

Draft Legislation

of the Federal Ministry of Justice and Consumer Protection

Ordinance establishing new rules on electronic legal transactions at the German Patent and Trade Mark Office

A. Problem and objective

The German Patent and Trade Mark Office (Deutsches Patent- und Markenamt – DPMA) has been a pioneer in the digitisation of its registration and communication channels since its early years. It has been offering electronic submission options since 2003. The DPMA has been able to deliver documents to its customers in electronic form since 2017. Over 90 percent of all patent and design applications and over 85 percent of all trade mark applications are now submitted to the DPMA in electronic form.

In order to take technological change into account, these registration and communication channels to and from the office must be refined and adapted to technological progress. The basis for this is established by these new rules of the Ordinance on Electronic Legal Transactions with the German Patent and Trademark Office (ERVDPMAY).

B. Solution

The new rules replace the existing ERVDPMAY and create the necessary legal basis to further expand and modernise the DPMA's digital communication channels.

The new rules establish in particular the legal basis for the establishment of a web-based user portal of the DPMA, which will enable the electronic submission, delivery and management of industrial property rights and will use modern registration and authentication methods.

However, the new rules of the Ordinance also cover the established services of the DPMA such as DPMAdirektPro and DPMAdirektWeb, which will continue to be operated until the technical implementation of the user portal and will be improved in specific areas by this Ordinance.

Furthermore, the new rules of the regulation expand the possibility of using digital services of European and international offices in the field of industrial property protection for the submission of electronic documents to the DPMA. In particular, the possibilities for using the WIPO Digital Access Service (WIPO DAS), the database for electronic priority documents provided by the World Intellectual Property Organization (WIPO), will be expanded.

The new rules also create a simple way to exchange electronic documents during hearings and oral proceedings. This further increases the efficiency of hearings and oral proceedings, especially when these take place via video conference.

Finally, the rules for the delivery of electronic documents will be modernised and simplified.

C. Alternatives

None.

D. Budgetary expenditure excluding compliance costs

The federal administration will incur a one-time budgetary expenditure of EUR 1 134 000 for the years 2025 to 2027. In addition, one-time material costs of EUR 16 560 will be incurred in 2027. Furthermore, ongoing budgetary expenditure of EUR 80 000 per year in personnel costs will be incurred from 2027 onwards, and EUR 5 000 per year in material costs will be incurred from 2027 onwards. The additional material and personnel requirements at the federal level is to be financially and structurally balanced in Budget Section 07.

E. Compliance costs

E.1 Compliance cost for citizens

None.

E.2 Compliance cost for businesses

This will result in a one-time compliance cost of EUR 1 934 000 for businesses. The long-term annual relief for businesses associated with the new rules is estimated at EUR 5 442 000.

This includes bureaucratic costs arising from information obligations.

None.

E.3 Administrative compliance costs

The administration will incur a one-time compliance cost of approximately EUR 966 000 and negligible annual compliance costs.

F. Further costs

None.

Draft Legislation of the Federal Ministry of Justice and Consumer Protection

Ordinance establishing new rules on electronic legal transactions at the German Patent and Trade Mark Office^{*)}

of ...

