

## **Ministerial Draft**

### **of the Federal Ministry of the Interior and for Community**

## **Ordinance amending the Identity Card Ordinance, the Passport Ordinance, the Residence Ordinance and other provisions**

### **A. Problem and objective**

As a result of the Act to Strengthen Security in Passports, Identity Cards and Documents for Foreigners of 3 December 2020 (Federal Law Gazette I p. 2744), regulations in both the Passports Act and the Identity Cards Act will come into force on 1 May 2025, according to which the procedure for transmitting the photograph for the application for an identity document will change. The applicant in Germany has the choice: They may have the photograph produced electronically by a service provider and subsequently transmitted by the service provider to the passport or ID card authority by means of a secure procedure. Alternatively, they may take the photograph electronically directly at the passport or identity card office, provided that the office has the appropriate equipment for taking photographs. The Identity Card Ordinance as well as the Passport Data Collection and Transmission Ordinance are to regulate the more detailed provisions on the new procedures. In principle when abroad, the applicant can only have the photograph produced electronically by the passport or identity card authority. Therefore, different methods for the production of the photograph and for the safe transmission of this photograph are regulated. In exceptional cases, the presentation of a paper-based photo is also permitted.

The residence law follows the (security) technical requirements of passport and identity card law. The newly-introduced procedure for transmitting the photograph will also apply to foreign national documents.

Currently, two visits by the applicant to the authorities are necessary for the complete processing of a passport or ID card application as well as for the issuing of a card with the function of electronic proof of identity (eID card) or an electronic residence permit for foreigners (eAT) in Germany. In addition to the application, the document must also be collected in person by the applicant or an authorised person. This means additional work for both the applicant/authorised person and the respective authorities. The application process should therefore become more citizen-friendly. In the course of this, the process of issuing the further information such as the secret number, which is required for the electronic proof of identity, is also to be adapted for the ID card, the eID card and the eAT.

Since 2013, the Federal Foreign Office has been responsible for identity card matters abroad with its designated missions abroad. So far, however, there has been no clear regulation that would allow, in the event of reasons for a passport refusal, to effectively order that an identity card applied for in a diplomatic mission abroad does not entitle the holder to leave Germany. For this purpose, the issuance of an identity card limited to Germany by the identity card authority in Germany at the last place of residence under registration law exclusively to the applicant is provided for.

## **B. Solution; Benefits**

The technical and organisational requirements for the procedures for the secure transmission of the photograph by a service provider to the passport or identity card authorities are to be regulated in a new chapter in the Passport and Identity Card Ordinance. There should be two secure procedures for transmitting the photo to the passport or identity card authority. On the one hand, the photo can be transmitted by a service provider with the involvement of a cloud provider, on the other hand, the photograph can also be transmitted using a photo recording device of a service provider, if it is directly connected to the public network of a passport or identity card authority. As these procedures are not available abroad, the applicant can only produce the photograph electronically directly at the passport or identity card authority. In exceptional cases, the presentation of a paper-based photo is also permitted.

The above procedural rules are transferred to the law on foreigners by referring to the Identity Card Ordinance. The same conditions and the same standard of security requirements for foreign national documents should apply, insofar as photographs in residence permits and identity documents are digitally processed.

In the future, it should be possible for passports, identity cards and eID cards to be handed over directly in Germany (direct shipping) at the request of the applicant. As a result, a second trip to the authority is no longer necessary for the applicant. Under certain conditions, direct shipping in Germany should also be possible when applying for an eAT. For issuing the identity card, the eID card or the eAT, further information for the electronic proof of identity, with the exception of the blocking password, is in principle handed over directly at the time of the application. The blocking password is either handed over at collection or, in the case of direct shipping, sent to the applicant with the document.

In addition, procedural simplifications will be introduced for exhibition practice and the legal prerequisites for implementation will be created.

If a competent authority abroad orders that the identity card does not entitle the holder to leave Germany if there are grounds for refusing a passport, this identity card, which is geographically limited to Germany, shall be issued exclusively to the applicant by the identity card authority in Germany in whose district they were last subject to registration for their main place of residence or which they designate if they have never been subject to registration in Germany.

The benefit of the draft regulation is to modernise administrative procedures and to reduce the burden on passport, ID and aliens authorities as well as on citizens through adapted procedures. In addition, the security and integrity of the data in passports, identity cards and electronic residence permits is ensured, maintaining the high level of trust in these documents.

## **C. Alternatives**

For the process of secure transmission of the photograph by a cloud provider, a further regulatory option considered was to link the registration process for service providers with a query as to whether there are any security concerns. This regulatory option was not pursued further because service providers should not be subjected to blanket suspicion. In order to nevertheless take into account the legitimate security interests associated with the integrity of biometric data in sovereign identity documents, high requirements are instead envisaged for reliable identification of the service provider as well as its personnel. Should it become known that manipulated photographs have been transmitted to request official identity documents, the person acting in this way must be prevented from transmitting more photographs.

## **D. Budgetary expenditure exclusive of compliance costs**

None.

## **E. Compliance costs**

### **E.1 Compliance costs for citizens**

For citizens, there is an annual relief of around 1 million hours and an annual relief of around EUR 4.5 million.

### **E.2 Compliance costs for businesses**

For the economy, there is an increase of around EUR 1.3 million in annual compliance costs, of which EUR 903,000 is attributable to bureaucracy costs arising from information obligations. In total, there is a one-off expense of around EUR 6.5 million, which is mainly to be allocated to the category "one-off information obligation".

### **E.3 Compliance costs for the authorities**

For the authorities, the annual compliance costs increase by around EUR 29.5 million. Of these, 1.5 million are allocated to the federal government and 28 million to the federal states. The one-off compliance effort for the authorities increases by around EUR 17.9 million. Of this, around EUR 700,000 is allocated to the federal government and EUR 17.2 million to the federal states.

## **F. Further costs**

With regard to the fees incurred for the presentation of photographs in passport or personnel issuing authorities, reference is made to the comments in the Bundestag document 19/21986.

Additional fees of EUR 6 apply in the case of the on-site recording of the photograph for foreign national documents. On the other hand, foreigners save on the costs that would otherwise be incurred for obtaining a photograph.

# Referent Draft of the Federal Ministry of the Interior and for Home Affairs

## Regulation amending the Identity Card Ordinance, the Passport Ordinance, the Residence Ordinance and other regulations<sup>\*)</sup>

Dated ...

On the basis of the first sentence of Section 69(3) of the Residence Act, as amended by Article 1(1)(c) of the Act of 13 July 2017 (Federal Law Gazette p. 2350), the Federal Government orders the Federal Ministry of the Interior and for Homeland

- on the basis of § 6a(3), first sentence, points 1 to 3 and sentence 2 of the Passport Act, which is governed by Article 1(5)(b) of the Act of 3 December 2020 (Federal Law Gazette I p. 2744) has been recast, in agreement with the Federal Ministry for Economic Affairs and Climate Protection, and in consultation with the Federal Foreign Office,
- on the basis of section 34 sentence 1 number 3 letters a to c and number 9 letter c as well as sentence 2 of the Identity Card Act, of which sentence 1 number 3 letters a to c was recast by Article 2 number 6 letter b of the Act of 3 December 2020 (Federal Law Gazette I p. 2744), sentence 1 number 9 was added by Article 2 number 8 of the Act of 21 June 2019 (Federal Law Gazette I p. 846). June 2019 (Federal Law Gazette I p. 846) and sentence 2 inserted by Article 2 number 6 letter f of the Act of 3 December 2020 (Federal Law Gazette I p. 2744), in agreement with the Federal Ministry of Economics and Climate Protection and in consultation with the Federal Foreign Office,
- on the basis of the first sentence of Paragraph 20(3) of the Passport Act, as amended by § 78 of the Ordinance of 19 June 2020 (Federal Law Gazette I, p. 1328),
- on the basis of § 31(3) sentence of the Identity Card Act, which has been recast by Article 80 of the Ordinance of 19 June 2020 (Federal Law Gazette. I, p. 1328),
- on the basis of § 99(1), points 13(a) to (c), 13a, first sentence, letter (a), (d), (e), (g) and (h) and 15(a) to (c) of the Residence Act, the number 13(a) to (c) of the first sentence of Article 7(4)(a) of the Law of 3. 2 December 2020 (Federal Law Gazette I, p. 2744), whose number 13a, first sentence, letter d, e, g and h by Article 4b(3) of the Law of 17 February 2020 (Federal Law Gazette I p. 166), Article 1(8)(a) double letter (bb) of the Law of 3 December 2020. December 2020 (Federal Law Gazette I, p. 2744) and point 15 of which was inserted by Article 3(11)(a) in accordance with Article 11 in conjunction with Article 12(6) of the Law of 4 August 2019 (Federal Law Gazette I, p. 1131),
- on the basis of § 11a of the Free Movement of Persons Act/EU, as amended by the notice of 12 November 2020 (Federal Law Gazette I p. 2416)
- in conjunction with § 1(2) of the Jurisdiction Adjustment Act of 16 August 2002 (Federal Law Gazette I, p. 3165) and the organisational decree of 8 December 2021 (Federal Law Gazette I, p. 5176):

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<sup>\*)</sup> Notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

## Article 1

### Amendment of the ID Card Ordinance

The ID Card Ordinance of 1 November 2010 (Federal Law Gazette I p. 1460), last amended by Article 3 of the Ordinance of 20 August 2021 (Federal Law Gazette I p. 3682), is amended as follows:

1. In the content overview, the word "delivery" is replaced by the words "issue and hand-over" in the reference to Chapter 4.
2. § 4 Paragraph 3 is amended as follows:
  - a) In Number 1 letter d, the word "and" is replaced with a semicolon at the end.
  - b) In number 2 letter d, the full stop at the end is replaced by the word "and" .
  - c) The following point 3 is added:
    1. " in connection with the deletion of the blocking entry of the electronic proof of identity
      - a) the blocking amount as well as the date and time of deletion,
      - b) the removal of the general blocking feature from the block list, as well as the date and time of the removal,
      - c) the provision of the block list for retrieval, as well as the date and time of the deployment; and
      - d) the actual retrieval and the date and time of the actual retrieval".
1. § 5 is amended as follows:
  - a) Paragraph (3) is amended as follows:
    - a%6) In Number 1, the words "ten years and" are deleted and the words "whose entry" are replaced by the words "expiry of validity".
    - b%6) In Number 3, the words "ten years and" are deleted and the words "their storage" are replaced by the words "expiry of the validity period of an electronic proof of identity".
    - c%6) In number 4, the words "ten years and one month after the blocking key has been stored with the blacklist operator", are replaced by the words "one month after the expiry of the validity period of an electronic identity certificate" and the full stop at the end is replaced by a semicolon.
    - d%6) The following point 5 is added:
      1. "the log data generated pursuant to § 4(3) shall be deleted 20 weeks after its creation."
  - b) Paragraph (4) is amended as follows:

a%6) In sentence 4, the words “ten years and one month after their registration” are replaced by the words “one month after expiry of the validity period of an electronic proof of identity” .

a%6) The following clause is inserted after clause 4:

“The block list operator shall inform the identity card manufacturer of the deletion operations referred to in paragraph 3(1) and (2).”

c) In the first sentence of Section 98(5), “§ 22” is replaced by “§ 21”.

2. § 17 shall be worded as follows:

#### § 17 “

##### Handing over the secret number and unblock number

(1) The identity card authority shall provide the applicant with the secret number and unblock number of the identity card in person. The applicant must confirm the receipt in writing.

(2) If the applicant does not have a single residence in Germany, the secret number and the unblock number can be sent by the identity card authority to the address designated by the applicant, if the handover cannot take place at the time of the application and the collection of the letter from the identity card authority would only be possible for the applicant under unreasonable circumstances and the place of residence is in a state in which there is a reasonable guarantee of proper transmission. Paragraph 1(2) shall apply accordingly. Identity card and secret number may not be sent with the same mail. In the case of letters returned as undeliverable, the identity card authority shall hand over the letters to the applicant.

(3) Until handing over to the applicant, the identity card authority shall ensure that third parties cannot obtain access to the secret number and the unblock number”.

3. In the heading of Chapter 4, the word “delivery” is replaced by the word “issue”.

4. § 18 is amended as follows:

a) The heading is worded as follows:

#### § 18 “

##### Issuing and handing over the ID card and blocking password”.

b) The paragraphs 1 and 2 are replaced by paragraphs 1 to 2b:

“(1) The identity card shall be issued together with the blocking password by the identity card authority to the applicant, to another person entitled pursuant to Section 9(1) or (2) of the Identity Card Act, or to a person authorised by the applicant.

(2) The identity card shall be handed over together with the blocking password of the applicant to their domestic registration address, if the applicant holds a valid passport within the meaning of Section 1(2) of the Passport Act or a provisional identity card pursuant to Section 3(1) of the Identity Card Act and has con-

sented to this procedure. A handover pursuant to sentence 1 is excluded if there is no available domestic registration address. The previous identity card must be invalidated when applying. Before handing over, the delivery person must check the identity of the applicant, who must present a valid passport for this purpose within the meaning of Section 1(2) of the Passport Act or a provisional identity card pursuant to Section 3(1) of the Identity Card Act. The identity card manufacturer informs the identity card authority about the handover of the identity card to the identity card holder.

(2a) In a procedure referred to in paragraph 2, the applicant shall provide the identity card authority with an email address. The identity card authority sends this email address to the identity card manufacturer so that they can send the email address to the deliverer. In this case, the deliverer announces to the applicant the period of delivery by email to the stored email address. The email address may not be used for purposes other than those mentioned and must be deleted immediately by the identity card authority, the identity card manufacturer and the deliverer after the identity card has been handed over to the applicant.

(2b) In the case of a procedure referred to in paragraph 2, the identity card and the blocking password cannot be handed over by the deliverer, the deliverer shall deposit the identity card and the blocking password with the identity card authority where the identity card has been applied for, and shall inform the applicant of the deposit. Paragraph 2a sentence 3 shall apply with the proviso that the deliverer shall immediately delete the email address after the delivery of the identity card and the blocking password to the identity card authority, the identity card authority shall delete the email address after the handover of the identity card and the blocking password to the applicant. “

- a) In paragraph 4 the words “paragraphs 1 and 3” are replaced with the words “paragraph 3”.
- b) Paragraph (5) is worded as follows:

(1) “ By way of derogation from paragraph 2, the identity card authority may also hand over identity cards abroad together with the blocking password by post, without the deliverer identifying the applicant, provided that the collection of the identity card by the applicant would only be possible under unreasonable circumstances and the place of residence is in a State in which there is a reasonable guarantee of proper handover”.

- c) The following paragraph (6) is added:

(1) “ If an order pursuant to Section 6(7) of the German Identity Card Act has been issued to an applicant who does not have a residence in Germany, the identity card shall be issued by the identity card authority in Germany, in whose district the applicant person was last required to report their residence and in the place of their main residence if they have several residences. If the applicant has never been required to report their residence in the Federal Republic of Germany, the issue shall be made by an identity card authority in the Federal Republic of Germany to be designated by the applicant. The issue of the identity card to another person authorised under Section 9(1) or (2) of the German Identity Card Act or to a person authorised by the applicant shall be excluded in such cases”.

- 5. § 21 is amended as follows:

- a) In paragraph 1 sentence 1 after “paragraph 3”the entry “sentence 1” is deleted.
- a) In paragraph 2 sentence 1 after “paragraph 3”the entry “sentence 1” is deleted.

6. After § 36c the following § 36d is inserted, reading:

“§ 36d

Different rules for the eID card

(1) In procedures pursuant to the first sentence of §18(2), the applicant must hold a valid identity card or passport of the Member State of which they are a national.

(2) § 20 The third sentence of paragraph 2 shall apply on the condition that, when the letter is handed over, the deliverer shall verify the identity of the applicant by the applicant presenting an identity card or passport of the Member State of which they are a national”.

7. The former § 36d becomes § 36e.

8. § 37 Paragraph 4 is worded as follows:

(1) “ Until the end of 31.12.2032, by way of derogation from Section 5(3)(1), (3) and (4) and the fourth sentence of paragraph 4, the period of 10 years and three months after their entry in the reference list shall apply instead of the periods specified therein”.

9. In Annex 3, Section 2, ‘photo quality’ is worded as follows:

**“Photo quality**

The photo should have a resolution of at least 600 dpi. The photo must be colour-neutral and reflect the natural skin tones. In principle, digital photos must be presented in colour. If the presentation of a paper-based photo is permitted in exceptional cases, that photo may be presented in colour or in black and white; however, it must not have any kinks or contamination”.

## Article 2

### Amendments to the Passport Ordinance

The Passport Ordinance of 19 October 2007 (Federal Law Gazette I p. 2386), as last amended by Article 2 of the Ordinance of 20 August 2021 (Federal Law Gazette I p. 3682), is amended as follows:

1. The table of contents is amended as follows:

a) In the reference to Chapter 1, the words “passport sample” are replaced by the words “passport sample; issue and handover of the passport” .

b) The information in § 2 is deleted.

c) After the information in § 5, the following entry for § 5a is inserted:

“Section 5a Issue and handover of the passport”.

1. In the heading of Chapter 1, the words “passport sample” are replaced by the words “passport sample; issue and handover of the passport” .

2. § 2 is deleted.

3. After § 5, the following § 5a is inserted:

“§ 5a

Issuing and handing over the passport

(1) The passport is issued by the passport authority to the applicant, to another person authorised under § 6(1) of the Passport Act or to a person authorised by the applicant.

(2) The passport shall be handed over to the applicant at their domestic reporting address if the applicant possesses a valid identity card, a valid provisional identity card or another passport in accordance with § 1(2) of the Passport Act and has consented to the passport authority in the country using this procedure. The previous passport shall be invalidated at the time of application, unless it contains valid endorsements from other countries at that time. Before handing over, the identity of the applicant shall be verified by the deliverer by the applicant or authorised person presenting one of the applicant's documents referred to in the first sentence. The passport manufacturer informs the passport authority of the handover of the passport to the passport holder.

(3) The applicant shall communicate an email address to the passport authority in a procedure referred to in paragraph 2. The passport authority transmits this email address to the passport manufacturer so that the passport manufacturer sends the email address to the deliverer. In this case, the deliverer announces to the applicant the period of delivery by sending an email to the stored email address. The email address must be deleted immediately at the passport authority, the passport manufacturer and the deliverer after the passport is handed over to the applicant.

(4) If, in the case of a procedure under paragraph 2, the passport cannot be delivered by the deliverer, the deliverer shall deposit the passport with the passport authority where the passport was applied for and inform the applicant of the deposit. Paragraph 3 sentence 3 shall apply with the proviso that the deliverer shall immediately delete the email address after the handover of the passport to the passport authority, the passport authority shall delete the email address after the handover of the passport to the applicant.

(5) By way of derogation from paragraph 2, the passport authority may transfer passports abroad by post to the applicant without the deliverer identifying the applicant, provided that the collection of the passport would only be possible for the applicant under unreasonable circumstances and the place of residence is in a State in which there is a reasonable guarantee of a proper handover”.

4. § 15 is amended as follows:

a) Paragraph (1) is amended as follows:

a%6) Subparagraph 1 is amended as follows:

a%7%7) In letter a the information “EUR 60” is replaced by the information “EUR 70” .

b%7%7) Letter f is removed.

c%7%7) The previous letters g to i become letters f to h.

b%6) In number 2 after the words “provisional passports” the words “and for the extension or modification of a child’s passport” are deleted and the full stop at the end is replaced by a comma.

c%6) The following point 3 is added:

1. “ For delivery pursuant to Section 5a(2) 15 Euro [subject to change]”.

b) In paragraph 4(3), after the words “provisional passport” , the words “, in the child’s passport” are deleted.

5. Annex 2 is repealed.

6. In Annex 8 “photo quality” is worded as follows:

**“Photo quality**

The photo should have a resolution of at least 600 dpi. The photo must be colour-neutral and reproduce the skin tones naturally. In principle, digital photos must be presented in colour. If the presentation of a paper-based photo is permitted in exceptional cases, that photo may be presented in colour or in black and white; it shall not have any kinks or contamination”.

