7991).

<sup>415</sup> SR 142.31

<sup>416</sup> The amendments may be consulted under AS 2007 5437.

<sup>417</sup> FCD of 24 Oct. 2007

<sup>418</sup> Art. 2 let. a of the O of 26 Nov. 2008 (AS 2008 5405 Art. 2 let. a).

<sup>419</sup> AS 2013 4375; BBl 2010 4455, 2011 7325



*Annex I*<sup>420</sup>  
(Art. 2 para. 4 and 64a para. 4)

## 1. Schengen Association Agreements

The Schengen Association Agreements comprise:

- a. the Agreement of 26 October 2004<sup>421</sup> between the Swiss Confederation, the European Union and the European Community on the association of that State with the implementation, application and development of the Schengen Acquis (SAA);
- b. the Agreement of 26 October 2004<sup>422</sup> in the form of an exchange of letters between the Council of the European Union and the Swiss Confederation on the Committees that assist the European Commission in the exercise of its executive powers;
- c. the Agreement of 17 December 2004<sup>423</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;
- d. the Agreement of 28 April 2005<sup>424</sup> between the Swiss Confederation and the Kingdom of Denmark on the implementation, application and development of those parts of the Schengen Acquis that are based on the provisions of Title IV of the Treaty establishing the European Community;
- e. the Protocol of 28 February 2008<sup>425</sup> between the Swiss Confederation, the European Union, the European Community and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the Swiss Confederation, the European Union and the European Community on the association of the Swiss Confederation with the implementation, application and development of the Schengen Acquis.

<sup>420</sup> Inserted by No III para. 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>421</sup> SR 0.362.31

<sup>422</sup> SR 0.362.1

<sup>423</sup> SR 0.362.32

<sup>424</sup> SR 0.362.33

<sup>425</sup> SR 0.362.311

## 2. Dublin Association Agreements

The Dublin Association Agreements comprise:

- a. the Agreement of 26 October 2004<sup>426</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>427</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>428</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>429</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>426</sup> SR **0.142.392.68**

<sup>427</sup> SR **0.362.32**

<sup>428</sup> SR **0.142.393.141**

<sup>429</sup> SR **0.142.395.141**

*Annex 2<sup>430</sup>*  
(Art. 125)

## Repeal and Amendment of Current Legislation

### I

The Federal Act of 26 March 1931<sup>431</sup> on the Residence and Settlement of Foreign Nationals is repealed.

### II

The following federal acts are amended as follows:

...<sup>432</sup>

<sup>430</sup> Originally: Annex.

<sup>431</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 2262 Annex No 1, 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, 2007 359 Annex No 1]

<sup>432</sup> The amendments may be consulted under AS 2007 5437.