The Federal Ministry of Justice and Consumer Protection hereby decrees,

- pursuant to § 28(1)(1), § 34(6)(1), § 125a(3)(1), and § 127(1)(5)(2) of the Patent Act as promulgated on 16 December 1980 (Federal Law Gazette 1981 I p. 1), last amended by Article 26 of the Act of 23 October 2024 (Federal Law Gazette 2024 I No 323):
- pursuant to § 4(4)(1), § 21(1), and § 29(1) Point 1 of the Utility Model Act as promulgated on 28 August 1986 (Federal Law Gazette I p. 1455), as last amended by Article 17 of the Act of 15 July 2024 (Federal Law Gazette 2024 I No 237):
- pursuant to § 65(1)(1, 2, 7, 9 and 10), § 94(1)(4)(2), § 95a(3)(1), and § 138(1), of the Trade Mark Act of 25 October 1994 (Federal Law Gazette I p. 3082; 1995 I p. 156; 1996 I p. 682), last amended by Article 1 of the Regulation of 24 June 2024 (Federal Law Gazette 2024 I No 215):
- pursuant to § 11(1) of the Semiconductor Protection Act of 22 October 1987 (Federal Law Gazette I p. 2294), as last amended by Article 9 of the Act of 10 August 2021 (Federal Law Gazette I p. 3490), and
- pursuant to § 23(3)(3), § 23(4)(4), § 25(3)(1), and § 26(1)(1 and 2), of the Design Act as promulgated on 24 February 2014 (Federal Law Gazette p. 122), as last amended by Article 10 of the Act of 10 August 2021 (Federal Law Gazette I p. 3490):

^{*)} 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 of 17/09/2015, p. 1).

Artikel 1 Article

Ordinance on Electronic Legal Transactions with the German Patent and Trademark Office (ERVDPMAV)

§ 1

Submission of electronic documents

(1) Electronic documents can be submitted to the German Patent and Trade Mark Office in the following procedures:

1. in procedures under the Patent Act and the Act on International Patent Conventions,
2. in procedures under the Utility Model Act,
3. in procedures under the Trade Mark Act and the Regulation (EU) 2023/2411,
4. in procedures under the Design Act.

(2) Notwithstanding Paragraph 1, it is not allowed to submit electronic documents that may contain an official secret (§ 93 of the Criminal Code).

(3) Formal requirements under substantive law remain unaffected.

§ 2

Submission via digital services

(1) Electronic documents can be submitted to the German Patent and Trade Mark Office via the digital services provided for this purpose by the German Patent and Trade Mark Office that are

1. available on the website of the German Patent and Trade Mark Office or
2. listed on the website of the German Patent and Trade Mark Office.

(2) Electronic documents can also be submitted by making these available in a database recognised for this purpose by the German Patent and Trade Mark Office, provided the applicant requests the retrieval from the database, specifying the required information. The German Patent and Trade Mark Office publishes the recognised databases on its website.

(3) The use of the digital services referred to in Paragraph 1 requires registration. Registration is carried out

1. by providing proof of identity via a user account pursuant to § 2(5) of the Online Access Act in a procedure pursuant to § 3(4) of the Online Access Act or

2. in another registration procedure offered by the German Patent and Trade Mark Office.

After successful registration, authentication for the submission of electronic documents is carried out using authentication methods recognised by the German Patent and Trade Mark Office. The German Patent and Trade Mark Office publishes information on its website about the registration procedures offered, the details thereof, and the recognised authentication methods.

(1) Electronic documents may also be submitted via digital services as referred to in Paragraph 1 without complying with the requirements of Paragraph 3:

1. in trade mark procedures
 - a) for applications,
 - b) for applications for international registration pursuant to Article 3 of the Protocol of 27 June 1989 to the Madrid Agreement Concerning the International Registration of Marks, adopted in Madrid on 27 June 1989 (Federal Law Gazette 1995 II p. 1016, 1017),
2. in design procedures,
 - a) for applications,
 - b) for applications for a determination or declaration of nullity.

The Federal Ministry of Justice and Consumer Protection may determine further procedural acts in which electronic documents may be submitted without complying with the requirements of Paragraph 3. The German Patent and Trade Mark Office publishes these procedural acts on its website.

(2) If, pursuant to Paragraph 1(2), digital services of a European or international organisation active in the field of industrial property protection are designated, the requirements for registration and authentication applicable to the use of these electronic systems shall apply exclusively to the submission of electronic documents via these digital services, notwithstanding Paragraphs 3 and 4.

§ 3

Submission during a hearing or oral proceedings

(1) During a hearing or oral proceedings, electronic documents can be submitted via a digital exchange platform provided for this purpose by the German Patent and Trade Mark Office and made accessible to the parties involved in the proceedings.