7. Annex 11 is amended as follows:

a) The preliminary remark is amended as follows:

a%6) In number 1 sentence 2 after the words “applies to” the words “Child’s passport” are deleted.

b%6) In number 2 sentence 1 after the words “personal data” the words “children’s passports”, and after the words “diplomat passports” the words “, the sticker extension/modification of children’s passports” are deleted.

c%6) In Number 6 letter b sentence 1, after the word “For”, the words “the children’s passport” are deleted.

d%6) In number 7 sentence 3, after the word “For”, the words “the children’s passport” are deleted.

e%6) In number 9 sentence 2 after the word “in” the words “child’s passport” are deleted.

f%6) In number 10 the words “in the service passport, diplomat passport and child’s passport” are replaced by the words “in the service passport as well as in the diplomatic passport”.

g%6) In number 12 sentence 1 after the word “passport”, the words “, child’s passport” are deleted.

b) The heading of Table 2 is entered as follows:

“Table 2: Provisional passport, provisional service and diplomatic passport”.

## Article 3

### Amendment to the Residence Ordinance

The Residence Ordinance of 25 November 2004 (Federal Law Gazette I, p. 2945), last amended by Article 4 of the Ordinance of 20 August 2021 (Federal Law Gazette I, p. 3682), is amended as follows:

1. The table of contents is amended as follows:

a) The entry for § 45a is worded as follows:

“§ 45a Fees for express processing”.

b) In the reference to § 57a, the words “electronic storage and processing medium” are replaced by the word “Chip”

c) In the heading to Chapter 4 Section 2 Subsection 1, the words “electronic storage and processing medium” are replaced by the word “chip”

d) The following entry shall be added after the entry for § 60:

“60a Issue and handover of electronic residence permit”.

e) In § 61a the words “electronic storage and processing medium” are replaced by the word “chip”

2. § 4 is worded as follows:

a) Paragraph 1 clause 4 reads as follows:

In justified cases, children up to the age of 12 may, by way of derogation from the first sentence of paragraph 4, be issued passport replacement papers in accordance with the sentence 1, points 1, 3 and 4 without chips”.

b) In paragraph 1 sentences 2, 3 and 4, the words “electronic storage and processing medium” are replaced by the word “chip”

c) In paragraph 4, first sentence, the words “electronic storage and processing medium” are replaced by the word “chip”.

d) In paragraph 5, first sentence, the words “electronic storage and processing medium” are replaced by the word “chip”.

3. § 45a reads as follows:

“§ 45a

Fees for express processing

For the issue of a residence permit in the cases referred to in § 78(1) sentence 1 of the Residence Act in urgent cases (express processing), an additional fee of EUR 35 shall be charged in respect of the charges referred to in §§ 44, 44a, 45 and 45c”.

4. § 45b is worded as follows:

“§ 45b

Fees for residence permits in exceptional cases

For the issue of a residence permit in the cases referred to in the first sentence of § 78a(1) of the Residence Act, the fee to be levied pursuant to §§ 44, 44a or 45 shall be reduced by EUR 44”.

5. § 47 Paragraph 1 is amended as follows:
  - a) In number 15 the full stop at the end is replaced by a comma.
  - b) The following point 16 is added:
    1. “ in the case of a handover pursuant to Section 60a(2), in addition to the respective fixed fees for the issue of the electronic residence permit pursuant to Section 78(1), first sentence, of the Residence Act, EUR 15 [may be amended]”.
6. In § 48(1), first sentence, point 1c, the information “60” is replaced by the information “70”.
7. § 52 is amended as follows:
  - a) In, paragraph 2, first sentence, the words “electronic storage and processing medium” are replaced by the word “chip”.
  - b) Paragraph (3) is amended as follows:
    - a%6) Subparagraph 3 is worded as follows:
      1. “ § 47 Paragraph 1(8) for the issue of a fictional certificate and”.
    - a%6) In number 3 at the end the word “and” is deleted.
    - b%6) Subparagraph 5 is removed.
  - c) Paragraph (4) is worded as follows:
    - (1) “ Persons who receive a right of residence in accordance with § 23 (2) of the Residence Act for special political interests in the Federal Republic of Germany are exempt from the fees in accordance with
      1. § 44 Number 3, § 45(1)(1) and (2), § 45b and § 47(1) number 11 for the granting of; Re-issue as well as the issue and transfer of the settlement permit in exceptional cases; and
      2. § 49 Paragraphs 1 and 2 or the processing of applications for the performance of the official acts mentioned in number 1”.
  - a) Paragraph (5) is worded as follows:
    - (1) “ Foreigners who receive a scholarship from public funds for their stay in Germany are exempt from the fees in accordance with
      1. § 46 Paragraph 2(1) for the issue of a national visa;

2. § 45 Numbers 1 and 2, § 45c(1)(1) and (2), § 45b and § 47(1)(11) for the issue, renewal, reissue and transfer of the residence permit in exceptional cases,
  3. § 47 Paragraph 1(8) for the issue of a fictional certificate; and
  4. § 49 Paragraph 2 for the processing of applications for the performance of the official acts mentioned in point 2".
8. § 53 Paragraph 1 is amended as follows:
- a) In point 8, the comma at the end is replaced by the word 'and'.
  - b) In number 9 the word "and" is replaced by a full stop at the end.
  - c) Point 10 is repealed.
9. § 57a is amended as follows:
- a) In the heading and in sentence 1, the words "electronic storage and processing medium" are replaced by the word "chip".
  - b) In number 2, the words "electronic storage and processing medium" are replaced by the word "chip".
  - c) In point 2, the full stop at the end is replaced by a comma.
  - d) The following subparagraph 3 is added:
    1. " in the case of issue by mail, notify the competent aliens authority if the postal consignment has been opened without authorisation or if it does not contain the electronic residence permit or if any information on the electronic residence permit is incorrect".
10. After § 60, the following § 60a is inserted:

"§ 60a

Issuing and handing over the electronic residence permit

(1) The electronic residence permit is issued together with the blocking password by the manufacturer to the applicant, to another person authorised under § 80 of the Residence Act or to a person authorised by the applicant.

(2) The electronic residence permit, together with the blocking password of the applicant, shall be sent by post to their domestic registration address if:

1. the applicant has consented to this procedure by the competent immigration authority.
2. the applicant holds a recognised and valid foreign or domestic passport or passport replacement.

Before the handover, the identity of the applicant must be checked by the deliverer by presenting one of the applicant's documents listed in sentence 1 point 2. The manufacturer shall inform the immigration authority of the handover of the electronic resi-

dence permit to the holder of the electronic residence permit. It is not possible to deliver a replacement for the electronic residence permit by post.

(3) In the case of a procedure referred to in paragraph 2, the applicant shall provide the competent aliens authority with an email address which the competent aliens authority sends to the manufacturer so that the manufacturer of the electronic residence permit can send the email address to the deliverer. In this case, the deliverer announces to the applicant the period of delivery by email to the stored email address. The email address may not be used by the immigration authority, the manufacturer and the deliverer for purposes other than those mentioned and must be deleted immediately at the immigration authority, the manufacturer and the deliverer after the electronic residence permit has been handed over to the applicant.

(4) If, in the case of a procedure pursuant to paragraph 2, the electronic residence permit and the revocation password cannot be handed over by the deliverer, the deliverer shall deposit the electronic residence permit and the revocation password with the competent immigration authority at which the electronic residence permit was applied for and shall inform the applicant of this circumstance. The issue shall then be effected in accordance with paragraph 1. The third sentence of paragraph 3 shall apply on the condition that the deliverer shall immediately delete the email address after the electronic residence permit and the blocking password have been handed over to the competent aliens authority and the competent aliens authority shall delete the email address after the electronic residence permit and the blocking password have been handed over to the applicant”.

11. § 61a is amended as follows:

- a) In the heading, the words “electronic storage and processing medium” are replaced by the word “chip”.
- b) In paragraph 1 sentence 1 and paragraph 2 sentence 1 the words “electronic storage and processing medium” are replaced with the word “chip”.

12. § 61h(1) is worded as follows:

(1) “ With regard to the electronic identity card pursuant to § 78(5) of the Residence Act and with regard to the technical requirements for the procedure for the secure transmission of the photograph pursuant to § 60(2), the following regulations shall apply mutatis mutandis, provided that the aliens authority replaces the identity card authority:

1. §§ 1, 2 with the exception of sentence 1(2)(e) and (f) of the Identity Card Ordinance,
2. §§ 3, 4 and 5(1) sentence 2, paragraphs 2, 3, 4 sentences 1 to 5 and paragraph 7 of the Identity Card Ordinance,
3. §§ 5a, 5b and 5c(1), 2, 3, 4 and 5 sentences 1 and 2, §§ 5d and 5e(1) of the Identity Card Ordinance,
4. §§ 10, 13 to 16, § 17(1), (2) sentence 1 and paragraph 3, § 18(4) of the Identity Card Ordinance,
5. § 20 Paragraphs 1, 3 and 4, first sentence, of the Identity Card Ordinance,
6. Sections 21 to 25(1), (2) sentence 1 and (3) of the Identity Card Ordinance,
7. Sections 25a and 26(1) and (3) of the Identity Card Ordinance, and

8. Sections 26a to 36a of the Identity Card Ordinance”.

13. The following:

- a) In section 28, second sentence, section 58, first sentence, number 11 letter c and number 14, section 59, paragraph 2, first and second sentence, section 2, sub-section 1, title, section 61b, paragraph 4 and 5, first sentence, and paragraph 6, second sentence, number 2, section 61f, paragraph 1, first and second sentence, and paragraph 2, Schedule D11a, Schedule D14a, the words “electronic storage and processing medium” are replaced by the word “chip”
- b) in § 5(5), § 6 sentence 2, § 7(1) and (2) the words “electronic storage and processing medium” are replaced by the word “chip” and
- c) in § 45c(1)(4), the words “electronic storage and processing medium” are replaced by the word “chip”.

## Article 4

### Amendment of the Passport Data Acquisition and Transmission Ordinance

The Passport Data Acquisition and Transmission Ordinance of 9 October 2007 (Federal Law Gazette I, p. 2312), last amended by Article 79 of the Ordinance of 19 June 2020 (Federal Law Gazette I, p. 1328), is amended as follows:

1. Under § 1, the following §§ 1a to 1f are inserted:

#### “§ 1a

##### Production and transmission of the photograph through a safe process

(1) In cases in which a passport is requested from a passport authority pursuant to §19(1) of the Passport Act, the applicant may commission a service provider to produce the photograph. The service provider shall produce the photograph electronically and then transmit it to the passport authority through a secure procedure. A service provider is any natural or legal person who takes photographs of other persons on a professional basis, provided that these are intended exclusively or at least in part for presentation to a passport authority.

(2) A safe procedure within the meaning of the second sentence of paragraph 1 is:

1. the transmission of the photograph to the passport authority by a service provider involving a cloud provider, or
2. the transmission of the photograph to the passport authority from a certified photograph-taking device of a service provider that is directly connected to the authority network of a passport authority.

## § 1b

### Transmission of the photo with the involvement of a cloud provider

In the event of a transmission pursuant to § 1a (2) point 1, the service provider transmits the photograph to a cloud provider and then transmits to the applicant a code, which they transmit to the passport authority as part of the application. With this code, the passport authority retrieves the photo from the cloud provider. When retrieved, the photo is sent to the passport authority together with the service provider's pseudonym. The transmission of the photograph from the service provider to the passport authority is encrypted as end-to-end encryption; Decryption by the cloud provider is not possible. Transmission of the photograph from the service provider to the cloud provider is only permitted if certified components are used for this purpose in accordance with § 4(1) sentence 1. Transmission by the service provider is the same as transmission by a person employed by the service provider.

## § 1c

### Registration and identification of a service provider with a cloud provider

(1) Service providers must register with a cloud provider with a user account. Upon registration, proof of the service provider's status and proof of the identity of the service provider must be provided.

(2) Proof of the service provider's status must be provided by

1. proof of trade registration;
2. an extract from the business register;
3. a certificate of membership of the Chamber of Crafts; or
4. confirmation from a tax office about the registration of a freelance activity as a photographer.

(3) Upon registration, proof of the identity of the service provider is carried out by:

1. electronic proof of identity in accordance with § 18 of the Identity Card Act, in accordance with §12 of the eID Card Act or in accordance with Section 78(5) of the Residence Act; or
2. another electronic identification means used in accordance with Article 6 of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73); L 23, 29.1.2015, p. 19; L 155, 14.6.2016, p. 44) has been notified at the level of safety 'high' within the meaning of Article 8(2)(c) of Regulation (EU) No 910/2014.

Several persons can be assigned to a user account if they are permanently employed by the service provider. When registering in a user account, persons pursuant to sentence 2 must also register in the user account using one of the means of identification specified in sentence 1.

(4) For each person who has registered in a user account in accordance with paragraph 3, a pseudonym shall be created by the cloud provider.

(5) Before each transmission of a photograph to the cloud provider, the transmitting person shall again identify themselves with one of the means of identification referred to in the first sentence of paragraph 3. With each transmission, the photo is permanently linked by the cloud provider to the pseudonym of the transmitting person. The passport authority enters the transmitted pseudonym in the passport register in accordance with § 21 Paragraph 2 Number 17 of the Passport Act as the photo-taking body.

## § 1d

### Obligations of the cloud provider

(1) At the request of the passport authority, the cloud provider must provide information about which pseudonym is to be assigned to which person if certain facts justify the assumption that a photograph retrieved from the cloud provider was created in an inadmissible manner. This also applies in the event that a cloud provider stops operating and until the data is deleted by the cloud provider.

(2) The processing of personal data may only be carried out by a cloud provider located in the territory of the European Union and exclusively in the territory of the European Union.

(3) The cloud provider is obliged to delete the personal data stored by it in accordance with the following deadlines:

1. the photo immediately after it has been retrieved by the passport authority, but no later than six months after receipt of the photo from a service provider, unless the passport authority has noted at the request of the applicant that the photo should not be deleted for a period of no more than six months from the submission of the application;
2. the log data referred to in paragraph 4, 10 years and six months after its creation;
3. the personal data of the service providers and the pseudonyms to be attributed to them after six months from the date on which the service provider requested the cloud provider to terminate their user account;
4. by way of derogation from point 3, the data referred to therein after 10 years and six months from the date of transmission of the photograph to the competent passport authority, if the photograph for the passport application has been transmitted by a person belonging to the user account.

(4) The cloud provider documents for the purpose of identifying the service provider of an illegitimately-created photograph

1. the transmission of an encrypted photograph by a service provider, the date and time of the transmission; and
2. the retrieval of an encrypted photograph by the passport authority as well as the date and time of the retrieval.

§ 1e

Transmission of the photograph from a photo recording device of a service provider

(1) In the case of a transmission pursuant to § 1a(2)(2), the service provider shall produce the photograph by means of their photo recording device, which is directly connected to its public authority network with the consent of the respective passport authority.

(2) The name of the service provider who made the photo recording device available and the ID of the photo recording device used are transmitted with the photo. In accordance with § 21(2) no. 17 of the Passport Act, the passport authority shall enter the name of the service provider and the identifier of the photo recording device used in the passport register as a photo-imaging body.

§ 1f

Production of the photo by the passport authority

(1) If the photo is made by the passport authority with its own photo recording device, the passport authority shall enter the passport authority in the passport register as a photo-imaging body in accordance with § 21(2) no. 17 of the Passport Act. The production of the photograph with its own photo recording device shall only be permitted if the photo recording device has been certified as a system component within the meaning of § 4(1) sentence 1.

(2) The photograph produced in accordance with paragraph 1 shall be immediately deleted from the photo recording device by the passport authority after it has been retrieved. If the photograph produced is not immediately retrieved by the passport authority, it shall be stored until retrieval, but no later than 96 hours after its was taken”.

1. § 2 is amended as follows:

a) The heading is worded as follows:

§ 2 “

Quality Assurance”.

a) Clause 1 of paragraph 2 is amended as follows:

a%6) In subparagraph 2, the word “and” at the end is replaced by a comma.

b%6) In point 3 the word “and” is added.

c%6) After point 3, the following point 4 is inserted:

1. “ the secure method of transmitting photographs from a service provider to the passport authority”.

2. § 4 is amended as follows:

a) Paragraph (1) is worded as follows:

(1) “ The system components of the passport authorities, the passport manufacturer and the service providers that use photographic imaging devices within the meaning of § 1a(2) number 2, the cloud providers to be used within the meaning of Section 1a(2) number 1 and the application components for the encryption and transmission of photographs to the cloud by the service provider, for which certification is mandatory, are set out in Annex 2. The type and details of the certification are based on the technical guidelines of the Federal Office for Information Security”

b) Paragraph 3(2) is repealed.

3. In Annex 1 the following point 5 is added:

1. “ BSI: Technical guideline TR-03170, Secure digital transmission of biometric photographs of service providers to passport, identity card and immigration authorities”.

4. In Annex 2, the following points 5 to 7 are added:

“5	Hardware and software for the operation of the cloud	Obligation for the cloud provider
6	Photo recording equipment for the production of the photo	Obligation for the passport authority to produce the photograph itself in accordance with § 1f. Obligation for the service provider who uses photographic imaging devices within the meaning of § 1a (2) number 2”.
7	Software for encrypting and transmitting photographs from service providers to the cloud	Obligation for software manufacturers”.

## Article 5

### Amendment of passport and identity card data retrieval ordinance

The Passport and Identity Card Data Retrieval Ordinance of 20 August 2021 (Federal Law Gazette I p. 3682) is amended as follows:

1. The heading is worded as follows:

“Ordinance on automated data transmission and on automated data retrieval from the passport, identity card and eID card registers (passport, identity card and eID card data retrieval ordinance – PPeKDAV)”.

2. § 1 is worded as follows:

#### “§ 1

##### Scope and procedural principles

(1) This Regulation lays down the conditions for:

1. Automated retrieval of the photograph from the passport or identity card register by the authorities referred to in § 22a(2) sentence 5 of the Passport Act

and in § 25(2) sentence 4 of the Personal Card Act with the issuing passport or identity card authority or, if a country has exercised the regulatory power of § 27a of the Passport Act or 34a of the ID Card Act, in a central passport register or identity card register,

2. Automated retrieval of the photograph and signature from the passport or identity card register by the authorities referred to in § 22a (2) sentence 6 of the Passport Act and in § 25(2) sentence 5 of the Identity Card Act with the issuing passport or identity card authority or, if a country has exercised the regulatory power of Section 27a of the Passport Act or 34a of the ID Card Act, a central passport register or identity card register,

3. Automated retrieval as well as automated notifications from a passport, identity card or eID card authority to another passport, personnel or eID card authority pursuant to § 24(1a) of the Identity Card Act, § 22(1a) of the Passport Act or § 19a of the eID Card Act.

(2) Automated retrievals referred to in paragraph 1(1) and (2) shall be carried out in a synchronous manner. Automated retrievals and automated communications referred to in point 3 of paragraph 1 may be carried out in a synchronous or asynchronous manner”.

3. § 2 Paragraph 1 sentence 1 shall read as follows:

“Data retrieval shall be carried out electronically on the basis of the XPass data exchange format from the standard XInnes and using the OSCI Transport transmission protocol in the applicable version published in the Federal Gazette”.

4. § 3 is amended as follows:

a) Paragraph (1) is amended as follows:

a%6) After entries “paragraph 1” the words “number 1 and 2” are inserted.

b%6) The following clause is added:

“XPass card is a data exchange format in the standard XInnes for the transmission of data between passport, identity card and eID card authorities pursuant to § 1(1) no. 3”.

b) In paragraph 3 sentence 1 the words “The data exchange format” are replaced with the words “The data exchange formats XPass ID,” .

c) In paragraph 4 sentence 1 the words “of the data exchange format” are replaced with the words “the XPass data exchange formats”.

5. § 4 is amended as follows:

a) In paragraph 1 after the words “after § 1(1)” the words “numbers 1 and 2” are inserted.

b) The following paragraph 3 is added:

(1) “ The serial number and the date of birth may be used as selection data for retrievals pursuant to § 1(1)(3) and to address automated communications pursuant to § 1(1)(3)”.

6. The following § 5 is added:

§ 5 “

Transitional provisions

(1) By way of derogation from the first sentence of § 1(2), automated retrievals pursuant to subsection (1) (1) and (2) may also take place in an asynchronous procedure until 31 October 2025.

(2) By way of derogation from the first sentence of § 2(1), electronic data retrievals pursuant to § 1(1) sentence 1 numbers 1 and 2 may also take place by 30 April 2024 on the basis of the data exchange format XLightbild from the standard XIn-neres”.