(2) Access to the digital exchange platform requires proof of identity from the parties involved in the proceedings.

§ 4

Submission on a data carrier

- (1) Electronic documents can also be submitted on a physical data carrier.

(2) The submission of a data carrier must be accompanied by an explanation as to who is responsible for the electronic documents stored on it. The declaration must be submitted as an original and be signed by the responsible person.

(3) The German Patent and Trade Mark Office publishes the permissible data carrier types and their formats on its website.

§ 5

Delivery of electronic documents

(1) The delivery of an electronic document may, with the consent of the party concerned, be effected by notification for data retrieval via the digital services provided or specified for this purpose by the German Patent and Trade Mark Office on its website in accordance with § 2(1). The party concerned must be informed of the legal consequences of delivery before granting their consent. § 2(3) applies accordingly to the retrieval of electronic documents. The person authorised to retrieve the data shall be notified of the option of retrieval no later than the day of the notification for retrieval.

(2) The electronic document is considered to have been delivered on the fourth day after the notification for retrieval. In case of doubt, the German Patent and Trademark Office must prove the date of retrieval for the presumption effect specified in Sentence 1 to take effect.

(3) § 5(5)(3), § 5(6 and 7), as well as § 7(2), of the Administrative Service Act do not apply to the delivery of electronic documents.

§ 6

Notifications of processing requirements

The German Patent and Trade Mark Office announces on its website:

1. the permissible file formats for and further technical requirements for the electronic documents submitted in accordance with §§ 2 to 4, including the supporting documents.
2. the details of how to apply a qualified electronic signature to the electronic document as well as
3. further information required for transmission or submission in accordance with §§ 2 to 4 in order to ensure the allocation and further processing of the electronic documents including the supporting documents.

§ 7

Submission in appeal procedures

For the submission of electronic documents in appeal procedures pursuant to § 73 of the Patent Act, § 18 of the Utility Model Act, §§ 66 and 133 of the Trade Mark Act, and § 23(4) of the Design Act, these must additionally be provided with a qualified electronic signature.

§ 8

Special schemes for the use of the digital service DPMAdirektPro

(1) § 2(3) does not apply to the submission of electronic documents via the digital service DPMAdirektPro.

(2) Electronic documents submitted via the digital service DPMAdirektPro must be provided with a qualified electronic signature.

(3) § 5(1)(3) does not apply to the delivery of electronic documents via the digital service DPMAdirektPro.

(4) To retrieve electronic documents via the digital service DPMAdirektPro, the authentication methods offered by the German Patent and Trade Mark Office must be used. The German Patent and Trade Mark Office publishes the authentication methods offered and the details thereof on its website.

Artikel 2

**Amendment to the Regulation on Electronic Legal Transactions
at the German Patent and Trade Mark Office**

The Ordinance on Electronic Legal Transactions with the German Patent and Trademark Office of 1 November 2013 (Federal Law Gazette, p. 3906), as last amended by Article 2 of the Regulation of 7 February 2022 (Federal Law Gazette I, p. 171), is amended as follows:

The following § 6 is inserted after § 5:

‘§ 6

Abrogation

‘This Ordinance shall be abrogated on 28 February 2026.’

Artikel 3

Entry into force

(1) Subject to Paragraph 2, this Ordinance shall enter into force on 1 March 2026.

(2) Article 2 shall enter into force on the day following its promulgation.

EU legal acts:

Regulation (EU) 2023/2411 of the European Parliament and of the Council of 18 October 2023 on the protection of geographical indications for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753 (OJ L 2023/2411, 27/10/2023)

Justification

A. General part

I. Purpose and necessity of the provisions

The German Patent and Trade Mark Office (DPMA) has been a pioneer in the digitisation of its registration and communication channels since its early years. It has been offering electronic submission options since 2003. Currently, the DPMAdirektPro submission and transmission software enables the submission of electronic documents with a qualified electronic signature. Furthermore, this system has offered the option of electronic document delivery from the DPMA to its customers since 2017. In addition, since 2013 certain documents for trade mark and design procedures can also be submitted without a signature via the DPMAdirektWeb service. Over 90 percent of all patent and design applications and over 85 percent of all trade mark applications are now submitted to the DPMA in electronic form. A significant portion comes from foreign customers.