## Article 6

### Amendment of identity card and eID card fee ordinance

The Identity Card and eID Card Fees Ordinance of 1 November 2010 (Federal Law Gazette II p. 1477), as last amended by Article 3 of the Ordinance of 15 October 2020 (Federal Law Gazette I p. 2199) is amended as follows:

1. § 1 is amended as follows:

a) Paragraph 3(2) is repealed.

b) Paragraph (4) is worded as follows:

“(4) The fee referred to in paragraph 1 shall be increased

1. by EUR 30 if the official act is carried out by a non-competent authority at the initiative of a person habitually resident abroad,
2. by EUR 30 if the official act is carried out by a consular or diplomatic representation of the Federal Republic of Germany abroad,
3. by EUR 15 [subject to change] if a handover takes place in accordance with §18(2) of the Identity Card Ordinance”.

2. § 1a is repealed.

3. § 2 is worded as follows:

§ 2 “

Fee for the eID card

(1) A fee of EUR 37 must be charged for the issue of an eID card for EU citizens and European Economic Area nationals.

(2) The fee referred to in paragraph 1 shall be increased by EUR 15 [subject to change] if a handover takes place in accordance with § 18(2) of the Identity Card Ordinance in conjunction with § 36b of the Identity Card Ordinance”.

4. § 2a is repealed.

## Article 7

### Further amendment of the ID Card Ordinance

The ID Card Ordinance, last amended by Article 1, is amended as follows:

1. The table of contents is amended as follows:
  - a) The heading to Chapter 2 is worded as follows:

“Chapter 2 Transmission of the photo by service provider”.
  - b) The previous headings relating to Chapters 2 to 11 will refer to Chapters 3 to 12.
2. § 2 Sentence 1 point 2 is amended as follows:
  - a) In letter g, the word “and” is replaced by a comma at the end.
  - b) In letter h, the full stop at the end is replaced by the word “and” .
  - c) The following point (i) is added:
    - a) “the secure method of transmitting photographs from a service provider to an identity card authority”.
3. § 3 is amended as follows:
  - a) Paragraph 1 clause 1 shall read as follows:

“The system components result from Annex 4

    1. the identity card authorities,
    2. the identity card manufacturer,
    3. the cloud provider,
    4. the service provider who uses photographic imaging devices within the meaning of § 5a(2),
    5. the service provider and its processors pursuant to Article 4(8) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1, L 314, 22.11.2016, p. 72, L 127, 23.5.2018, p. 2, L 74, 4.3.2021, p. 35), whose certification is mandatory or optional”.
  - b) Paragraph 3 sentence 2 is deleted.
4. In § 4, the following paragraph 4 is added:
  - (1) “ The cloud provider documents
    1. the transmission of an encrypted photograph by a service provider, the date and time of the transmission; and

2. the retrieval of an encrypted photograph by the identity card authority and the date and time of the retrieval”.
5. § 5 is amended as follows:
  - a) The following clause is added to paragraph 1:

“Photographs produced in accordance with § 6a by means of photo recording devices of the identity card authority shall be deleted from the photo recording apparatus immediately upon request by the identity card authority”.
  - b) The following paragraph 7 is added:
    - (1) “ The data stored by the cloud provider must be deleted according to the following deadlines:
      1. the photograph immediately after retrieval by the identity card authority, but no later than six months after receipt of the photograph from a service provider, unless the identity card authority has indicated at the request of the applicant that the photograph should not be deleted for a maximum period of six months;
      2. the log data referred to in § 4(4) ten years and six months after its creation;
      3. the personal data of the service providers and the pseudonyms to be attributed to them after six months from the date on which the account holder requested the cloud provider to terminate their user account;
      4. by way of derogation from point 3, the data referred to therein after 10 years and six months from the date of transmission of the photograph to the competent identity card authority, if it was sent by a person assigned to the user account for the identity card application”.
6. The following Chapter 2 is inserted after § 5:

## ‘Chapter 2

### Transmission of the photograph by service providers

#### § 5a

##### Production and transmission of the photograph through a safe process

(1) In cases in which an identity card is requested from an identity card authority pursuant to § 8(1) of the German Identity Card Act, the applicant may commission a service provider to produce the photograph. The service provider shall produce the photograph electronically and then transmit it to the identity card authority by means of a secure process. A service provider is any natural or legal person who takes photographs of other persons on a professional basis and if these are intended exclusively or at least in part for presentation to an identity card authority.

(2) A secure process within the meaning of paragraph 1 shall be:

1. the transmission of the photograph by a service provider involving a cloud provider, or
2. the transmission of the photo from a service provider's photo capture device which is directly connected to the authority network of an ID card authority.

#### § 5b

##### Transmission of the photo with the involvement of a cloud provider

In the event of a transmission pursuant to § 5a(2) number 1, the service provider transmits the photograph to a cloud provider and then transfers a code to the applicant for the purpose of submitting an application to the identity card authority. With this code, the identity card authority retrieves the photo from the cloud provider. When the photo is retrieved together with the pseudonym of the service provider, the photo is transmitted to the identity card authority. The transmission of the photograph from the service provider to the identity card authority shall be encrypted using end-to-end encryption; Decryption by the cloud provider is not possible. Transmission of the photograph from the service provider to the cloud provider is only permitted using certified components in accordance with § 3(1) sentence 1. The transmission by the service provider is the same as the transmission by a person permanently employed by the service provider.

#### § 5c

##### Registration and identification of a service provider with a cloud provider

(1) Service providers must register with a cloud provider with a user account. Upon registration, proof of the service provider's status and proof of the identity of the service provider must be provided.

(2) Proof of the service provider's status must be provided by transmission of:

1. proof of trade registration;
2. an excerpt from the business register;
3. a certificate of membership in the Chamber of Crafts, or
4. a confirmation from a tax office about the registration of a freelance activity as a photographer.

(3) Upon registration, proof of the identity of the service provider is carried out by:

1. electronic proof of identity in accordance with §18 of the Identity Card Act, in accordance with §12 of the eID Card Act or in accordance with § 78(5) of the Residence Act, or
2. another electronic identification means used in accordance with Article 6 of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73); L 23, 29.1.2015, p. 19; L 155, 14.6.2016, p. 44) has been notified at the

level of safety 'high' within the meaning of Article 8(2)(c) of Regulation (EU) No 910/2014.

Several persons can be assigned to a user account if they are permanently employed by the service provider. When registering in a user account, persons pursuant to sentence 2 must also register in the user account using one of the means of identification mentioned in sentence 1.

(4) For each person who has registered in a user account in accordance with paragraph 3, a pseudonym shall be created by the cloud provider.

(5) Before each transmission of a photograph to the cloud provider, the acting person of the service provider shall again identify themselves with one of the means of identification referred to in paragraph 3 sentence 1. With each transmission, the photo is permanently linked by the cloud provider to the pseudonym of the acting person. The identity card authority shall enter the pseudonym in the identity card register as a photo-imaging body in accordance with § 23(3)(20) of the Identity Card Act.

#### § 5d

##### Obligations of the cloud provider

(1) At the request of the identity card authority, the cloud provider must provide the authority with information on which person is to be assigned which pseudonym if certain facts justify the assumption that a photograph retrieved from the cloud provider has been created in an unauthorised manner. This also applies in the event that a cloud provider stops operating and until the data is deleted by the cloud provider.

(2) The processing of personal data may only be carried out by a cloud provider located in the territory of the European Union and exclusively in the territory of the European Union.

#### § 5e

##### Transmission of the photograph from a photo recording device of a service provider

(1) In the event of a transmission pursuant to Section 5a(2)(2), the service provider shall produce the photograph by means of their photo recording device, which is directly connected to the public authority network with the consent of the respective identity card authority.

(2) Together with the photograph, the name of the service provider who provided the photograph-taking device and the identifier of the photograph-taking device used are transmitted to the ID card authority. The identity card authority shall enter in the identity card register the name of the service provider and the identification of the photo recording device used in accordance with § 23(3)(20) of the Identity Card Act".

7. The previous chapter 2 becomes chapter 3.
8. After § 6, the following § 6a is inserted:

“§ 6a

Production of the photo by the identity card authority

(1) If the photo is made by the identity card authority with its own photo recording device, the identity card authority shall enter the identity card authority in the identity card register as a photo-imaging body in accordance with § 23(3)(20) of the Identity Card Act. The production of the photograph with its own photo recording device shall only be permitted if the photo recording device has been certified as a system component within the meaning of § 3(1) sentence 1.

(2) The photograph produced in accordance with paragraph 1 shall be immediately deleted from the photo recording device by the identity card authority after it has been retrieved. If the photograph taken is not retrieved directly by the identity card authority, it shall be stored on the photo recording device until the identity card authority has retrieved it, but not longer than 96 hours after it has been taken”.

9. § 7 Paragraph 1 is worded as follows:

(1) “ A photograph produced in accordance with § 9(3) sentence 3 of the Identity Card Act must be up-to-date and comply with the requirements of the Technical Guideline TR-03121 of the Federal Office for Security in Information Technology as amended.

(2) By way of derogation from paragraph 1, an up-to-date photograph of 45 mm x 35 millimetres in portrait format and without border may also be presented for an identity card application abroad to the identity card authority in accordance with § 8(2) of the Identity Card Act, provided that electronic production by means of devices of the authority for taking photographs is not possible”.

10. The previous chapters 3 to 11 become chapters 3 to 12.

11. In § 36b(1) the words “of Chapters 1 to 9” are replaced by the words “of Chapter 1 and Chapters 3 to 10”.

12. Annex 4 is amended as follows:

a) Point 4 is repealed.

b) In point 5, the words “§ 7(1) sentence 2 number 2” are replaced by the words “§§ 6a, 7(1) sentence 3 manufacture themselves or for service providers who use photo recording devices within the meaning of § 5a(2) number 2”.

c) The following points 12 and 13 are added:

“12	Hardware and software for the operation of the cloud	Obligation for the cloud provider”.
13	Software for encrypting and transmitting photographs from service providers to the cloud	Obligation for software manufacturers”.

**Article 8**

**Further amendment of the Passport Ordinance**

The Passport Ordinance, last amended by Article 2, is amended as follows:

1. § 5 is worded as follows:

§ 5 “

Photo

(1) A photograph produced in accordance with § 6(2) sentence 3 of the Passport Act must be up-to-date and comply with the requirements of the Technical Guideline TR-03121 of the Federal Office for Information Security in the current version.

(2) The photo must show the person in a frontal shot, without headgear and without the eyes covered. In addition, the photograph must comply with the requirements of Annex 8. The passport authority may allow exemptions from the requirement of no headgear, in particular for religious reasons, from the other requirements for medical reasons, which are not merely temporary. Annex 8 regulates further permissible deviations in the case of photographs of children.

(3) By way of derogation from paragraph 1, a current photograph of 45 mm x 35 millimetres in portrait format and without border may also be presented for a passport application abroad to the passport authority pursuant to §19(2) of the Passport Act, provided that electronic production by means of devices for photo recording is not possible by the authority”.

2. § 9 is worded as follows:

§ 9 “

Photographs for passport replacement

If a photograph is intended to be attached to a substitute passport, a current photograph without a border that is 45 millimetres high and 35 millimetres wide must be submitted to the passport authority. If the technical requirements are met in the passport authority, the photograph may be produced by the passport authority”.

3. § 15 Paragraph 1 is amended as follows:

- a) In number 3 the full stop at the end is replaced by a comma.

- b) The following point 4 is added:

1. “ for a photograph made by the passport authority, in addition to the fees referred to in points 1(a) to (f), EUR 6” .

## Article 9

### Further amendment of the Residence Ordinance

The Residence Ordinance, last amended by Article 3, is amended as follows:

1. § 48 Paragraph 1(1) is amended as follows:

- a) In number 15 the full stop at the end is replaced by a comma.

b) The following point 16 is added:

1. “ for the production of a photograph (§ 60(2) sentence 2 in conjunction with § 6(2) sentence 3 No. 2 Passport Act)6 Euro [subject to amendment]”.
2. After § 60, Paragraph 2, the following Paragraph 2a is inserted:

“(2a) In the cases referred to in subsection (2) sentence 2, the competent immigration authority shall enter in the foreigner file A (§ 63) as a photo-imaging body pursuant to § 65(7)

  1. the pseudonym transmitted if a photograph has been produced in accordance with the requirements of § 6(2) sentence 3 number 1 of the Passport Act and § 1a(2) number 1 of the Passport Data Collection and Transmission Ordinance,
  2. the name of the service provider who made the photo recording device available, as well as the identifier of the photo recording device used, if a photograph has been produced in accordance with the requirements of § 6(2) sentence 3 number 1 of the Passport Act and §1a(2) No 2 of the Passport Data Acquisition and Transmission Ordinance; or
  3. the relevant immigration authority, if a photograph has been produced in accordance with the requirements of § 6(2) sentence 3 number 2 of the Passport Act”.

## Article 10

### Further amendment of identity card and eID card fee ordinance

§ 1 Paragraph 4 of the Identity Card and eID Card Fees Regulation, last amended by Article 6, is amended as follows:

1. In number 3 the full stop at the end is replaced by a comma.
2. The following point 4 is added:
  4. “ 4. by EUR 6 [subject to change] if the photograph was produced by the identity card authority”.

## Article 11

### Amendment of the AZRG Implementing Ordinance

The AZRG Implementing Ordinance of 17 May 1995 (Federal Law Gazette I p. 695), as last amended by Article 6 of the Act of 20 April 2023 (Federal Law Gazette 2023 I No 106), is amended as follows:

1. § 3 Paragraph 3 is worded as follows:
  - (1) “ After six months, the registration authority automatically saves the message "Moving to unknown" in the general database of the register if the foreigner has entered the country and

1. neither an immigration authority, a reception centre nor the Federal Office for Migration and Refugees is the file-keeping authority, or
2. They have made a request for asylum, entered the country illegally or are illegal within the scope of this Act, and no information on moving in or moving out has been saved after any of these facts have been stored”.

2. In the Annex the following is entered in Section I General database number 9 (Part I) column A:

“A	A1*)	B**)	C	D
<p style="text-align: center;"><b>9 (Part I)</b></p> <p style="text-align: center;">Name of the data (§ 3 of the AZR Act)</p>	<p style="text-align: center;">Group of persons</p>	<p style="text-align: center;">Date of transmission</p>	<p style="text-align: center;">Transmission by the following public bodies (§ 6 of the AZR Act)</p>	<p style="text-align: center;">Transmission/transfer to the following bodies</p>
<p>§ 3 Paragraph 1(3), 6 and 7 and paragraph 3f in conjunction with § 2(2)(3)</p>				<p><u>§§ 15, 16, 17, 17a, 18, 18a, 18b, 18d, 18g, 19, 21, 23, 23a, 24a of the AZR Act</u></p>
<p>Residence status</p> <p>a) Exempt from the requirement of a residence permit</p> <p>b) Grant/renewal of the residence permit refused on</p> <p>aa) delivered on</p> <p>bb) incontestable since</p> <p>cc) Schengen identification number for the alert in the Schengen Information System (Schengen ID number)</p> <p>dd) Nature of the offence underlying the alert</p> <p>– Penal provision</p> <p>— legal name of the act</p> <p>– Nature and level of punishment</p>		<p>(5)</p> <p>(5)</p> <p>(6)</p> <p>(7)</p> <p>(7)</p>	<p>– Immigration authorities and public bodies entrusted with the implementation of foreign national legislation</p> <p>– Federal Police and other authorities responsible for the police control of cross-border traffic relating to columns A(d) and (e)</p>	<p>l) The data relating to columns A(b) and (c) respectively double letters cc and dd are transmitted only to the Federal Criminal Police Office in its function as SIRENE Bureau.</p> <p>– Immigration authorities and public bodies entrusted with the implementation of foreign national legislation</p> <p>– Reception facilities or bodies pursuant to § 88(3) of the Asylum Act</p> <p>– Federal Office for Migration and Refugees</p> <p>– Federal Police</p> <p>– other authorities responsible for the police control of cross-border traffic</p> <p>– supreme Federal and</p> <p>Land authorities entrusted with the implementation of foreign, asylum and passport legislation as their own task</p> <p>– Federal Agency for</p> <p>Work on performance of tasks pursuant to § 18(1) of the AZR Act</p> <p>– German missions abroad, the</p> <p>Federal Office for Foreign Affairs and other public</p>
<p>c) Residence permit withdrawn on</p> <p>aa) delivered on</p> <p>bb) incontestable since</p> <p>cc) Schengen identification number for the alert in the Schengen Information System (Schengen ID number)</p> <p>dd) Nature of the offence underlying the alert</p> <p>– Penal provision</p> <p>— legal name of the act</p> <p>– Nature and level of punishment</p> <p>revoked on</p> <p>aa) delivered on</p> <p>bb) incontestable since</p>		<p>(5)</p> <p>(6)</p> <p>(7)</p> <p>(7)</p>		



				vestigations in order to fulfil their tasks pursuant to § 28(1), second sentence, number 2 of the Money Laundering Act
k) Certificate of the effect of the application (fiction certificate) issued on valid until moved in on expired on		(7)		
l) Residence permit number		(7)		
§ 3 Paragraph 4(3), 6 and 7 in conjunction with § 2(3)(3) and (4)		— as above —	— as above —	— as above, with Exception of the Federal Employment Agency
Residence status — as above column A(a), (d), (h), (j) to (l) and (b) and (c) without double letters cc and dd —	(2)			on the performance of tasks pursuant to § 23a of the AZR Act —
§ 3 Paragraph 4(3), 6 and 7 in conjunction with § 2(3)(3) and (4)		— as above —	— as above —	<u>§ 15 Subsection 1 sentence 1 Nos 1 and 6, § 18(1), §§ 21 and 23 of the AZR Act</u>
Residence status — as above column A(a), (h), (j) to (l), and (b) and (c) without double letters cc and dd —	(3)			— only the bodies referred to in point I of column D for group of persons —

\* In these cases, entry into the Federal territory shall be reported at the same time if the entry is not yet recorded in the register”.

## Article 12

### Entry into force

(1) This Ordinance shall enter into force on the day following the publication, subject to paragraphs 2 to 6.

(2) Article 1 number 2, 3, 7 and 10 shall enter into force on the ...[insert: the first day of the quarter following the publication].

(3) Article 3(1)(a) and (3) and Article 5(1), (3) and (4) to (5) shall enter into force on 1 November 2023.

(4) Article 2(1)(b), 3, 5(a) double letter aa, double letters bb and letter (b), 7 and 9 and Article 3(2) shall enter into force on 1 January 2024.

(5) Article 1 points 1.4 to 6, 8 to 9 and 11, Article 2(1)(a) and (c), points 2, 4, 5(a) cc, Article 3(1)(b), 5 to 8 and Article 6 shall enter into force on 1 November 2024.

(6) The Articles 4 and 7 to 10 shall enter into force on 1 May 2025.

(7) Article 5(2) and (6) shall enter into force on 1 November 2025.

Approved by the Federal Council.

## **Explanatory notes**

### **A. General part**

#### **I. Objective of and need for the provisions**

The Act to Strengthen Security in Passport, ID and Immigration Documents of 3 December 2020 (Federal Law Gazette I p. 2744) will introduce regulations in the Passport Act (PassG), the Personal Identity Card Act (PAuswG) and the Residence Act (AufenthG) that will come into force as of 1 May 2025, according to which the procedure for the transmission of the photo for the application for an identity document changes. The applicant may: Have the photograph produced electronically by a service provider and subsequently have it transmitted by a secure process to the passport, identity card or immigration authority. Or have the photograph produced directly in a passport, identity card or foreigner authority, provided that the authority has appropriate photographic imaging equipment. Against this background, the technical or organisational requirements for the procedures for the secure transmission of the photograph by a service provider to the passport or ID card authorities are to be regulated in a new chapter in the ID Card Ordinance as well as in the Passport Data Collection and Transmission Ordinance. The newly-introduced procedure for the secure transmission of the photograph should also apply to foreign national documents. Therefore, the provisions on the new procedures in the ID Card Ordinance are declared to be applicable accordingly. The issue of an identity card applied for abroad, for which a spatial restriction to Germany was ordered due to the existence of reasons for a passport refusal, is issued exclusively by the identity card authority in Germany in whose district the applicant was last registered for their main residence or which they name if they have never been subject to registration in Germany and exclusively to the applicant themselves.