Due to ongoing technological change, the DPMA's electronic communication channels need to be modernised. The currently applicable Ordinance on Electronic Legal Transactions with the German Patent and Trademark Office (ERVDPMAY), which dates in large part to 2013, does not provide an adequate basis for the necessary modernisations of digital communication channels. In order for the DPMA to continue offering its customers reliable and user-friendly digital services, the underlying legal provisions must be adapted to technological developments and modernised in a technology and future-oriented manner. This Draft Ordinance serves that purpose.

II. Main content of the Draft

The draft regulation creates the necessary legal basis to further expand and modernise the DPMA's digital communication channels. At the same time, it provides the legal basis for the continued operation of existing submission and delivery options until new digital services of the DPMA are developed and established.

For this purpose, key new provisions for the submission and delivery of electronic documents via digital services are created in § 2 and § 5. Instead of specifying concrete technologies or procedures in detail, deliberately technology-neutral and future-oriented provisions are created that, in view of rapid technological change, ensure compatibility with future innovations.

These provisions make it possible in particular to establish a web-based user portal in which customers can submit electronic documents, manage their intellectual property rights and retrieve electronic mail from the DPMA after registration. As a rule, no qualified electronic signature should be required to use this portal; instead, modern registration and authentication procedures should be used. An exception applies only to submissions in appeal procedures pursuant to § 7 and § 1(3). This aligns electronic legal transactions with the DPMA with developments at other European and international offices in the field of industrial property protection, where a qualified electronic signature is also dispensed with.

Specifically, a two-stage procedure is provided for the use of the portal (§ 2(3)), which takes into account both the security requirements and the user needs for easy usability of digital services:

Use of the user portal initially requires registration, which can be carried out in particular via the established user accounts according to the Online Access Act (OZG). This will make the existing infrastructure for electronic legal transactions in public administration usable in electronic legal transactions with the DPMA and will utilise synergies. In addition, due to the international customer base of the DPMA, other means of access to electronic legal transactions must also be offered: The DPMA also offers additional registration procedures for this purpose. A PIN letter procedure is currently planned. After successful registration, subsequent authentication during everyday use of the portal can be carried out using the authentication methods recognised by the DPMA. Two-factor authentication is currently planned as the authentication method. This addresses the user's need for easy accessibility and user-friendliness of digital services. After registration, it will also be possible to use an OZG user account as an authentication method. The DPMA will announce the registration procedures offered, the details thereof, and the recognised authentication methods. In view of the rapid pace of technological change, the specification of concrete technologies or procedures is deliberately avoided, and a flexible and technology-neutral framework is created that also takes into account future developments and innovations, for example with regard to resources that are also available to foreigners.

In addition to these modern digital services, the new rules of the regulation also cover the established services of the DPMA such as DPMAdirektPro and DPMAdirektWeb, which will continue to be operated until the technical implementation of the user portal. For the continued operation of the digital service DPMAdirektPro until the user portal is operational, the regulation contains transitional provisions in § 8.

In addition, the revision of the regulation will make the submission options at the DPMA via digital services of European or international offices in the field of industrial property protection more flexible and thus more future-oriented. These services will in future be covered by the technology-neutral general clause in § 2(1)(2). By setting standards that are open to technology and the future, special regulations can largely be eliminated and future developments can be implemented with minimal bureaucracy.

Furthermore, the submission of electronic documents via access to a database recognised by the DPMA is also made possible (§ 2(2)). This enables the DPMA to retrieve electronic priority documents via the WIPO Digital Access Service (WIPO DAS), thereby significantly simplifying the submission of priority documents.