#### **II. Main content of the draft**

The main content of the Ordinance is the following rules:

There should be two secure procedures for transmitting the photo to the passport, identity card or immigration authority. On the one hand, the transmission of the photograph can be carried out by a service provider with the involvement of a cloud provider. On the other hand, the transmission of the photograph can also be carried out using a service provider's photograph-taking device if this is directly connected to the authority network of a passport, identity card or aliens authority.

Currently, for the complete processing of an application for a passport or ID card or an application for an electronic residence permit in Germany, the applicant has to go to the authorities twice. In addition to the application, the respective document must also be collected personally by the applicant or by an authorised person. This entails an additional burden for both the applicant and the authorities. In future, it should therefore be possible for passports, identity cards and, under certain conditions, electronic residence permits to be sent directly by post if the applicant so wishes. In this case, a second visit to the authority is omitted for the applicant.

In the course of the introduction of direct mail in Germany, the transmission of the secret number, the unlocking number and the blocking password will also be modified for the identity card and the electronic residence permit. Instead of handing over a letter by the manufacturer, the secret number and the unlock number are now handed over by the identity card or immigration authority. The blocking password will either be handed over

upon collection or sent with the document if the document is sent. For identity card authorities abroad, there is also the possibility that, for example, if there are doubts in the context of identification or other reasons stand in the way of the factual decision, such as lack of proof of the existence of German nationality, the letter with secret number and unlock number can be sent to a deposited address as soon as the identity has been established or further conditions for issue have been positively checked.

If a responsible identity card authority abroad orders that an identity card applied for from them does not entitle the holder to leave Germany due to reasons for the refusal of a passport, the identity card authority in Germany in whose district the applicant was last registered for their main residence or which they name is only issued if they have never been subject to registration in Germany, and only to the applicant themselves.

With the regulation on the direct dispatch of electronic residence permits, the corresponding authorisation basis is made use of in the newly-formulated § 99 (1) number 13a letter k Residence Act. In addition, it is stipulated that in the future, in particularly urgent cases, an application for an electronic residence permit can be submitted via an express procedure for an additional fee.

In addition, technical adjustments to the storage periods of the eID data are regulated by the block list operator and the identity card manufacturer.

### **III. Alternatives**

For the process of securely transmitting the photo using a cloud provider, another regulatory option considered was to link the registration process for service providers with a query as to whether there were security concerns. This regulatory option was not pursued further because service providers should not be subjected to blanket suspicion. However, in order to take into account the legitimate security interests associated with the integrity of the biometric data in official identity documents, high requirements are instead provided for a reliable identification of the person who transmits a photograph. Should it become known that manipulated photographs have been transmitted to request official identity documents, the person acting in this way must be prevented from transmitting more photographs.

### **IV. Regulatory Power**

The regulatory competence of the Federal Ministry of the Interior and Homeland arises from § 6a(3)(1) to (3) of the Passport Act and from § 34(1)(3)(a) to (c) of the Identity Card Act, which must be exercised in agreement with the Federal Ministry for Economic Affairs and Climate Protection and in consultation with the Federal Foreign Office.

The regulatory competence of the Federal Ministry of the Interior and Homeland also results from § 34,(1) (9), point 9(c) of the Identity Card Act, which must be exercised in consultation with the Federal Foreign Office.

Furthermore, the regulatory competence of the Federal Ministry of the Interior and for Homeland is based on § 20(3), first sentence, of the Passport Act, on § 31(3) of the Identity Card Act, on § 69(3), first sentence, and on § 99(1), points 13(a) to (c), point 13a, first sentence (a), (d), (e), (g) and (h), point 15(a) to (c) of the Residence Act.

### **V. Compatibility with European Union law and international treaties**

The draft legislation is compatible with the law of the European Union and with existing international treaties concluded by the Federal Republic of Germany.

## VI. Consequences of the Legislation

### 1. Legal and administrative simplification

By specifying the procedure for the secure transmission of the photo, the scanning of the photo in the passport, identity card and immigration authorities is no longer necessary. Instead, it can be retrieved directly from the cloud or from the storage of the photo capture device via the respective specialist procedures used.

The introduction of a direct dispatch of sovereign documents from the manufacturer to the person filing the application in Germany leads to the elimination of an appointment with the authorities and thus to a simplification of the procedure for the competent authorities.

### 2. Sustainability aspects

The draft ordinance is in line with the Federal Government’s guiding principles on the national sustainability strategy. Individual sustainability indicators are not affected.

### 3. Budgetary expenditure exclusive of compliance costs

None.

### 4. Compliance costs

#### 4.1 Compliance costs for citizens

Estimated compliance costs for citizens with regard to the individual requirements are outlined below.

#### Requirement 4.1.1: Issuing a passport, ID or residence permit; § 5a Passport Ordinance Draft, § 18 ID Card Ordinance Draft and § 60a(2) Residence Ordinance Draft

Change in annual compliance costs:

Number of cases	Time expenditure per case (in minutes)	Material costs per case (in EUR)	Time expenditure (in hours)	Material costs (in thousands of EUR)
2 400 000	-16	-1.1	-640 000	-2 640

To date, the applicant has had to go to the authorities twice to apply for a passport, ID card or residence permit: Both the application and the collection of the passport, ID or residence permit must be done in person. In future, documents can usually be delivered directly by post at the request of the applicant, whereby the identity must be verified and the sender must be informed of the delivery. Therefore, there is no need for a second trip to the authority, which, according to the Guidelines on the identification and presentation of compliance costs in regulatory projects of the Federal Government (hereinafter: Guideline) involves 15 minutes per case plus one minute for the transfer of documents and costs of EUR 1.10 (see Guidelines p. 60 and 68).

The online database of compliance costs of the Federal Statistical Office is used to derive the number of cases (Ondea, ID 2006101308430310). According to this, the annual number of passports issued is 2.2 million. According to the data basis of the Federal Printing Press, the annual number of identity cards amounts to around 8 million. The number of children’s passports (approximately 923,000) and the additional number of regular passports or identity cards (together around 154,000) must be taken into account in the case figures. The total annual number of passports and identity cards to be issued amounts to around 9.4 million (2.2 million + 8 million – 923,000 + 154,000).

When calculating compliance costs, a distinction is made between German citizens living in Germany and those living abroad. In the case of citizens living abroad, postal delivery was also possible under the current legal situation if collecting the document in person would have caused unreasonable circumstances. This practice is essentially to be maintained, which is why there is no change in compliance costs in this respect. Of the approximately 83.3 million people living in Germany at the end of 2021, around 11.8 million had foreign citizenship (see Federal Statistical Office, Specialist Series 1, Series 2, [https://www.destatis.de/DE/Service/Bibliothek/\\_publikationen-fachserienliste-1.html#609206](https://www.destatis.de/DE/Service/Bibliothek/_publikationen-fachserienliste-1.html#609206)). Thus, around 71.5 million people with German citizenship lived in Germany. Around 3.4 million people of German nationality live abroad (see <https://www.deutsche-im-ausland.org/im-ausland-leben-und-arbeiten/leben-im-ausland/daten-und-fakten.html>). Of the 74.8 million people with German citizenship, around 95.5 percent live in Germany and 4.5 percent live abroad. This results in a passport and ID issue of around 9 million (9.4 million x 0.955) in Germany.

In addition, residence permits are issued. 2.8 million issues are accepted here (source: annual average of residence documents produced by the Federal Printing Press between January 2020 and November 2022). Postal dispatch is only considered for people who are in Germany for gainful employment or permanently, which corresponds to about one sixth of immigrants (cf. report of the Federal Office for Migration and Refugees (BAMF) in figures 2021, pp. 93 et seq.). This consideration is accepted due to the secure address and financial opportunity to pay the fee. Of the approximately 9 million, there are 470,000 possible postal issues (2.8 million/6), i.e. a total of around 9.5 million.

It is also assumed that around 25 percent of citizens will use the mailing of their passport, ID card, residence permit or eID card for themselves, which means around 2.4 million mailings. The 25 percent is based on the amount of the fee of EUR 15 (cf. § 15(1)(3) Passport Ordinance, § 1(4)(3) and § 2(2) ID Card Ordinance, § 47(1) number 16 Residence Ordinance). With a fee of EUR 15, it is expected that the time saving for postal mailing is only worthwhile for every fourth applicant. The estimated fee is based on an estimate for the sending of the secret number when using the electronic PIN reset service in accordance with §§ 20(2) and 21(2) of the ID Card Ordinance, which are comparable with regard to the legal requirements for the delivery of the letter with the secret number on the one hand and for the direct delivery of the document on the other.

This results in a reduction of 640,000 hours (2.4 million cases x 16 minutes/60 minutes) and a reduction in material costs of 2.6 million EUR (2.4 million cases x EUR 1.10).

**Requirement 4.1.2: Photographing at the immigration authority; § 60 Paragraph 2 Alternative 2 Residence Ordinance in conjunction with § 48(1) sentence 1 number 16 Residence Ordinance Draft**

Change in annual compliance costs:

Number of cases	Time expenditure per case (in minutes)	Material costs per case (in EUR)	Time expenditure (in hours)	Material costs (in thousands of EUR)
1 650 000	-15	-1.1	-412 500	-1 815

According to the new regulation, applicants are granted the option of having a photograph taken on site by the respective foreigners authority for a fee.

It is assumed that two thirds of the applicants who are required to submit a recent photograph will make use of this option, as this saves the need to visit a service provider and the estimated fee of EUR 6 is in line with the market (cf. <https://www.persofoto.de/lexikon/passbild/kosten/>).

On average, around 2.8 million residence permits are issued per year (cf. requirement 4.1.1). To this must be added another 330,000 or so cases for passports for refugees (246,218 according to BAMF figures for 2022), foreigners (82,657) and stateless persons (2,838), which then equates to a total of 3.1 million necessary photographs. Since there are 11.8 million foreigners in Germany (cf. requirement 4.1.1), residence titles are renewed on average about every 4.2 years. It is assumed that for short-term residence permits and passports issued within the 4.2 years, existing pictures may be used if they are not older than six months. This is possible because photographs must be deleted by the authorities at the latest after six months. Therefore, the number is reduced by twelve per cent (six months out of 4.2 years equals about 12 per cent), leaving about 2.5 million required images per year. Since it is estimated that around one third of citizens will use private-sector services (cf. target 4.2.4), the number of cases should be reduced by around one third to a total of around 1.7 million and set accordingly.

Since citizens do not have to travel to a service provider or to a photo capture device when their photo is taken at the authority, travel times of 15 minutes and material costs of EUR 1.10 are eliminated (cf. Guidelines, p. 64). In addition, the aforementioned EUR six for a service provider or for a photographic device are saved in material costs, while the citizens are charged the same amount in fees, which is to be entered under Part F - Other costs.

Together, there is a relief of around 413,000 hours (1.7 million x 15/60 minutes) and EUR 1.8 million (1.7 million x EUR 1.10 ).

#### 4.2 Compliance costs for businesses

The concept of increasing transparency about the conversion costs for the economy and limiting them effectively and proportionately was applied by determining the compliance cost categories. Below is a description of the compliance cost estimate for businesses for each specification.

##### Specification 4.2.1 ( ): Applying for certification of system components; § 9 Paragraph 2 BSIG in conjunction with § 3 PAuswV-E and § 4 Pass-DEÜV-E

Change in annual compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
7 300	150	48.35	0	882	0
Compliance costs (in thousands of EUR)				882	

One-off compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
45 000	150	48.35	0	5 439	0
Compliance costs (in thousands of EUR)				5 439	

In addition to the system components of the passport and ID card authorities and the passport and ID card manufacturer, which under the current regulation already have to apply for certification from the competent Federal Office for Information Security (BSI), this also applies under the planned legal amendment to system components of cloud providers and of service providers who operate a photo capture device. These players incur one-time compliance costs for applying to the BSI for certification of system compo-

nents (cf. mirror requirement 4.3.1). The cost of acquiring the new devices was already quantified in the draft of the Act to Strengthen Security in Passport, Identity Card and Alien Documents (cf. 19/21986, p. 24).

Together, the number of cloud providers and service providers – photo studios registered in a craft role – can be estimated at around 45,000 (cf. <https://www.netzwelt.de/vergleich/online-speicher-vergleich-cloud-anbieter-test.html> and BT-Drs. 19/21986, P. 24). With a case-related effort of 150 minutes (cf. OnDEA, ID 2010082411401701) and an averaged wage rate of EUR 48.35 per hour (cf. Guideline, Annex 7, economic section M, medium and high qualification level at 50 percent each), the one-off compliance effort of the category "one-off information obligation" amounts to around EUR 5.4 million.

Annual expenditure arises because providers have to purchase new system components every seven years (cf. AfA table AV of the Federal Ministry of Finance, reference 6.14.4) and have them certified accordingly. In addition, assuming that new suppliers will enter the market each year with an estimated 2 % of existing suppliers, around 7,300 (= 45 000/7 + 45000 x 0.02) applications for certification are expected annually. This results in annual compliance costs of EUR 882,000.

**Specification 4.2.2 (  ): Documentation obligations of the cloud provider; § 4 Paragraph 4 Passport Ordinance Draft and § 61h(1) ID Card Ordinance Draft**

One-off compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
20	960	59.30	0	19	0
Compliance costs (in thousands of EUR)				19	

The planned amendment concerns documentation obligations for the cloud provider related to the transmission of an encrypted photograph by a service provider and the retrieval of an encrypted photograph by the ID card authority. As assumed in the citizens' mandate, some photographs are taken by private service providers.

A total of around 20 cloud providers are currently offering their services on the German market (cf. <https://www.netzwelt.de/vergleich/online-speicher-vergleich-cloud-anbieter-test.html>). With regard to the time required, it can be assumed, according to an IT expert, that the aforementioned documentation obligation will run automatically and that no permanent effort will be required. For necessary programming work, there is a one-time effort of two working days on average. With a wage rate of EUR 59.30 per hour (cf. Guideline, Annex 7, Economic Section J, high qualification level), there is a one-off implementation effort in the category "Introduction or adaptation of digital processes" of around EUR 19,000.

**Specification 4.2.3 (  ): Storage and deletion of the cloud provider; § 5 Paragraph 7 Passport Ordinance Draft and § 61h(1) ID Card Ordinance Draft**

One-off compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
20	1 440	59.30	0	28	0

Compliance costs (in thousands of EUR)	28
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The planned amendment concerns storage periods with cloud providers, among other things on the photograph and log data. As assumed in the citizens' mandate, some photographs are taken by private service providers.

Based on the survey of an IT expert, it will be possible to comply with the aforementioned storage periods in an automated manner. As a result, there is no additional annual compliance effort. A one-off compliance cost of three working days is incurred for the one-off automated deletion of the photo after retrieval. With around 20 cloud providers and a wage rate of EUR 59.30 per hour, there is a one-off implementation effort in the category "Introduction or adaptation of digital processes" of around EUR 28,000.

**Specification 4.2.4 ( [ ] ): Secure transmission of photographs from a service provider to an identity card or aliens authority; §§ 5a, 5b and 5e Passport Ordinance Draft in conjunction with § 2 sentence 1(2)(i) Passport Ordinance Draft, §§ 1a, 1b and 1e, 2 Passport Data Acquisition and Transmission Ordinance Draft and §§ 60(1) Alternative 1, 61h(1) ID Card Ordinance Draft**

Change in annual compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
814 000	0	0	0.5	0	407
Compliance costs (in thousands of EUR)				407	

In addition to having a photograph taken at the competent foreigners authority on site (cf. requirement 4.1.2), foreigners can have photographs required for identity documents taken by a service provider. The legal changes provide for several specifications for the transmission of the service provider (cf. §§ 5a, 5b and 5e Passport Ordinance Draft), which result in a case-related effort of 50 cents (cf. BT-Drs. 19/21986, p. 24). If one-third of the approximately 2.5 million photographs are produced by a service provider not at the immigration authorities (see 4.2.1), annual material costs amount to a total of around EUR 407,000.

**Specification 4.2.5 ( [ ] ): Registration and identification of service providers with cloud providers; § 5c Passport Ordinance Draft and § 1c Passport Data Acquisition and Transmission Ordinance Draft**

Change in annual compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
900	15	59.70	0	13	0
Compliance costs (in thousands of EUR)				13	

One-off compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
45 000	15	59.70	0	672	0
Compliance costs (in thousands of EUR)				672	

The draft regulation requires service providers to register with cloud providers and prove their identities by submitting evidence.

A total case-related effort of 15 minutes is assumed. This includes the retrieval and uploading of the verification documents, the electronic registration with the cloud provider and the identification process. For 45,000 service providers (see specification 4.2.1) and a wage rate of EUR 59.70 per hour (cf. Guideline, Annex 7, Economic Section M, high qualification level), there is a one-off compliance cost of around EUR 672,000.

Assuming that around 900 new service providers enter the market every year (see specification 4.2.1), there is an annual compliance cost of around EUR 13,000.

**Specification 4.2.6 (  ): Processing of registrations and identification of service providers by cloud providers; § 5c Passport Ordinance Draft and § 1c Passport Data Acquisition and Transmission Ordinance Draft**

Change in annual compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
900	10	45.20	0	7	0
Compliance costs (in thousands of EUR)				7	

One-off compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
45 000	10	45.20	0	339	0
Compliance costs (in thousands of EUR)				339	

Assuming that cloud providers review the registrations formally and in terms of content (cf. 4.2.5), a case-related effort of around 10 minutes should be assumed (see Guidelines, Annex 8, Standard Activities 3 and 5, simple complexity). With a wage rate of EUR 45.20 per hour (Guideline, Annex 7, economic section J, average qualification level), the service providers already operating on the market will be subject to a one-off compliance effort in the category “One-time information obligation” of around EUR 339,000 for the 45,000 registrations. Prospectively, 900 new service providers entering the market each year are expected to have a permanent cost of EUR 7,000.

**Specification 4.2.7 (  ): Processing of requests from the identity card authorities; § 5d Passport Ordinance Draft and § 1d Passport Data Acquisition and Transmission Ordinance Draft**

The draft regulation stipulates that in certain cases cloud providers must transmit information to identity card authorities. It can be assumed that such requests will be an exception and therefore the costs are negligible.

**4.3 Compliance costs for government agencies by specification**

**Requirement 4.3.1: Processing applications for system component certification; § 9 Paragraph 2 BSIG in conjunction with § 3 PAuswV-E and § 4 PassDEÜV-E**

Change in annual compliance costs of the Federal Government:

Number of	Time expen-	Hourly wage	Material costs	Staff costs (in	Material costs (in
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cases	diture per case (in minutes)	(in EUR)	per case (in EUR)	thousands of EUR)	of thousands of EUR)
7 300	20	46.50	0	113	0
Change in compliance costs (in thousands of EUR)				113	

One-off compliance costs for the Federal Government:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
45 000	20	46.50	0	698	0
Compliance costs (in thousands of EUR)				698	

The BSI is the competent authority for processing the additional applications from cloud providers and service providers for certification for photo imaging (cf. mirror requirement 4.2.1).

Assuming a case-related time of 20 minutes (cf. Guideline, Annex 8, Standard Activities 3, 5, 11 and 14, simple complexity) and a wage rate of EUR 46.50 per hour (cf. Guideline, Annex 9, Federal Government, Higher Service), there is a one-off cost of around EUR 698,000 for the approximately 45,000 applications and around EUR 113,000 for the annual application.

**Requirement 4.3.2: Documentation obligations in connection with the deletion of the electronic proof of identity; § 4 Paragraph 3, point 3 ID Card Ordinance Draft**

The planned amendment concerns documentation obligations in connection with the deletion of the electronic proof of identity, including the time of deletion and the effective date of entry into the blacklist. According to the Federal Office of Administration (BVA) as the operator of the blacklist, the amendment to the law traces the practice that is already common at this point in time. As a result, there is no change in compliance costs.

**Requirement 4.3.3: Deletion of photographs from recording devices at the passport, identity card and immigration authorities; § 1f sentence 2, § 5(1) sentence 2 ID Card Ordinance Draft and § 61h Residence Ordinance Draft**

The planned change concerns the deletion of photographs in the recording devices of the passport, identity card and immigration authorities. According to a Citizens' Registration Office, this change in the law reflects the current practice. As a result, there is no change in compliance costs.

**Requirement 4.3.4: Deletion by the block list operator; § 5 Paragraph 3(5) ID Card Ordinance Draft**

The proposed amendment concerns the deletion of log data collected after a certain period of time. According to the BVA, the change in the law reflects the current practice. As a result, there is no change in compliance costs.