The established option of submitting electronic documents on a physical data carrier (§ 4) will also be retained.

In addition, § 3 establishes a legal basis to allow electronic documents to be submitted during hearings and oral proceedings – whether via video conference or in person – which are immediately accessible to all parties involved in the proceedings.

Finally, the regulations on the delivery of electronic documents in § 5 are modernised and made more customer-friendly, in particular by regulating delivery by notification for retrieval and eliminating the requirement of a qualified electronically signed confirmation of receipt.

III. Executive footprint

Neither lobbyists nor commissioned third parties have made a significant contribution to the content of the Draft Ordinance.

IV. Alternatives

None.

V. Regulatory competence

The authority of the Federal Ministry of Justice and Consumer Protection to issue regulations derives from § 28(1)(1), § 34(6)(1), § 125a(3)(1), and § 127(1)(1)(2), of the Patent Act (PatG), § 4(4)(1), as well as from § 21(1) and § 29(1)(1), of the Utility Model Act (GebrMG), § 65(1)(1, 2, 7, 9 and 10), § 94(1)(4)(2), § 95a(3)(1), and § 138(1) of the Trade Mark Act (MarkenG), § 11(1) of the Semiconductor Protection Act (HalbSchG), § 23(3)(3), and § 23(4)(4), § 25(3)(1), and § 26(1)(1 and 2) of the Design Act (DesignG).

VI. Compatibility with European Union law and international treaties

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

VII. Regulatory consequences

1. Legal and administrative simplification

The new rules established in the Ordinance aim to simplify the law by creating a flexible legal framework that takes account of ongoing technological change by way of future and technology-oriented provisions, thus eliminating the need for special schemes and avoiding continual legal adjustments.

The new rules of the ERVDPMAV also contribute to reducing bureaucracy and improving the efficiency of procedures at the DPMA. In particular, synergies are utilised by linking to the existing structures of the OZG user accounts. The new rules also reduce expenditure, for example when submitting priority documents and during hearings and oral proceedings, or when serving electronic documents, by eliminating the need for confirmation of receipt.

2. Sustainability aspects

The Draft Ordinance is in line with the Federal Government's guiding principles for sustainable development as defined by the German Sustainability Strategy, which serves to implement the UN 2030 Agenda for Sustainable Development. The Draft specifically promotes Sustainable Development Goal 16, 'Peace, Justice and Strong Institutions,' with its requirement of the rule of law and access to justice for all in Subgoal 16.3 and the goal of building efficient, accountable and transparent institutions in Subgoal 16.6, by modernising electronic legal transactions with the DPMA.

3. Budgetary expenditure excluding compliance costs

The new rules under this Ordinance will result in expenditure for the Federal Government in Budget Section 07, Chapter 0719 'German Patent and Trade Mark Office'.

In 2027, one-time IT-related material costs of EUR 16 560 will be incurred for the procurement of software and licenses. From 2027 onwards, annual material costs for licenses will amount to approximately EUR 5 000.

The estimated personnel expenditure for the years 2025 to 2027 amounts to a total of EUR 1 134 000 (one-time expenditures). They encompass the start-up and project phases of implementing the new rules under the Ordinance.

In the 2025 fiscal year, the estimated personnel expenditure within the project phases of implementation amounts to EUR 66 000 (one-time expenditures) for the modification of IT systems, technical conception, training, knowledge management, external publications, including form creation, and the support and preparation of the adaptation of the specialist systems (0.2 established posts at pay grade A15 BBesG [Federal Civil Service Remuneration Act] [EUR 26 844], 0.2 establishment plan posts at pay grade A14 BBesG [EUR 23 460], 0.1 establishment plan posts at pay grade A11 BBesG [EUR 8 879], 0.1 establishment plan posts at pay grade A8 BBesG [EUR 6 575]).