**Requirement 4.3.5: Information on deletion of revocation key and revocation sum from the revocation list operator to the badge manufacturer; § 5 Paragraph 4, sentence 5 ID Card Ordinance Draft**

The planned change affects the message about deletion processes from the block list operator to the ID card manufacturer. According to the BVA, the change in the law reflects the current practice. As a result, there is no change in compliance costs.

**Requirement 4.3.6: Enquiries from the identity card authorities; § 5d Passport Ordinance Draft and § 1d Passport Data Acquisition and Transmission Ordinance Draft**

The draft regulation stipulates that in certain cases cloud providers must transmit information to identity card authorities. It can be assumed that such requests will be an exception and therefore the costs are negligible.

**Requirement 4.3.7: Entry in the passport or identity card register; § 6a ID Card Ordinance Draft and § 1f Passport Data Acquisition and Transmission Ordinance Draft**

One-off compliance costs of the federal states:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
1	0	0	71	0	71
Compliance costs (in thousands of EUR)				71	

According to the planned amendment to the law, the passport or ID card authority must enter the photo-taking agency in the passport or ID card register.

Based on information from a citizens' office, this is expected to be automated, as transfers will be exclusively electronic. As a result, there is no additional annual compliance effort.

According to the survey of an IT expert, it is assumed for the one-time compliance effort that the municipal authorities will have to have their ID card registers adapted once by the approximately 50 operators (cf. <https://netzpolitik.org/2018/wirrwarr-an-systemen-bundes-behoerden-duerfen-passfotos-abfragen-koennen-aber-nicht/>) for the one-time compliance effort. For the necessary programming and project effort, three working days are to be assumed. At a wage rate of EUR 59.30 per hour (cf. Guideline, Annex 7, Economic Section J, high skill level), one-off material costs for the use of third-party services amount to around EUR 71,000 .

**Requirement 4.3.8: Photographing at the immigration authority; § 60 Paragraph 2 Alternative 2 Residence Ordinance in conjunction with § 6a(1) sentence 2 ID Card Ordinance Draft and § 60(2) Residence Ordinance Draft**

One-off compliance costs of the federal states:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
600	0	0	28 500	0	17 100
Compliance costs (in thousands of EUR)				17 100	

In future, citizens will be able to have photographs taken on site by the foreigners authority if the authority has created the appropriate technical conditions. Since the actual need has not yet been specifically determined, the calculation basis used in the following is an almost comprehensive set of equipment for the immigration authorities in order to show the compliance costs for this case. This task is already defined for the passport and identity card authorities in a draft law (cf. BT-Drs. 19/21986, p. 24). There, a compliance cost of EUR 28,500 per passport and identity card authority with almost full technical equipment is quantified. Assuming there are around 600 immigration authorities, which are assumed to be almost fully equipped with technical equipment, there will be one-off material costs of around EUR 17.1 million.

**Requirement 4.3.9: Registration of the photo manufacturer in the immigration file; § 60 Paragraph 2a Residence Ordinance Draft**

One-off compliance costs of the federal states:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
1	0	0	40 000	0	40
Compliance costs (in thousands of EUR)				40	

After the planned amendment to the law, the competent immigration authority must record the photo-recording body in the immigration file.

This process is comparable to that of the passport and identity card authorities (see specification 4.3.7). It is therefore expected that the registration will take place automatically, as transmissions will take place exclusively electronically. As a result, there is no additional annual compliance effort.

The EUR 71,000 assumed in requirement 4.3.7 can be used for the one-off compliance costs for the automated setup. In this case, the same compliance costs could be incurred up to about a tenth of that (7,100) because there are ten times fewer immigration authorities than passport and ID authorities (cf. requirement 4.3.8 “Photographing in the Immigration Authority”). A rounded appropriation of EUR 40,000  $(71000 + 7\ 100)/2$  is estimated here as material costs for the immigration authorities for commissioning service providers.

**Requirement 4.3.10: Issuing a passport, ID or residence permit by passport, ID and immigration authorities; § 5a Passport Ordinance Draft, § 18 ID Card Ordinance Draft and § 60a(2) Residence Ordinance Draft**

Change in annual compliance costs of the federal states:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
2 400 000	-6	33.7	15	-8 088	36 000
Change in compliance costs (in thousands of EUR)				27 912	

In the future, passports and ID cards should be sent directly by post at the request of the applicant.

For approximately 2.4 million transactions (cf. Requirement 4.1.1), postal mail for the authorities reduces the case-related processing time by six minutes. In this way, it can be assumed that no extra effort is incurred by communicating the blocking password. A slight additional effort of two minutes results from the information from the document manufacturer about the delivery that has to be archived (plus two minutes according to Guidelines, Annex 8). A reduction in time is assumed for the omission of viewing the data after receipt of the passport from the manufacturer (five minutes), handing it over (one minute) and archiving the issue (two minutes, each guide, Annex 8). Overall, a reduced average cost of six minutes per case is estimated. With a wage rate of EUR 33.70 per hour (cf. Guideline, Annex 9, Länder, middle-level service), the total relief for annual personnel costs amounts to around EUR 8 million.

In line with the requirement 4.1.1, additional shipping costs of around EUR 15 are expected per case. This means that the additional annual burden on material costs amounts to around EUR 36 million. As a result, the total annual compliance expense increases by around EUR 28 million.

**Requirement 4.3.11: Delivery of a passport, ID or residence permit by the document manufacturer; § 5a Passport Ordinance Draft, § 18 ID Card Ordinance Draft and § 60a(2) Residence Ordinance Draft**

Change in annual compliance costs of the Federal Government:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
2 400 000	1	33.80	0	1 352	0
Change in compliance costs (in thousands of EUR)				1 352	

If the passports, identity cards or residence permits are delivered directly by the official document manufacturer, then the respective authority must be informed of the delivery by the document manufacturer.

For the 2.4 million transactions (cf. 4.1.1), one minute is estimated (see Guidelines, Annex 8). The material costs do not change, as the shipping now takes place directly to the citizens and no longer to the authorities. With a wage rate of EUR 33.80 per hour (cf. Guideline, Annex 9, Federal Government, Mid-level Service), annual compliance costs increase by around 1.4 million EUR.

**Requirement 4.3.12: Issuing residence permits by express procedure; § 78 ID Card Act in conjunction with § 45a ID Card Ordinance Draft**

Change in annual compliance costs of the federal states:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
135 000	2	33.70	0	152	0
Change in compliance costs (in thousands of EUR)				152	

For urgent cases, the option of creating electronic residence permits by express procedure is created.

It can be assumed that a total of around 135,000 electronic residence permits will be issued by express procedure: Of the average 2.8 million residence permits issued per year (cf. Requirement 4.1.1), the department estimates that a maximum of 3 percent of all residence permits are issued in paper form. For the remaining 2.7 million cases, assuming that around five percent of electronic residence permits will be issued by express procedure in the future, there will be 135,000 express procedures per year.

## 5. Further costs

The procedure for issuing the electronic residence permit in the express procedure differs only in a few aspects from the standard procedure at the immigration authorities, since in both cases the residence permit is sent by the Federal Printing Office and then handed over to the applicant personally. A certain amount of additional work is required for sorting the residence documents that have been sent in order to be able to meet the deadlines of the express procedure. A time requirement of two minutes per case is assumed for this (see Guidelines, Annex 8, Standard Activity 14). With a wage rate of EUR 33.70 (see Guidelines, Annex 9, Länder, mid-level service), annual personnel costs amount to around EUR 152,000.

In the case of direct mailing of passports, identity cards or electronic residence permits, fees in the amount of EUR 15 are to be paid by the person submitting the application. Ac-

According to the estimate used as a basis for the compliance costs that direct mailing is chosen in 2.4 million cases annually, citizens will incur fees in the amount of EUR 36 million.

When an electronic residence permit is issued using the express procedure, foreign nationals incur fees of around EUR 4.7 million. This amount results from the fact that an annual number of cases of 135,000 is to be multiplied by the increased fee of EUR 35.

In exceptional cases, the fee is reduced by EUR 44 when an electronic residence permit is issued. For an assumed annual number of cases of 84,000 (cf. BT-Drs. 20/6519, pp. 23 and 48) therefore no fees of around EUR 4 million.

With regard to the fees incurred for taking photographs in passport or ID Card authorities, reference is made to the comments in Bundestag document 17/21986.

In the case of the on-site recording of the photograph, the fees for the foreign national documents will be increased by EUR 6. On the other hand, foreigners save on the costs that would otherwise be incurred for obtaining a photograph. Reference is made to the explanations under A.VI.4.1 of the justification.

## **6. Further consequences of the legislation**

None.

## **VII. Time limit; Evaluation**

There is no need for a time limit or evaluation of the Ordinance.

## **B. Specific part**

### **Re Article 1 (Amendment of the Identity Card Ordinance)**

#### **Re Point 1**

As the heading of Chapter 4 has been changed, the table of contents must be changed accordingly.

#### **Re Point 2**

#### **Re Letter a**

This is a follow-up amendment to the insertion of the new point 3.

#### **Re Letter b**

This is a follow-up amendment to the insertion of the new point 3.

#### **Re Letter c**

The block list operator must document the deletion in order to be able to prove its technically correct implementation. For this purpose, in addition to a reference to the deleted document, the time of the deletion and its entry into the revocation list must be logged.

### **Re Point 3**

#### **Re Letter a**

##### **Re Double letter (aa)**

The deletion periods of the block list operator shall be adjusted in order to store the data to be stored for electronic proof of identity with an identity card only for as long as is technically required. There is a technical need for the storage of the aforementioned data for the entire period of validity as well as for an additional month. There is a technical need to store the above data for the entire period of validity and additionally for one month.

##### **Re Double letter bb**

The deletion periods at the blacklist operator are to be adjusted in order to store the data to be updated for the blacklist only as long as there is a technical need for this. There is a technical need for the storage of the aforementioned data for the entire period of validity as well as for an additional month. The storage for another month is necessary in order to be able to respond to possible technical problems.

##### **Re Double letter cc**

The deletion periods of the block list operator for updates of the blocking features must also be adjusted in order to store the data to be stored for the electronic proof of identity only for as long as technically needed. There is a technical need for the storage of the aforementioned data for the entire period of validity as well as for an additional month. The storage for another month is necessary in order to be able to respond to possible technical problems.

##### **Re Double letter dd**

The log data to be collected pursuant to § 4 paragraph 4 shall be deleted 20 weeks after its generation. This period is sufficient to prove the deletion of the data for the electronic proof of identity after it has been deleted.

#### **Re Letter b**

##### **Re Double letter (aa)**

The deletion periods must also be adjusted by the identity card manufacturer in order to store the data to be stored only as long as technically needed.

##### **Re Double letter bb**

The information on deletion operations referred to in paragraph 3(1) and (2) by the block list operator to the identity card manufacturer is necessary, since the identity card manufacturer itself does not have this information and otherwise could not carry out timely deletion. In addition, this ensures that the deletion of the identity card manufacturer takes place only after the deletion is carried out by the block list operator.

#### **Re Letter c**

This is an editorial amendment.

### **Re Point 4**

The procedure for transferring the information concerning the secret number, the unblocking number and the blocking password of an electronic proof of identity of an identity card

is amended. Until now, the secret number, the unlock number and the blocking password are sent by the ID manufacturer in a so-called PIN letter to the registration address of the applicants. As is now laid down in paragraph 1, the PIN letter of the applicant should be handed over to the applicant as soon as the application is made. For this purpose, the ID card authority keeps non-personalised PIN letters produced by the ID card manufacturer in a secure area. These PIN letters contain only the secret number and the unlock number. Each PIN letter is marked with a unique reference (barcode or number). When the application is submitted, the identity card authority links the unique reference of the respective PIN letter to the application file. Subsequently, the PIN letter of the applicant linked to the application file is handed over by the identity card authority and receipt by the applicant is confirmed in writing within the meaning of § 126b of the German Civil Code. This procedure is also to be transferred to the missions abroad designated by the Federal Foreign Office and other offices authorised for this purpose, e.g. honorary consular officers (cf. in this respect No. 6.1.1.2 of the General Administrative Regulation for the Implementation of the Passport Act) or identity card application acceptance offices. Even if the PIN letter is handed over at the time of application without the decision on the issue of the ID card having already been made, e.g. because identification of the applicant is only carried out subsequently or documents (e.g. on the name, nationality, etc.) still have to be submitted and checked for the final examination of the ID card application, there are no objections to this procedure, as the PIN letter is useless without the corresponding ID card. The number of such cases where the PIN letters are issued without a subsequent handover of an ID card is likely to be low, so that the additional financial expenses incurred as a result are also likely to be low.

When applying for an ID card abroad, it is also possible for the PIN letter to be sent to a deposited address by the ID card authority abroad at a later date instead of being handed over when the application is submitted, e.g. if the PIN letter has not been handed over for the time being due to doubts about identity or German citizenship. When sending abroad, however, it must be taken into account that, unlike in Germany, foreign representations may be able to find suitable delivery agents abroad who offer secure delivery comparable to a registered letter with advice of receipt. However, delivery agents abroad cannot regularly be entrusted with the reliable verification of identity on the basis of a German passport or identity card when handing over the PIN letter with secret number and unblocking number. In view of the fact that the need to send the PIN letter abroad can be particularly high in certain cases, such a handover is also permitted in these cases without identification at the time of handover. Because personally collecting the PIN letter can still represent unreasonable hardship for applicants abroad in individual cases, in particular due to the greater physical distance to the nearest German mission abroad and poorer accessibility, e.g. due to poorer transport infrastructure, expensive flight connections, etc. For this reason, there should be no need for a further personal visit abroad to collect the PIN letter and it should be possible to send it without identification, provided that the PIN letter could only be collected under unreasonable circumstances for the applicant and the place of residence is in a state in which there is a sufficient guarantee of a proper handover. This procedure must be documented in the passport file.

Paragraph 3 provides that the identity card authority shall take the necessary precautions to ensure that the PIN letters are kept securely and not accessible by third parties.

In addition, the previous rule in paragraph 5 on the age limit for handing over the PIN letter is abolished. Holders of identity cards and eID cards were only allowed to use the function for electronic proof of identity from the age of 16. However, it makes sense to hand over the PIN letter in advance, even if the function for electronic proof of identity is not yet activated at the time the letter arrives due to age. This is because the unblocking number is currently permanently missing when the electronic proof of identity is activated later, for which there will be more and more possible applications in the future.

### **Re Point 5**

The wording of the heading is changed to match the amended heading of § 18.

### **Re Point 6**

#### **Re Letter a**

The heading is changed to match the amended issuing process of the ID card and the blocking password.

#### **Re Letter b**

Currently, for the complete processing of an identity card application in Germany, two visits by the applicant to the identity card authority are necessary. In addition to submitting the application, the identity card must also be collected personally by the applicant. This entails an additional burden for both the applicant and the identity card authorities. Therefore, at the request of the applicant, identity cards may also be handed over directly by post. In this case, a second visit to the authority is omitted for the applicant.

Direct shipping upon request is subject to a fee. Reference is made to the explanatory memorandum to Article 7(1).

In addition to relieving the burden for citizens, the burden on the identity card authorities is also relieved. In the case of direct mailing, there is no need for the identity card authority to make another appointment, or for the identity card to be accepted by the identity card manufacturer, stored and handed over to the applicant.

Paragraph 1 regulates the customary handover of the identity card to the applicant, to another person entitled under § 9(1) and (2) of the Identity Card Act or to a person authorised by the applicant by the identity card authority. Since the changed process of issuing the PIN letter no longer contains the lock password, it is now handed over together with the document. This option will continue to exist as the standard way of handing over the ID card. The competent identity card authority shall be free to determine how it specifically organises the issuing process of the identity card pursuant to subsection (1) sentence 1. It can therefore also use other aids, such as dispensers, for the issuing process. However, they must provide sufficient assurance that the identity card and the blocking password will only be issued to the correct person.

Paragraph 2 now allows the identity card to be handed over by means of direct delivery. The prerequisite for the application is that the applicant has a registration address in Germany and has a valid passport. This must be the case at the time of the application. Since the previous identity card is now already cancelled when the application is submitted, it must be ensured in this way that the person applying can identify themselves to the deliverer with an acceptable document. In order to ensure that the identity card is actually handed over to the applicant, the holder of an identity card must personally identify themselves with the aforementioned documents when the official document is handed over by the commissioned deliverer.

The sending of the document together with the blocking password is triggered directly by the identity card manufacturer. When the identity card has been handed over, the identity card manufacturer receives a message from the deliverer. This information shall be transmitted by the identity card manufacturer to the identity card authority. After the identity card has been handed over by the deliverer, the identity card manufacturer informs the identity card authority about the handover.

Paragraph 2a provides that the applicant shall provide an email address solely for the purpose of allowing the identity card authority to carry out the direct delivery. This is usually

advisable so that the deliverer can inform the applicant about the scheduled delivery date. The email address is first transmitted to the identity card manufacturer with the application data. The manufacturer will make it available to the deliverer. Use for purposes other than those mentioned is not permitted. The email address must be deleted immediately after the identity card has been handed over to the applicant authority, as there is no need for it to be stored. In the case of a handover in accordance with paragraph 2a, it is also not apparent that this will result in inconsistencies that may necessitate any research or investigative measures.

Paragraph 2b regulates the case in which the identity card cannot be handed over by the deliverer because the applicant is either not present or is unable to identify themselves with an admissible document. In this case, the identity card will be handed over to the competent identity card authority. The deliverer informs the applicant that the delivery could not take place and that the identity card will be deposited with the identity card authority where the application was made. The deletion period from paragraph 2a is adopted here and the relevant time for the ID card authority and the deliverer is adjusted.

### **Re Letter c**

This is an editorial amendment.

### **Re Letter d**

In certain cases, the sending of identity documents has already been permitted abroad. However, it should be borne in mind that, unlike in Germany, missions abroad can find suitable delivery agents who offer safe dispatch comparable to a registered letter with acknowledgement of receipt. However, mail carriers abroad cannot regularly be entrusted with the reliable verification of identity using a German passport or identity card when handing over the identity document.

In view of the fact that in certain cases the need for sending an identity document may be particularly high abroad, such handover must be allowed even without identification at handover. Personal collection of identity cards can still represent unreasonable hardship for applicants abroad in individual cases, in particular due to the greater physical distance to the nearest German diplomatic mission and poorer accessibility, for example due to poorer transport infrastructure, expensive flight connections, etc. For this reason, it should be possible to dispense with a further personal visit abroad to collect the identity card and shipping without identification should be permitted if the collection of the identity card would only be possible under unreasonable circumstances for the applicant and the place of residence is in a country in which there is a sufficient guarantee for a proper handover.

Due to the change in the delivery of the PIN letter, it should also be added that if the document is sent abroad, the blocking password is also sent.

The procedure must be documented in the passport file.

### **Re letter e**

Since 2013, the Federal Foreign Office has been responsible for identity card matters abroad with its designated missions abroad. It is true that a mission abroad, as a competent authority, may order in individual cases that an identity card does not entitle a person to leave Germany. However, since the order is not visibly affixed to the identity card, the applicant may continue to stay abroad or travel from the current habitual residence abroad to other states when the identity card limited to Germany is issued, without the restrictive order being recognised by the competent foreign authorities. The issue of an identity card that is geographically restricted to Germany due to passport refusal reasons defeats the aim of the order, which is to prevent the applicant from staying outside Germany, and the security, tax, maintenance, state security and criminal prosecution interests set out in § 7

paragraph 1 PassG are not enforced in relation to the applicant. For this reason, it should only be issued by the identity card authority in Germany in whose district the person applying for their main residence was last registered or who they name if they have never been registered in Germany. The issue of the identity card to another person authorised under § 9(1) or (2) of the German Identity Card Act or to a person authorised by the applicant is excluded in these cases.

#### **Re Point 7**

##### **Re Letter a**

This is an editorial amendment.

##### **Re Letter b**

This is an editorial amendment.

#### **Re Point 8**

The eID card itself cannot be used as proof of identity on site due to lack of photo. Therefore, when setting a new secret number on the eID card, a different rule is to be applied that the identity of the applicant must be verified by presenting an identity card or passport from the Member State of which the applicant is a national.

#### **Re Point 9**

These are consequential amendments to the insertion of the new § 36d.

#### **Re Point 10**

A transitional period for the deletion periods at the blacklist operator as well as at the ID card issuer must be regulated. The reason is that the storage of the last day of the validity period has only taken place since November 2021. Accordingly, a deletion period of ten years and three months must still apply for a transitional period until 31 January 2032.

#### **Re Point 11**

Section 2 of Annex 3 shall be adapted with regard to the requirements to be placed on a photograph. Since, with a few exceptions, only digital photographs are to be used for the passport in future, it was stipulated that these must be produced in colour. The reason for this is that producing the photograph in colour enables better recognition of the person depicted and also simplifies the comparison between the photograph in the passport and the person. For paper-based photographs, the choice between a black-and-white photograph and a colour photograph should remain, in order to make it as easy as possible to issue a document in any emergency situation abroad.

### **Re Article 2 (Amendment of the Passport Ordinance)**

#### **Re Point 1**

##### **Re Letter a**

The table of contents shall be changed to match the amended heading of Chapter 1.

##### **Re Letter b**

The removal of the model for the children's passport in § 2 means the table of contents must also be amended accordingly.

### **Re Letter c**

The insertion of the new § 5a means the table of contents must be changed accordingly.

### **Re Point 2**

The new rules on the handover of the passport in Section 5a means the heading of Chapter 1 shall be supplemented accordingly.

### **Re Point 3**

Article 1(1)(a)(aa) of the Act on the Modernisation of the Passport, Identity Card and Aliens' Documents System repeals the Children's Passport in the Passport Act. By repealing Section 2, the abolition is also reflected in the Passport Ordinance.

### **Re Point 4**

Currently, for the complete processing of a passport application in Germany, two visits by the applicant to the passport authority are necessary. In addition to submitting the application, the passport must also be collected personally by the applicant or by an authorised person. This means an additional burden for both the applicant and the passport authorities. Therefore, in the future, the regulations in the new § 5a should also allow passports to be handed over directly by post domestically at the request of the applicant. In this case, a second visit to the authority is omitted for the applicant.

The application for direct shipping is subject to a fee. Reference is made to the explanatory memorandum to Article 7(1).

In addition to relieving the burden on citizens, the burden on the passport authorities is also relieved. In the case of direct mailing, there is no need for the passport authority to allocate another appointment, or for the passport to be accepted by the passport manufacturer, stored and handed over to the applicant.

Paragraph 1 regulates the customary handover of the passport to the applicant, to another person entitled under § 6(1) of the Passport Act or to a person authorised by the applicant by the passport authority. This option remains as the standard issue for passports. The competent passport authority shall be free to decide how the process of issuing the ID card pursuant to paragraph 1 sentence 1 is to be designed. It can therefore also use other aids, such as dispensers, for the issuing process. However, they must provide sufficient assurance that the passport will only be issued to the right person.

Paragraph 2 now creates the option of having the passport handed over by direct delivery upon request. The prerequisite for the application is that the passport applicant has a registration address in Germany, has a valid identity card or another passport in accordance with § 1(2) of the Passport Act. This must be the case at the time of the application. Since the previous passport is now invalidated at the time of application, it is thus necessary to ensure that the applicant can identify themselves with an admissible document vis-à-vis the deliverer. In order to ensure that the passport is actually handed over to the legitimate holder of the passport, the passport holder must personally identify themselves with the documents mentioned when the official document is handed over by the authorised deliverer.

The shipment is immediately triggered by the passport manufacturer. When the passport is handed over, the passport manufacturer receives a message from the deliverer. This information is transmitted by the passport manufacturer to the passport authority. After the passport has been handed over by the deliverer, the passport manufacturer informs the passport authority about the handover.

Paragraph 3 provides that the applicant shall deposit an email address solely for the purpose of the passport authority being able to carry out the direct dispatch. This is usually advisable so that the deliverer can inform the applicant about the scheduled delivery date. The email address is first transmitted to the passport manufacturer with the application data. The manufacturer will make it available to the deliverer. Use for purposes other than those mentioned is not permitted.

Paragraph 4 regulates the case where the passport cannot be handed over by the deliverer because the applicant is either not present or is unable to identify themselves with an admissible document. In this case, the passport will be handed over to the competent passport authority. The deliverer informs the applicant that the handover could not take place and that the passport will be deposited with the passport authority to which the application was made. The deletion period from paragraph 3 sentence 3 is adopted here and the relevant time for the passport authority and the deliverer is adjusted.

Paragraph 5 regulates the transfer abroad. In certain cases, the sending of identity documents has already been permitted abroad. However, it should be borne in mind that, unlike in Germany, missions abroad can find suitable delivery agents who offer safe dispatch comparable to a registered letter with acknowledgement of receipt. However, mail carriers abroad cannot regularly be entrusted with the reliable verification of identity using a German passport or identity card when handing over the identity document.

In view of the fact that in certain cases the need for sending an identity document may be particularly high abroad, such handover must be allowed even without identification at handover. Personal collection of passports can still represent unreasonable hardship for applicants abroad in individual cases, in particular due to the greater physical distance to the nearest German mission abroad and poorer accessibility, e.g. due to poorer transport infrastructure, expensive flight connections, etc. For this reason, it should be possible to dispense with a further personal visit abroad to collect the passport and shipping without identification should be permitted if the collection of the passport would only be possible under unreasonable circumstances for the applicant and the place of residence is in a country in which there is a sufficient guarantee for a proper handover. This procedure must be documented in the passport file.

#### **Re Point 5**

#### **Re Letter a**

#### **Re Double letter (aa)**

#### **Re Triple letter aaa**

The current passport fee was last calculated in 2005 and consists of the production cost share (product price) and a cost share for the individual administrative burden. Despite the introduction of the new generation of passports in March 2017, the product price has been kept stable with new, modern materials. The fee was only adjusted by 1 Euro in March 2017. After 17 years, the administrative burden (the use of staff and material resources in the municipal passport authorities) was thoroughly examined in the municipal authorities with the participation of the Federal Statistical Office. The audit found that on average a total processing time of approximately 26.5 minutes was required to complete the process. Taking into account the material costs and an overhead surcharge of 30 percent, the hourly personnel costs were around EUR 60. Accordingly, the administrative cost component of the current fee is no longer cost-covering and has to be increased by EUR ten. The increase in the proportion of administrative costs is intended to fully benefit the passport authorities.

**Re Triple letter bbb**

This is a subsequent amendment to the cancellation of the children's passport.

**Re ccc**

This is a subsequent amendment to the cancellation of the children's passport.

**Re Double letter bb**

This is a subsequent amendment to the cancellation of the children's passport.

**Re Double letter cc**

An additional administrative fee of EUR 15 shall be charged for direct dispatch from the manufacturer to the applicant.

The choice of direct shipping incurs additional costs for appointing a suitable delivery agent. This person must guarantee the special requirements when handing over the passport, in particular the reliable identification of the applicant by comparing the person receiving the passport with the photograph of the recognised and valid foreign passport document.

The additional costs are to be financed by the collection of fees that the applicant is required to pay. Therefore, the new point 16 must include a charge event in the case of direct shipping. With regard to the calculation of the amount of the, reference is made to the explanatory memorandum to Article 7(3).

**Re Letter b**

This is a subsequent amendment to the cancellation of the children's passport.

**Re Point 6**

This is a subsequent amendment to the cancellation of the children's passport.

**Re Point 7**

This is a subsequent amendment to the cancellation of the children's passport.

**Re Point 8**

Annex 8 shall be adapted with regard to the requirements to be placed on a photograph. Since, with a few exceptions, only digital photographs are to be used for the passport in future, it was stipulated that these must be produced in colour. The reason for this is that producing the photograph in colour enables better recognition of the person depicted and also simplifies the comparison between the photograph in the passport and the person. For paper-based photographs, the choice between a black-and-white photograph and a colour photograph should remain, in order to make it as easy as possible to issue a document in any emergency situation abroad.

**Re Point 9**

**Re Letter a**

This is a subsequent amendment to the cancellation of the children's passport.

**Re Double letter bb**

This is a subsequent amendment to the cancellation of the children's passport.

**Re Double letter cc**

This is a subsequent amendment to the cancellation of the children's passport.

**Re Double letter dd**

This is a subsequent amendment to the cancellation of the children's passport.

**Re Double letter ee**

This is a subsequent amendment to the cancellation of the children's passport.

**Re Double letter ff**

This is a subsequent amendment to the cancellation of the children's passport.

**Re Double letter gg**

This is a subsequent amendment to the cancellation of the children's passport.

**Re Letter b**

This is a subsequent amendment to the cancellation of the children's passport.

**Re Article 3 (Amendment of the Residence Ordinance)**

**Re Point 1**

**Re Letter a**

The insertion of the new section 45a means the table of contents must be supplemented accordingly.

**Re Letter b**

This is an editorial amendment.

**Re Letter c**

This is an editorial amendment.

**Re Letter d**

The insertion of the new section 60a means the table of contents must be supplemented accordingly.

**Re letter e**

This is an editorial amendment.

## **Re Point 2**

### **Re Letter a**

In the area of residence law, the regulation is intended to ensure that travel documents for foreigners, refugees and stateless persons for children under the age of 12 are generally equipped with a chip. This creates an alignment with the current regulations in the passport system for German nationals, in which children always receive a passport with a chip due to the abolition of the child passport document type.

This current provision in the Passport Act is to be incorporated into the right of residence by amending the Residence Ordinance. So far, § 4 paragraph 1 sentence 4 Residence Ordinance provides as a rule that a travel document for foreigners, refugees and stateless persons before the age of twelve is issued without a chip. A travel document with a chip may only be issued upon request and in justified individual cases. This rule-exception-rule is now to be reversed in order to reduce appointments with the authorities and the associated burdens on parents, children and authorities. Because travel documents for foreigners, refugees and stateless persons for children under the age of 12 without an electronic storage and processing medium are valid for a maximum of one year according to § 4 paragraph 1 sentence 5 Residence Ordinance.

### **Re Letter b**

This is an editorial amendment.

### **Re Letter c**

This is an editorial amendment.

### **Re Letter d**

This is an editorial amendment.

## **Re Point 3**

The residence permit according to § 4 Paragraph 1 Sentence 2 Numbers 2 to 4 of the Residence Act is generally issued in the form of a centrally produced electronic residence permit.

Pursuant to Article 1 Paragraph 2 Number ii a of the Council Regulation (EC) No. 1030/2002 on the uniform format of the residence permit for third-country nationals, OJ L 157 of 15.6.2002, p. 7, as amended by Regulation (EC) No. 380/2008 of the Council amending Regulation (EC) No. 1030/2002 on the uniform design of the residence permit for third-country nationals, OJ L 115 of 29 April 2008, p. 1, residence permits in the form of adhesive labels may only be issued in exceptional cases for the extension of residence permits for a maximum of one month.

Residence permits in the form of adhesive labels, which can be issued directly by the immigration authorities in one transaction, are therefore only legally possible to avoid exceptional hardship for the purpose of extending the length of stay by one month.

In order to be able to deal with urgent individual cases, an express procedure must be introduced (based on the express procedure for German passports). An electronic residence permit in the express procedure will be received by the responsible immigration authority by 12:00 p.m. on the third working day after the manufacturer has received the complete application data by 12:00 p.m. The day the application data is received by the manufacturer is not included in the calculation of the deadline. Working days are the days

of the week from Monday to Friday inclusive, with the exception of public holidays and the days when the manufacturer's headquarters are closed.

If an electronic residence permit is issued in the express procedure, an additional express fee of EUR 35 will be charged for faster receipt of the electronic residence permit. This is stated in the present regulation.

The express procedure incurs higher costs, especially for the manufacturer. These additional costs are to be financed by charging fees of EUR 35, which are to be paid by the applicant in accordance with the cost-covering principle.

#### **Re Point 4**

The new version of § 78a Paragraph 1 Sentence 1 of the Residence Act combines the previous numbers 1 and 2 into one regulation. Up to now, a residence title could be issued according to § 78a Paragraph 1 Sentence 1 Number 1 for the purpose of extending the length of stay by one month or according to Number 2 to avoid exceptional hardship.

In its current form, however, the chargeable element of § 45b subsection 1 of the Residence Ordinance continues to be linked to number 1 of § 78a subsection 1 sentence 1, and subsection 2 to number 2. Consequently, in the new version of § 45b, a decision must be made in favour of one of the two types of fee, since one provision provides for the levying of a fee and the other for the reduction of such a fee. Both rules are mutually exclusive.

In this case, preference should be given to the chargeable element in paragraph 2. A deletion of paragraph 2 would mean that a reduction in the cases of the revised § 78a paragraph 1 sentence 1 Residence Act would be completely eliminated. This would mean that the costs still incurred according to §§ 44, 44a and 45 would remain in full and the unreasonable situations caused by the extraordinary hardship could not be adequately taken into account.

#### **Re Point 5**

##### **Re Letter a**

This is a follow-up amendment to the insertion of the new point 16.

##### **Re Letter b**

An additional administrative fee of EUR 15 shall be charged for direct dispatch from the manufacturer to the applicant.

The choice of direct shipping incurs additional costs for appointing a suitable delivery agent. This person must guarantee the special requirements when handing over the electronic residence permit, in particular the reliable identification of the applicant by comparing the person receiving the residence permit with the photograph of the recognised and valid foreign passport document.

The additional costs are to be financed by the collection of fees that the applicant is required to pay. Therefore, the new point 16 must include a charge event in the case of direct shipping. With regard to the calculation of the amount of the administrative fee, the explanatory memorandum to Article 76 Number 31 is referenced.

#### **Re Point 6**

Corresponding to the adjustment of the fee amount for the issuance of German passports, a corresponding adjustment of the fee amount for the issuance of German passport re-

placement documents is necessary. The fee for issuing a travel document for refugees, a travel document for stateless persons or a travel document for foreigners increases from EUR 60 to EUR 70.

#### **Re Point 7**

The deletions and replacements are editorial adjustments. §45a, in the version in force before 15.7.2021, regulated the fees for the use of electronic proof of identity (eID). § 45a was repealed by Article 5 of the Act on the Development of the Central Register of Foreigners. The references in § 52 to § 45a have not been repealed and have since been ineffective. A deletion of the references is now necessary because § 45a is newly introduced by this Ordinance. § 45a regulates the fees for the express procedure in the future. An exemption from the fee pursuant to § 52 for the express procedure is not provided for.

#### **Re Point 8**

The deletion is an editorial adjustment. For reasons, reference is made to the comments on point 7.

#### **Re Point 9**

##### **Re Letter a**

This is an editorial amendment.

##### **Re Letter b**

This is an editorial amendment.

##### **Re Letter c**

This is a follow-up amendment to the insertion of the new point 3.

##### **Re Letter d**

In the case of the direct dispatch of the residence permit pursuant to § 4(1), second sentence, numbers 2 to 4 of the Residence Act, there are additional obligations to cooperate on the part of the applicant. They shall check the consignment immediately upon receipt to see if it has been damaged or opened without authorisation. If a consignment has been opened without authorisation or if the consignment does not contain the electronic residence permit, they shall inform the issuing aliens authority without delay. In addition, it is mandatory to check the electronic residence permit for the correctness and completeness of all information immediately upon receipt. If an indication on the electronic residence permit is incorrect, the issuing immigration authority must be informed immediately and a new electronic residence permit must be applied for.

#### **Re Point 10**

Currently, for the complete processing of an application for an electronic residence permit, two visits by the applicant to the competent immigration authority are necessary. In addition to submitting the application, the electronic residence permit must also be collected personally by the applicant. This means an additional effort both for the applicant and for the immigration authorities. Therefore, the provisions in the new § 60a will enable electronic residence permits to be handed over directly by post at the request of the applicant if the numbered conditions listed are fulfilled. In this case, a second visit to the authority is omitted for the applicant.

The application for direct shipping is subject to a fee. Reference is made to the explanatory memorandum to Article 6(1).

In addition to relieving the burden on the applicant, the burden on the immigration authorities is also relieved. In the case of direct mailing, there is no need for the immigration authorities to allocate an appointment, nor for the electronic residence permit to be received by the manufacturer, stored and handed over to the applicant.

Paragraph 1 regulates by reference the fundamental handover of the electronic residence permit together with the blocking password to the applicant, to another person entitled under § 80 of the Residence Act or to a person authorised by the applicant by the immigration authority. This option remains as standard issue of the electronic residence permit. The competent immigration authority is free to decide how it specifically organises the issuing process of the electronic residence permit referred to in paragraph 1. It can therefore also use other aids, such as dispensers, for the issuing process. However, they must provide sufficient assurance that the electronic residence permit is issued exclusively to the authorised person.

Paragraph 2 now provides the possibility, with the consent of the applicant, for the electronic residence permit to be handed over by means of direct delivery. The prerequisite for such a procedure is that the person filing the application has a domestic registration address that can be served. In order to verify the identity of the applicant when the electronic residence permit is handed over by the deliverer, they must have a recognised and valid foreign passport or passport replacement. This aspect is already examined by the competent immigration authority upon consent to this procedure. In order to ensure that the electronic residence permit is actually handed over to the lawful applicant, they must personally identify themselves with the documents mentioned when the official document is handed over by the authorised deliverer. This check must be carried out with particular care in cases where several persons can be found at the address for service (e.g. collective accommodation). As far as the electronic residence permit contains a reference to an additional sheet, it is at the discretion of the immigration authority to allow direct dispatch. Direct shipping then presupposes that the immigration authority sends the supplementary sheet to the applicant in an appropriate form. This can be done, for example, directly upon application, at a further date or by postal delivery.

Dispatch is triggered directly by the manufacturer. When the electronic residence permit is handed over, the manufacturer receives a message from the deliverer. The manufacturer shall forward this information to the immigration authority without delay.

Paragraph 3 stipulates that the applicant shall deposit an email address solely for the purpose of allowing the competent immigration authority to carry out the direct dispatch. This is usually advisable so that the deliverer can inform the applicant about the scheduled delivery date. The email address is first transmitted to the manufacturer with the application data. The manufacturer will make it available to the deliverer. Use for purposes other than those mentioned is not permitted.

Paragraph 4 lays down the case where the electronic residence permit cannot be handed over by the deliverer to the applicant because they are either not present or cannot be identified with an admissible document. In this case, the electronic residence permit will be handed over to the competent immigration authority. The deliverer informs the applicant that the delivery could not take place and that the electronic residence permit will be deposited at the foreigners authority where the application was filed. The deletion period from paragraph 3 sentence 3 is adopted here and the relevant time for the immigration authority and the deliverer is adjusted.

#### **Re Point 11**

These are editorial amendments.

## **Re Point 12**

The Identity Card Ordinance regulates the procedure and the technical components of the secure transmission of photographs from a service provider to the identity card authority. The regulations required for the transfer of this procedure at the foreigners authorities shall be declared applicable accordingly. Reference is made to the corresponding explanations in the explanatory memorandum to Article 1.

## **Re Point 13**

These are editorial amendments.

## **Re Article 4 (Amendment of the Passport Data Acquisition and Transmission Regulation)**

### **Re Point 1**

As a result of the Act to Strengthen Security in the Passport, Identity Card and Aliens Document System of 3 December 2020, regulations in both the Passport Act and the Identity Card Act will come into force on 1 May 2025, according to which the procedure for transmitting the photograph for applying for an identity document will change. The applicant has the choice in Germany: They can either have the photograph produced electronically by a service provider and then have it sent to the passport authority using a secure process.

Or they can create the photograph electronically directly in the passport authority, provided that the authority has equipment for photographing. In other countries, the only option is to have the photo taken electronically by the passport authority. The aim of the changed process of inserting the photo is to counteract the possibility of manipulation, in particular through so-called morphing. The reliability of the biometric data in sovereign identity documents in particular is of paramount importance. The application process must therefore be designed in such a way that manipulation is made more difficult and effective measures can be taken against the persons involved in the event of an attempt at manipulation.

The new Chapter 2 regulates the technical and organisational requirements for the procedures for the secure transmission of the photograph by a service provider.

In paragraph 1, § 1a first names the subject matter of the regulation and defines the concept of service provider. Paragraph 2 lists the two possible secure procedures for the transmission of the photo to the passport authority by a service provider. According to number 1, the photo can now be transmitted by a service provider - usually a photographer - with the involvement of a cloud provider. According to number 2, the photo can also be transmitted using a photo recording device from a service provider if this is directly connected to the network of a passport authority. In the case of number 1, however, the service provider is obliged to inform the person concerned about the data recipient - i.e. the respective cloud provider - and thus give them the opportunity to make use of any other solutions. This takes sufficient account of the directly applicable right to information under Article 13 of the GDPR.

§ 1b describes the process of a secure transmission procedure according to § 1a paragraph 2 number 1. With this method, the service provider transmits the photo to a cloud provider. The applicant receives a code from the service provider. This is a barcode that can be printed out by the service provider using a standard printer. This barcode is handed over by the applicant to the passport authority. The passport authority can retrieve the photo from the cloud provider with the barcode. When retrieved, the photo is sent to the passport authority together with the service provider's pseudonym. From the time the photograph is transferred from the service provider to the cloud provider until the comple-

tion of the transfer of the photograph from the cloud provider to the passport authority, the data shall be encrypted. This corresponds to modern end-to-end encryption. In addition, it should be made clear that a transmission of the photograph from the service provider to the cloud operator may only be carried out if the cloud provider has the certified components according to § 4 paragraph 1 sentence 1 in order to be able to guarantee - in addition to end-to-end encryption - sufficient security of the transmitted data. If a person permanently employed by the service provider has created and transmitted the photograph, the regulations addressed to the service provider shall be applied accordingly.

§ Section 1c standardises the process of registering a service provider with the cloud provider. The purpose of the registration is that it is clear with high reliability who transmitted the photograph. For this purpose, the service provider must create a user account with the cloud provider and provide proof of its service provider status and identity in this process.

Evidence of service provider status must be provided, as access to the procedure should in principle be reserved for service providers who operate in the photography trade on a permanent basis or who work permanently as freelance photographers. At the same time, no unnecessary bureaucratic hurdles should be attached to registration. The cloud provider must therefore only accept the evidence referred to in paragraph 2. An in-depth examination of the evidence by the cloud provider is not necessary, since the submission of such evidence may presume that the person who submitted that proof is engaged in the photography industry. However, the cloud provider must check whether the evidence is manifestly incorrect, i.e. whether the name indicated on the evidence matches the name of the registered person and whether the evidence shows any other obvious irregularities. This includes any spelling errors in the information or if the evidence submitted differs significantly when compared with other evidence of the same kind.

According to paragraph 3, proof of identity must be provided by an electronic proof of identity in accordance with § 18 of the Personal Identity Card Act (PAuswG), in accordance with § 12 of the eID Card Act (eIDKG) or in accordance with § 78 Paragraph 5 of the Residence Act (AufenthG) or by another electronic means of identification, which has been notified according to Article 6 of Regulation (EU) No. 910/2014 at the security level "high" within the meaning of Article 8 paragraph 2 letter c of Regulation (EU) No. 910/2014.

Employees of a service provider can also register on the user account. For identification, they may use the same means of identification as the service provider. Proof of service provider status is not required for these persons.

Paragraph 4 stipulates that a pseudonym is to be created for each person who is logged in to the user account. The technical procedure for this is described in TR-03170 of the BSI.

Paragraph 5 stipulates that before each upload of a photograph to the cloud provider, the person acting must also provide electronic proof of identity in accordance with § 18 Identity Card Act (PAuswG), § 12 eID Card Act (eIDKG) or § 78 Paragraph 5 of the Residence Act or with another electronic means of identification, which according to Article 6 of Regulation (EU) No. 910/2014 has been notified at the security level "high" within the meaning of Article 8 paragraph 2 letter c of Regulation (EU) No. 910/2014. Only in this way can a high level of security be documented about the identity of the person acting. For each transmission, the photo is permanently linked by the cloud provider to the pseudonym of the person acting. In this way, the photograph can later be transferred to the passport authority without personal data of the service provider. The pseudonym must be entered by the passport authority in the passport register as a photo-recording body.

§ 1d regulates the obligations of the cloud provider. Paragraph 1 standardises a claim of the passport authority against the cloud provider for information as to which person is to be assigned which pseudonym, if facts justify the assumption that the retrieved photograph has been created in an inadmissible manner. If a suspicion arises that a photograph has been illegally created, especially if it has been manipulated to enable "morphing", the passport authority should be able to clarify the identity of the person who transmitted the photograph to the cloud provider in order to be able to take further action if necessary. The cloud provider must be able to provide the information even if it ceases to operate. This applies until the time the data has been deleted by the cloud provider.

Paragraph 2 also lays down the obligation that all personal data may be processed exclusively by a cloud provider established in the territory of the European Union. This is intended to ensure that the processing of data may only be stored on servers within the European Union and that the storage and processing of data by the cloud provider are fully subject to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data, on the free movement of such data and repealing Directive 95/46/EC and the high data protection requirements associated therewith. In addition, the requirement that the cloud provider is located in the territory of the European Union is intended to prevent that, despite the applicability of the GDPR, an exception provided for under the GDPR (e.g. Article 3) would take effect and allow processing and storage of the data outside the European Union.

Paragraph 3 regulates when the cloud provider is obliged to delete personal data within the scope of the new possibility of secure transmission of the photograph under section 1a(2)(1).

Number 1 is intended to regulate that the photograph is to be deleted immediately after it has been retrieved by the passport authority and is thus linked, among other things, in the case of a photo being taken by the authority, the new § 5 paragraph 1 sentence 2 ID Card Ordinance. Nevertheless, the photograph should remain stored for a certain period of time unless the citizen receives an appointment at the passport office without further delay. This is intended to avoid the need for the citizen to revisit a service provider for the production of a photograph or to have one taken by the identity card authority on the spot, and must again spend financial resources to do so. As a result, the photograph is to be stored for a period of six months, so that it can be easily accessed by the passport authority without any further effort for the citizen when an appointment is made within this period. In addition to this option, the citizen also has the option of requesting the passport authority to store the photograph even after the retrieval. This 'application' is not subject to strict formal requirements, so that such a request can be submitted in writing or orally. In particular, this scheme is intended to take account of the fact that, within a certain period of time, the citizen can reuse the same photograph for other documents, without any further burden on them. The period for which the photo should be blocked for deletion should be at the discretion of the citizen and can be freely chosen. This allows the citizen to decide freely and independently on the re-use of their personal data in the form of the photograph. There is only a limit of six months from the submission of such an application. It can be expected that the necessary appointments regarding the other documents that require a digital photograph could be observed within this period. Further storage of the photo therefore does not appear necessary.

The period of validity of the passport of 10 years shall be decisive for the deletion periods set out in points 2 and 4. During the validity of the passport and its use, any anomalies - in particular with regard to any morphing concerning the photograph - may occur. In this case, it must be possible to identify the service provider who has taken the photograph in this way and to be able to take any necessary measures against them. After the period of ten years has expired, storage is no longer necessary, as the passport can no longer be used for identification anyway and the question of whether the photograph has been sub-

ject to manipulation is no longer relevant. The deadline is to be increased by six months, since the creation of the log data and the transmission of the photo to the passport authority do not automatically lead to a timely retrieval by the passport authority. This can only be done when the applicant submits the application on site, which can be up to six months after the photo was taken.

Number 3 takes into account the fact that after the service provider's application to delete its user account with the cloud provider, consent to the processing of personal data is no longer given. However, in order to be able to clarify any criminal offences for which the improper creation of the photograph was used to prepare or carry out, the personal data should be stored for six months in order to be able to carry out the necessary investigative measures. Paragraph 4 regulates documentation obligations of the cloud provider. On the one hand, the cloud provider should document the transmission of an encrypted photograph by a service provider and the date and time of transmission and, on the other hand, the retrieval of an encrypted photograph by the passport authority and the date and time of retrieval. Should it become known at a later point in time that manipulated photographs have been used, this data is then required for any necessary measures which, depending on the individual case, may be of a nature to avert danger or be of a criminal nature.

§ 1e regulates the case that a service provider creates the photograph using a certified recording device. This must be connected directly to the local authority network with the consent of the respective passport authority. Consent only needs to be given once when connecting to the local authority network of the passport office. No consent is required for each transmission. Consent is required again if it has been revoked by the passport authority in the meantime.

When transmitting the photograph, the name of the service provider who provided the photograph-taking device and the identifier of the photograph-taking device used shall be transmitted. The passport authority shall enter this information in the passport register as a photo-taking body.

§ 1f regulates in the event that the passport authority produces the photo with its own photo recording device, this registers itself as the photo-taking agency. Photo imaging devices must be certified as system components within the meaning of § 4.

## **Re Point 2**

### **Re Letter a**

The heading of § 2 must be adjusted, as the recording of the photograph is regulated by the new Sections 1a to 1f.

### **Re Letter b**

#### **Re Double letter (aa)**

This is a subsequent amendment to the insertion of the new letter (d).

#### **Re Double letter bb**

This is a subsequent amendment to the insertion of the new letter (d).

#### **Re Double letter cc**

§ 1a regulates which technical procedures in the passport system must correspond to the state of the art, which is defined by the BSI Technical Guidelines. Therefore, the new procedure for the secure transmission of photographs from a service provider to the passport authority must be supplemented at this point. The relevant technical guidelines are the

TR-03170 for the procedure pursuant to § 1a(2) number 1 (transmission via a cloud provider) and TR-03121 for the procedure pursuant to § 1a(2) number 2 (production by means of a photo recording device of a service provider directly connected to the public authority network).

### **Re Point 3**

#### **Re Letter a**

§ 1b regulates which system components must undergo a certification process. As new procedures for the secure transmission of the photo, the transmission from a service provider involving a cloud provider and the transmission from a recording device of a service provider, which is directly connected to the official network of a passport authority, are being introduced. When transmitting from a service provider with the involvement of a cloud provider, the entire cloud operation must be certified. In the case of transmission from a recording device from a service provider which is directly connected to the official network of a passport authority, the recording device must be certified. Therefore, cloud providers and service providers using recording devices within the meaning of § 5d(2) number 2 must be added as standard addressees.

#### **Re Letter b**

The reference to the BSI Costs Ordinance of 3 March 2005 (Federal Law Gazette I p. 519) no longer complies with the applicable legal situation and is to be repealed. Instead, the Special Fees Ordinance BMI of 2 September 2019 (Federal Law Gazette I p. 1359) applies.

### **Re Point 4**

The new TR-03170 "Safe digital transmission of biometric photographs of service providers to passport, identity card and immigration authorities" of the BSI, which technically describes the cloud procedure, is to be supplemented.

### **Re Point 5**

The list of system components to be certified shall be supplemented by the hardware and software for operating the cloud, the application components for encrypting and transmitting photographs to the cloud, as well as the hardware and software of the recording devices that are directly connected to the network of a passport authority for producing the photograph.

## **Re Article 5 (Amendment of passport and identity card data retrieval regulation)**

### **Re Point 1**

The heading must be adapted to the extended scope of application. The scope of application now includes automated retrievals as well as automated notifications from a passport, identity card or eID card authority to another passport, identity card or eID card authority.

### **Re Point 2**

In the newly-worded § 1, paragraph 1 numbers 1 and 2 are added to clarify that the provisions of the regulation also apply in the case where an automated photo retrieval is carried out by an authorised authority at a central register of passports or ID cards, provided that a Federal State has made use of the regulatory authority under § 27a of the Passport Act or § 34a of the Identity Card Act.

The new number 3 extends the scope of application to automated retrievals and automated notifications from one passport, identity card or eID card authority to another passport, identity card or eID card authority, which in the course of modernising the procedures should be introduced in the event the passport holders move.

Paragraph 2 stipulates that automated retrievals as well as automated notifications according to paragraph 1 number 3 can be carried out in a synchronous or asynchronous procedure. The synchronous procedure is not necessary for all data exchanges. In addition, it is currently not yet available in most cases. In the future, however, the synchronous procedure should also be used at least for those automated retrievals or automated notifications in which the competent authority requires immediate information from the issuing register-keeping authority.

#### **Re Point 3**

With the introduction of the XPassAusweis format, which is initially relevant for automated communications and automated retrievals between the respective authorities, § 2 is to be supplemented accordingly. In the future, XPassAusweis will be relevant for all automated data exchanges in the passport and ID system by integrating XPhoto into XPassAusweis.

#### **Re Point 4**

With the introduction of the XPassAusweis format, which is initially relevant for automated communications and automated retrievals between the respective authorities, § 3 is to be supplemented accordingly. In the future, XPassAusweis will be relevant for all automated data exchanges in the passport and ID system by integrating XPhoto into XPassAusweis.

#### **Re Point 5**

##### **Re Letter a**

This is a follow-up regulation to supplement the new § 1 paragraph 1 number 3.

##### **Re Letter b**

For automated notifications and automated retrievals, the selection data must also be defined. For these retrievals, the serial number and the date of birth must be used.

#### **Re Point 6**

The passport and ID card authorities currently do not have the technical means to communicate synchronously with the public authorities authorised to retrieve data. Even at the state level, corresponding central datasets have not yet been set up that would enable synchronous communication. Therefore, the possibility of asynchronous communication should also be allowed for a transitional period. In certain cases, which in particular are not urgent, an asynchronous retrieval is also suitable for task fulfilment. However, this transitional phase should end when the obligation under § 22a Paragraph 3 Passport Act and § 25 Paragraph 3 ID Card Act to ensure that the photographs can be accessed by public authorities at any time comes into force. This shall take into account paragraph 1.

Paragraph 2 is intended to ensure that the retrievals referred to in § 1(1)(1) and (2) may be carried out transitionally with the previous data exchange format XLichtbild from the standard XInneres. A complete changeover to the new data exchange format is expected to take place on 1 May 2024. With this change, XLichtbild can no longer be used.

## **Re Article 6 (Amendment of identity card and eID card fee regulation)**

### **Re Point 1**

#### **Re Letter a**

The fee element previously regulated in sentence 2 is now regulated in paragraph 4 number 1 with identical content.

#### **Re Letter b**

The fee items that increase the fee in paragraph 1 are to be regulated in the newly drafted paragraph 4.

Point 1 regulates the subject matter of charges previously standardised in paragraph 3 sentence 2 with the same content.

Point 2 regulates the same content as the fee situation standardised in paragraph 4.

The choice of direct shipping incurs additional costs for appointing a suitable delivery agent. The additional costs are to be financed by the collection of fees that the applicant is required to pay. Therefore, a fee element in the case of direct mailing is to be inserted by the new number 3.

According to initial estimates, the cost of direct shipping is approximately EUR 15 per document. A specific value can only be designated once the shipping service provider to be determined by invitation to tender is established for direct shipping. The estimate is based on a comparison with the costs currently incurred for sending the secret number when using the electronic PIN reset service pursuant to §§ 20(2) and 21(2) of the ID Card Ordinance. The legal requirements for the delivery of the letter with the secret number on the one hand and the direct delivery of the document on the other hand are comparable. In both cases, the documents are sent to the address of residence and the identity of the applicant is to be verified by the deliverer upon delivery by presenting a sovereign identity document.

#### **Re Letter c**

### **Re Point 2**

Due to the new regulation on the assignment of the secret number, the unblocking number and the blocking password, the fee element in § 1a becomes obsolete.

### **Re Point 3**

The choice of direct shipping incurs additional costs for appointing a suitable delivery agent. The additional costs are to be financed by the collection of fees that the applicant is required to pay. Therefore, the new paragraph 2 shall include a charge in the case of direct shipping.

According to initial estimates, the cost of direct shipping is approximately EUR 15 per document. A specific value can only be designated once the shipping service provider to be determined by invitation to tender is established for direct shipping. The estimate is based on a comparison with the costs currently incurred for sending the secret number when using the electronic PIN reset service pursuant to §§ 20(2) and 21(2) of the ID Card Ordinance. The legal requirements for the delivery of the letter with the secret number on the one hand and the direct delivery of the document on the other hand are comparable. In both cases, the documents are sent to the address of residence and the identity of the ap-

plicant is to be verified by the deliverer upon delivery by presenting a sovereign identity document.

#### **Re Point 4**

The new regulation on the assignment of the secret number, the unblocking number and the blocking password renders the fee element § 2a obsolete.

#### **Re Article 7 (Further amendment of the Identity Card Ordinance)**

##### **Re Point 1**

##### **Re Letter a**

The insertion of the new chapter 2 means the table of contents has to be adapted.

##### **Re Letter b**

The insertion of the new chapter 2 means the table of contents should also be adapted with regard to the new chapters 3 to 12.

##### **Re Point 2**

##### **Re Letter a**

This is a follow-up amendment to the insertion of the new letter (i).

##### **Re Letter b**

This is a follow-up amendment to the insertion of the new letter (i).

##### **Re Letter c**

§ Section 2 regulates which technical procedures in the passport and ID system must comply with the state of the art, which is defined by the Technical Guidelines (TR) of the Federal Office for Information Security (BSI). Therefore, the new procedure for the secure transmission of photographs from a service provider to the ID card authority must be supplemented at this point. The relevant technical guidelines are the TR-03170 for the procedure pursuant to § 5a(2) number 1 (transmission via a cloud provider) and TR-03121 for the procedure pursuant to § 5a(2) number 2 (production by means of a photo recording device of a service provider directly connected to the public authority network).

##### **Re Point 3**

##### **Re Letter a**

§ 3 regulates which system components must undergo a certification process. As new procedures for the secure transmission of the photo, the transmission from a service provider involving a cloud provider and the transmission from a photo recording device of a service provider, which is directly connected to the authority network of an identity card authority, are being introduced. When transmitting from a service provider with the involvement of a cloud provider, the entire cloud operation must be certified. In the case of transmission from a photo recording device of a service provider, which is directly connected to the network of an identity card authority, the photo recording device must be certified. Therefore, cloud providers and service providers who use photo recording devices within the meaning of Section 5a (2) number 2 are to be added as standard addressees.

In addition, the reference to § 11 of the Federal Data Protection Act no longer corresponds to the current legal situation and should be replaced by a reference to Article 4 (8) of the General Data Protection Regulation.

#### **Re Letter b**

The reference to the BSI Costs Ordinance of 3 March 2005 (Federal Law Gazette I p. 519) no longer complies with the applicable legal situation and is to be repealed. Instead, the Special Fees Ordinance BMI of 2 September 2019 (Federal Law Gazette I p. 1359) applies.

#### **Re Point 4**

The cloud provider shall document, on the one hand, the transmission of an encrypted photograph by a service provider and the date and time of the transmission, as well as the retrieval of an encrypted photograph by the identity card authority and the date and time of the retrieval. Should it become known at a later date that manipulated photographs have been used, this data will be necessary for any necessary measures.

#### **Re Point 5**

#### **Re Letter a**

If photographs are taken by the identity card authority's photo-recording devices, it must be regulated when the photos in the photo-recording devices, which have their own memory, are to be deleted. After transmission via the authority network to the specialist procedures of the identity card authority, there is no further need for the storage of the photo in the recording devices, which is why they must be deleted immediately after retrieval by the identity card authority.

#### **Re Letter b**

In the context of the new option of transferring the photograph from a service provider involving a cloud provider, personal data is stored with the cloud provider. The new paragraph 7 regulates the corresponding deletion periods.

Point 1 is intended to regulate that the photograph is to be deleted immediately after it has been called up by the identity card authority and is thus linked, among other things, in the case of a photo being taken by the authority, the new § 5 paragraph 1 sentence 2 ID Card Ordinance. Nevertheless, the photo should be stored for a certain period of time, provided that the citizen does not get an appointment with the identity card authority without further delay. This is intended to avoid the need for the citizen to revisit a service provider for the production of a photograph or to have one taken by the identity card authority on the spot, and must again spend financial resources to do so. As a result, the photograph is to be stored for a period of six months, so that it can be easily accessed by the identity card authority without further effort for the citizen when attending an appointment within that period. In addition to this option, the citizen may also request the identity card authority store the photograph even after the retrieval. This 'application' is not subject to strict formal requirements, so that such a request can be submitted in writing or orally. In particular, this scheme is intended to take account of the fact that, within a certain period of time, the citizen can reuse the same photograph for other documents, without any further burden on them. The period for which the photo should be blocked for deletion should be at the discretion of the citizen and can be freely chosen. This allows the citizen to decide freely and independently on the re-use of their personal data in the form of the photograph. There is only a limit of six months from the submission of such an application. It can be expected that the necessary appointments regarding the other documents that require a digital photograph could be observed within this period. Further storage of the photo therefore does not appear necessary.

The period of validity of the identity card of 10 years shall be decisive for the deletion periods set out in points 2 and 4. During the validity of the identity card and its use, any anomalies may occur - especially with regard to any morphing of the photograph. In this case, it must be possible to identify the service provider who took the photograph in this way and to be able to take any necessary measures against them. After the period of ten years has expired, storage is no longer necessary, as the ID card can no longer be used for identification anyway and the question of whether the photograph has been subject to manipulation is no longer relevant. The deadline should be increased by six months, as the preparation of the log data and the transmission of the photograph to the identity card authority do not automatically lead to a timely retrieval by the identity card authority. This can only be done when the applicant submits the application on site, which can be up to six months after the photo was taken.

Number 3 takes into account the fact that after the service provider's application to delete its user account with the cloud provider, consent to the processing of personal data is no longer given. However, the need for the prosecution of possible criminal offences may arise, so that a time limit must be set here during which the police authorities should be able to access these data if inconsistencies should have occurred. However, this should only include incidents in which improper photo taking led to committing or attempting to commit a crime.

### **Re Point 6**

As a result of the Act to Strengthen Security in Passport, ID and Immigration Documents of December 3, 2020, regulations in both the Passport Act and the Identity Card Act will come into force on May 1, 2025, according to which the procedure for transmitting the photo for the application for an identity document changed. The applicant has the choice in Germany: They may either produce the photograph electronically by a service provider and subsequently have it transmitted by a secure procedure to the identity card authority. Or they may produce the photograph directly in the identity card authority, provided that the authority has photographic equipment. Abroad, the only option is to have the photo taken electronically by the identity card authority. The aim of the changed process of inserting the photo is to counteract the possibility of manipulation, in particular through so-called morphing. The reliability of the biometric data in sovereign identity documents in particular is of paramount importance. The application process must therefore be designed in such a way that manipulation is made more difficult and effective measures can be taken against the persons involved in the event of an attempt at manipulation.

The new Chapter 2 regulates the technical and organisational requirements for the procedures for the secure transmission of the photograph by a service provider.

In paragraph 1, § 5a first names the subject matter of the regulation and defines the concept of service provider. Paragraph 2 specifies the two possible secure procedures for the transmission of the photograph to the ID card authority by a service provider. According to number 1, the photo can now be transmitted by a service provider - usually a photographer - with the involvement of a cloud provider. According to point 2, the transmission of the photograph may also be carried out using a service provider's photograph capture device if this is directly connected to the local authority network of an ID card authority. In the case of number 1, however, the service provider is obliged to inform the person concerned about the data recipient - i.e. the respective cloud provider - and thus give them the opportunity to make use of any other solutions. This takes sufficient account of the directly applicable right to information under Article 13 of the GDPR.

§ 5b describes the process of a secure transmission procedure according to § 5a paragraph 2 number 1. With this method, the service provider transmits the photo to a cloud provider. The applicant receives a code from the service provider. This is a barcode that can be printed out by the service provider using a standard printer. The applicant submits

this barcode to the identity card authority. The passport authority can retrieve the photo from the cloud provider with the barcode. When the photo is retrieved together with the pseudonym of the service provider, the photo is transmitted to the identity card authority. From the time the photo is transmitted from the service provider to the cloud provider until the transmission of the photograph from the cloud provider to the identity card authority, the data must be encrypted. This corresponds to modern end-to-end encryption. In addition, it should be made clear that the photo may only be transmitted from the service provider to the cloud operator if the cloud provider has the certified system components according to § 3 Paragraph 1 Clause 1, so that - in addition to end-to-end encryption – to be able to guarantee adequate security of the transmitted data. If a person permanently employed by the service provider has created and transmitted the photograph, the regulations addressed to the service provider shall be applied accordingly.

§ 5c standardises the process of registering a service provider with the cloud provider. The purpose of the registration is that it is clear with high reliability who transmitted the photograph. For this purpose, the service provider must create a user account with the cloud provider and provide proof of its service provider status and identity in this process.

Evidence of service provider status must be provided, as access to the procedure should in principle be reserved for service providers who operate in the photography trade on a permanent basis or who work permanently as freelance photographers. At the same time, no unnecessary bureaucratic hurdles should be attached to registration. The cloud provider must therefore accept the evidence referred to in paragraph 2. An in-depth examination of the evidence by the cloud provider is not necessary, since the submission of such evidence may presume that the person who submitted that proof is engaged in the photography industry. However, the cloud provider must check whether the evidence is manifestly incorrect, i.e. whether the name indicated on the evidence matches the name of the registered person and whether the evidence shows any other obvious irregularities. This includes any spelling errors in the information or if the evidence submitted differs significantly when compared with other evidence of the same kind.

According to paragraph 3, proof of identity must be provided by electronic proof of identity in accordance with § 18 ID Card Act, in accordance with §12 eID Act or in accordance with § 78 (5) of the Residence Act or by another electronic means of identification which is required in accordance with Article 6 of Regulation (EU) No 910/2014 has been notified at the safety level "high" within the meaning of Article 8 Paragraph 2 Letter c of Regulation (EU) No 910/2014.

Employees of a service provider can also register on the user account. For identification, they may use the same means of identification as the service provider. Proof of service provider status is not required for these persons.

Paragraph 4 stipulates that a pseudonym is to be created for each person who is logged in to the user account. The technical procedure for this is described in a BSI Technical Guideline.

Paragraph 5 stipulates that before each upload of a photograph to the cloud provider, the person acting must also provide electronic proof of identity in accordance with § 18 Identity Card Act (PAuswG), § 12 eID Card Act (eIDKG) or § 78 Paragraph 5 of the Residence Act or with another electronic means of identification, which according to Article 6 of Regulation (EU) No. 910/2014 has been notified at the security level "high" within the meaning of Article 8 paragraph 2 letter c of Regulation (EU) No. 910/2014. Only in this way can a high level of security be documented about the identity of the person acting. For each transmission, the photo is permanently linked by the cloud provider to the pseudonym of the person acting. In this way, the photo can later be transferred to the identity card authority without personal data of the service provider. The pseudonym is to be entered by the identity card authority in the identity card register as a photo-recording body.

§ 5d regulates the obligations of the cloud provider. Paragraph 1 standardises a claim by the identity card authority against the cloud provider for information as to which pseudonym is to be assigned to which person. If there is a suspicion that a photo was taken illegally, especially if it was manipulated in such a way that “morphing” was made possible, the identity card authority should have the opportunity to clarify the identity of the person who sent the photo to the cloud provider in order to be able to initiate further measures if necessary. The cloud provider must be able to provide the information even if it ceases to operate. This applies until the time the data has been deleted by the cloud provider.

Paragraph 2 also lays down the obligation that all personal data may be processed exclusively by a cloud provider established in the territory of the European Union. This is intended to ensure that the processing of data may only be stored on servers within the European Union and that the storage and processing of data by the cloud provider are fully subject to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data, on the free movement of such data and repealing Directive 95/46/EC and the high data protection requirements associated therewith. In addition, the requirement that the cloud provider be based in the territory of the European Union is intended to prevent that, despite the applicability of the General Data Protection Regulation, one of the exceptions provided for under this (e.g. Article 3) would apply and allow processing and storage of the data outside the European Union.

§ Section 5e regulates the case where a service provider takes the photograph by means of a certified photograph-taking device. This must be connected directly to the authority network with the consent of the respective identity card authority. The consent must only be given once when connecting to the local authority network of the identity card authority. No consent is required for each transmission. Consent is required again if it has been revoked by the identity card authority in the meantime.

When transmitting the photograph, the name of the service provider who provided the photograph-taking device and the identifier of the photograph-taking device used shall be transmitted. The identity card authority shall enter this information in the identity card register as a photo-recording body.

#### **Re Point 7**

This is an editorial follow-up change required by the insertion of a new Chapter 2.

#### **Re Point 8**

Paragraph 1 regulates the production of the photo by an official photo recording device. If the identity card authority takes the photo with its own photo recording device, it enters itself as the photo-taking agency. The photo recording device used by the identity card authority must also be a certified system component in accordance with § 3 Paragraph 1 Clause 1 in order to be able to create a photo to be used in a permissible manner. There is no discernible reason why the presence of a certified system component should be dispensed with when using the authority's own photo recording devices - in contrast to the production of a photo by a service provider and transmission to a cloud provider.

Paragraph 2 regulates when the photos taken with these photo recording devices should be deleted. In principle, this should take place immediately after the photograph has been taken and retrieved as part of the application by the identity card authority, since the reason for storing the photograph no longer applies once it has been processed when the application is submitted. However, it should be possible to save the photographs in order to save the citizen from having to take another photograph and avoid the financial burden of doing so again. This storage must be temporary in order to avoid unlimited storage. A period of 96 hours from the date of taking the photograph appears appropriate. This ensures that, for example, if a photo was taken on Friday and the appointment is not attended on

the same day for certain reasons, such as missing documents, the photo is not deleted in the meantime, but is stored at least until Monday and then can be used for a follow-up appointment on Monday.

### **Re Point 9**

Currently, photographs are usually printed out and brought by the applicant to the authority. With this in mind, it was useful to indicate the height and width of the photograph directly in the Regulation. However, due to the changed process of introducing the photo exclusively in digital form, this is no longer necessary. The versions that are currently included in Part 3 Volume 2 of the TR-03121 of the BSI of the current version 5.2.1 are much more precise. However, the specifications may change due to technical development and must be adapted accordingly. This is already planned with regard to the changes for the digital transmission of the photograph. Therefore, a dynamic reference to the Technical Directive should now be made. It should be ensured that technical effects on service providers are always communicated with appropriate advance notice and with the necessary reach.

When applying for an identity card abroad, the applicant does not have the choice of having the photograph produced electronically by a service provider and then sent to the identity card authority by a secure process. In principle, they can only have the photo created electronically by the identity card authority. In principle, ID cards applied for abroad are only issued with a photo taken by the authority using a photo recording device. In rare cases, the submission of a paper-based photo with the previous dimensions should be permitted in deviation from an electronically produced photo, if, in particular due to technical imponderables, the electronic production with a photo recording device of the identity card authority is not possible and a renewed personal visit of the applicant abroad is required would represent unreasonable hardship, in particular due to the greater physical distance to the nearest German mission abroad and poorer accessibility, e.g. due to poorer transport infrastructure, expensive flight connections, etc.

### **Re Point 10**

This is a follow-up amendment to the insertion of the new Chapter 2.

### **Re Point 11**

This is a follow-up amendment to the insertion of the new Chapter 2.

### **Re Point 12**

#### **Re Letter a**

Since the de-mail procedure for the transmission of photographs is no longer applied, the corresponding regulation should be repealed.

#### **Re Letter b**

Where identity card authorities provide their own photo recording devices for photographs for applicants, these devices shall be certified as system components.

#### **Re Letter c**

The list of system components to be certified includes the hardware and software for operating the cloud, the application components for encrypting and transmitting photos to the cloud, and the hardware and software for the photo capture devices that are directly connected to the network of an identity card authority to produce the attached to the photograph.

## **Re Article 8 (Further amendment of the Passport Ordinance)**

### **Re Point 1**

Currently, photographs are usually printed out and brought by the applicant to the authority. With this in mind, it was useful to indicate the height and width of the photograph directly in the Regulation. However, this is no longer necessary due to the changed process for presenting the photo, which is basically exclusively made in digital form. The versions that are currently included in Part 3 Volume 2 of the TR-03121 of the BSI of the current version 5.2.1 are much more precise. However, the specifications may change due to technical development and must be adapted accordingly. This is already planned with regard to the changes for the digital transmission of the photograph. Therefore, a dynamic reference to the Technical Directive should now be made. It should be ensured that technical effects on service providers are always communicated with appropriate advance notice and with the necessary reach.

### **Re Point 2**

When applying for a passport abroad, the applicant does not have the option of having the photograph electronically produced by a service provider and then sent to the passport authority using a secure process. In principle, they can only have the photo created electronically by the passport authority. Personal appearance at the passport authority abroad is therefore required for the production of the electronic photograph. A personal appearance of passport applicants living abroad at the German diplomatic mission responsible for them is, in individual cases, much more difficult due to the greater physical distance to the nearest German diplomatic mission abroad and poorer accessibility, e.g. due to poorer transport infrastructure, expensive flight connections, etc. For the same reasons, it is often not possible for a passport application to be accepted outside the passport authority by their employees or by another authorised body, e.g. honorary consuls, using a mobile recording device. At the same time, passport applicants living abroad are urgently dependent on a valid identification document for reasons of residency law, but also to carry out other legal transactions such as maintaining a bank account. Therefore, in deviation from an electronically-produced photo, the submission of a paper-based photo with the previous dimensions is also permitted, provided that electronic production with photo-taking devices of the passport authorities is not possible. A paper-based photo can be submitted in particular if an applicant cannot or cannot reasonably be expected to appear in person for health reasons or due to imprisonment, or if the passport authority has to issue a passport ex officio or without an available photo recording device, e.g. in a crisis situation, but also in the event of technical failures where a renewed personal visit would be unreasonable. As an alternative to a paper-based photo, the right to check a photo that has been produced electronically and sent to the mission abroad via secure transmission channels is reserved.

### **Re Point 2**

This is a follow-up amendment to the recast of § 5. Unlike passports, certain passport substitutes can still be provided with a printed photograph. In these cases, the dimensions for the height and width of the photograph should therefore be specified.

### **Re Point 3**

#### **Re Letter a**

This is a follow-up amendment to the insertion of the new point 4.

## **Re Letter b**

If the photo is taken by the passport authority in Germany at the request of the applicant, the resulting costs must be financed through fees. The new point 4 therefore standardises the corresponding fee situation. With regard to the amount of the fee, reference is made to the justification for Article 5 (2).

## **Re Article 9 (Further amendment of the Residence Ordinance)**

### **Re Point 1**

#### **Re Letter a**

This is a follow-up amendment to the insertion of the new point 16.

#### **Re Letter b**

If the photo is taken, at the request of the applicant, by the competent immigration authority, the resulting costs must be financed through fees. The new point 16 therefore standardizes the corresponding fee situation. With regard to the amount of the fee, reference is made to the justification for Article 10 (2).

### **Re Point 2**

The new paragraph 2a regulates who is to be entered in the immigration file A as a photo-recording body. If the photo is transmitted by secure transmission using a cloud provider, the pseudonym that is also to be transmitted is entered. If, on the other hand, the photo is taken using a photo recording device from a service provider that is directly integrated into the authority network, the name of the service provider who made the photo recording device available and the associated ID of the photo recording device used must be entered. In the event that the immigration authority takes the photo with its own photo-taking device, it registers itself as the photo-taking agency.

## **Re Article 10 (Further amendment of the Identity Card and eID Card Fee Ordinance)**

### **Re Point 1**

This is a follow-up amendment to the insertion of the new point 4.

### **Re Point 2**

If the photo is taken by the identity card authority in Germany at the request of the applicant, the resulting costs for the procurement of the necessary technical infrastructure, for the necessary maintenance and for the creation of the photo must be financed through fees. The new number 4 therefore standardises the corresponding fee element in the amount of EUR 6. Reference is made to the further explanations on the justification of the Act on strengthening security in passport, ID and foreign national documents (Bundestagdrucksache 19/21986).

## **Re Article 11 (Amendment of the AZRG Implementing Regulation)**

### **Re Point 1**

Paragraph 3 number 1 corresponds to the content of the law that is already in force and has been supplemented by the "reception facilities", which are only stored after the regulation has come into force through the transmission of information about the arrival (technically) as a so-called "file-keeping authority" in the Central Register of Foreigners (AZR). Due to the close proximity of the content, only the authority keeping the files is entitled to

make certain changes to data in a foreigner's data record that they did not transmit to the AZR themselves.

Point 1 refers to cases in which, when a person enters Germany for the first time, there is initial contact (initial registration within the meaning of § 2 (1a) of the AZR Act) of the person with the police or others commissioned with the police control of cross-border traffic authorities. As part of the initial registration, a data record is created in the AZR, but no so-called (technical) file management in the AZR is justified. From a technical point of view, keeping a file is only justified in the AZR if an immigration authority, the Federal Office for Migration and Refugees (BAMF) or a new reception facility sends information about the move to the AZR. Insofar as the federal police or other authorities commissioned with the police control of cross-border traffic also transmit the first entry to the AZR as part of the initial registration, this does not justify (technical) record keeping. However, if the registered person does not appear at any other authority (immigration authority, reception facility or BAMF) after the initial registration, which is then stored in the AZR as a "file-keeping authority" as a result of a move notification to the AZR, the data record must be corrected, since the relevant person may no longer be in Germany. If the whereabouts of the person are not known, according to § 3 paragraph 3 AZRG-DV, "Move to unknown" is automatically stored in the AZR by the registration authority after six months.

Point 2 in paragraph 3 was added to correct data records of cases in which a person has re-entered the country after leaving the country, there is already an authority keeping the files and the whereabouts of this person are not known. The re-entry of a person or a new contact (registration within the meaning of § 2 paragraph 1a AZRG) after leaving the country does not necessarily justify the storage of a (new) file-keeping authority in the AZR (the federal police or other authorities commissioned with the police control of cross-border traffic) generally do not become the "technical file-keeping authority" in the AZR). For this reason, the authority that may have been recorded in the AZR before leaving the country as a record-keeping authority will continue to be stored as such in the AZR until a new record-keeping office is established (by transmitting information about the move) and stored in the AZR. If this is not the case and this person does not come into contact again with an immigration authority, a reception facility or the BAMF in the following months, which takes over the file management or justifies it again by transmitting information about the move, the same applies to above-mentioned use case for such data records also after six months in the AZR "move to unknown" by the registration authority.

Overall, the regulation of paragraph 3 serves to ensure the data quality in the AZR with regard to the correctness and topicality of the data and thus to facilitate and support the work of the authorities involved in the performance of their tasks. Practical experience has shown that a large number of people for whom facts within the meaning of Section 2 (1a) AZRG were stored did not make any further contact with an authority in the six months following their first entry or re-entry and the whereabouts of the persons cannot be determined. In these cases, the registration authority automatically saves the fact "moving to unknown" after the corresponding period of six months in the relevant data records.

## **Re Point 2**

It is a correction to number (9 Part I) column A to group of persons (2) and (3), which has become necessary as a result of conflicting change orders. Article 1(1)(c) double letter aa triple letter ccc of the Ordinance of 10 February 2023 (Federal Law Gazette 2023 I, point 35) the words "–, as above, column A(a), (j) to (l)" are replaced by the words "–, as above, points (a) to (c) of column A, h, j to l –" (entry into force: 1. August 2023) without taking into account that those words are already replaced by Article 5(2)(b) double letter aa triple letter aaa of the Law of 19.12.2022 (Federal Law Gazette I p. 2632) by the words "– as above column A(a), (h) to (k) and (b) and (c) each without double letters cc and dd –" (entry into force: 1. May 2023).

In column A, a further correction was made to the group of persons (2) (incorporation of letter d). Border crossing certificates are also issued to Union citizens who have been found to have lost or not to have the right to freedom of movement and who are accordingly required to leave the country.

### **Re Article 12 (Entry into Force)**

#### **Re Paragraph (1)**

The Regulation shall enter into force on the day following its promulgation. This means that the regulations on the revised provisions on area-specific data protection law in particular can be implemented promptly from the date on which they come into force.

The rules on Article 11 are corrections to be implemented in a timely manner.

#### **Re Paragraph (2)**

According to the agreements from the Better Regulation work program, the regulations on documentation requirements and the storage periods of the blocking characteristics by the blocking list operator are to come into force on the first day of the quarter following the promulgation.

#### **Re Paragraph (3)**

The regulations regarding the introduction of an express procedure when applying for an electronic residence permit are to come into force on November 1, 2023 in order to synchronise with the corresponding release cycles of the coordination office for IT standards.

#### **Re Paragraph (4)**

The rules on the adjustment of the fee for the passport are due to enter into force on 1 January 2024. The later entry into force is necessary, as a corresponding implementation period is required by the passport manufacturer and the passport authorities.

#### **Re Paragraph (5)**

The regulations for the consistent provision of automated photo retrieval by the passport and ID card authorities as well as those regulations for the direct mailing of passports, ID cards, eID cards and electronic residence permits are to come into force on 1 November 2024, as a corresponding implementation period for passport, ID card and immigration authorities is required.

#### **Re Paragraph (6)**

The regulations on the new procedures for transmitting the photo when applying for a new passport or ID card are to come into force on 1 May 2025, at the same time as the changes that have already been made to the Passport and ID Card Act. The same applies to the amendments to the Residence Ordinance with regard to the rules on the new procedures for transmitting the photograph.

#### **Re Paragraph (7)**

The regulations on automated image retrieval shall also be put into force on 1 November 2025, in line with the entry into force of the regulations provided for in the Act.