In the 2026 financial year, the estimated personnel expenditure during the start-up and project phases of implementation amounts to EUR 534 000 (one-time expenditures) for the modification of IT systems, in particular for the implementation of modern registration and authentication procedures for digital services and for the implementation of WIPO DAS (1.6 establishment plan posts at pay grade A15 BBesG [EUR 214 750], 1.6 positions at pay grade A14 BBesG [EUR 187 683], 1.4 establishment plan posts at pay grade A11 BBesG [EUR 124 304] and 0.1 establishment plan posts at pay grade A8 BBesG [EUR 6 575]).

In the 2027 financial year, the estimated personnel expenditure during the project phases of implementation amounts to EUR 534 000 (one-time expenditure) for the modification of IT systems, in particular for the implementation of modern registration and authentication procedures for digital services and for the implementation of WIPO DAS (1.4 establishment plan posts at pay grade A15 BBesG [EUR 187 906], 1.4 establishment plan posts at pay grade A14 BBesG [EUR 164 223], 1.9 establishment plan posts at pay grade A11 BBesG [EUR 168 698] and 0.2 establishment plan posts at pay grade A8 BBesG [EUR 13 150]).

During the operational phase from the fiscal year 2027 onwards, an estimated annual personnel expenditure of EUR 80 000 is projected, particularly for the retrieval of priority documents (0.9 establishment plan posts at pay grade A11 BBesG).

This already takes into account expenditure-reducing effects from the elimination of additional claims for confirmations of receipt and the elimination of faxing in video hearings.

The additional material and personnel requirements at the federal level is to be financially and structurally balanced in Budget Section 07.

4. Compliance costs

4.1. Compliance cost for citizens

None.

4.2. Compliance cost for businesses

Participation in electronic legal transactions with the DPMA is optional for businesses and especially for small and medium-sized enterprises. The use of electronic legal transactions can save time and money for businesses and thus have a relieving effect. The new rules under the Ordinance create the basis for a modern, customer-friendly and, where possible, low-threshold exchange of digital content with the DPMA. For the vast majority of businesses, this does not entail any additional time required or additional expenditure; rather, the new rules aim to reduce these in the long term.

Initially, the existing systems of the DPMA will continue to be operated and only improved in specific areas, resulting in no changes, but only in specific, negligible relief for businesses.

Upon commissioning of the web-based user portal, the new rules stipulate as a new requirement for businesses the necessity of registration by means of a one-time proof of identity through the use of an existing account under the OZG (§ 2(3)(2)(1)), or in another registration procedure offered by the DPMA (§ 2(3)(2)(2)).

This affects all users of the DPMA, provided they use digital communication channels. In the area of intellectual property rights, trade marks and designs, this applies to 85 percent of applicants, and to 90 percent for patents and utility models. In 2024, a total of 54 980 registration records were recorded, in which each record represents one user. It can be assumed that businesses may have several of these data sets. However, this will be disregarded in the following, as a future increase in user numbers is also to be expected. Of the applicant data records, approximately 80 percent relate to trade mark and design intellectual property rights, and 20 percent to patents and utility models.

This results in the following total number of users of digital communication channels to be considered:

	Brands, designs	Patents, utility models	Total
Share of the total number of users (in %)	80	20	
Number of users	43 984	10 996	
Of these, users of digital communication channels (in %)	85	90	
Users to be considered	37 386	9 896	47 283
Of these, users of the signature-based submission option via the DPMAdirektPro software (in %)	33	100	
Number of users of the signature-based submission option via the DPMAdirektPro software	12 462	9 896	22 358

Registration requires a one-time investment of no more than 60 minutes per user.

Seq. No.	Article Draft Legislation; Standard (§§); Designation of the requirement	IP	Annual number of cases and unit	Annual expenditure per case (minutes * labour costs per hour (business sector) + material costs in EUR)	Annual compliance costs (in thousands of EUR) or 'negligible' (justification)	Unique case number and unit	One-time expenditure per case (minutes * labour costs per hour (business sector) + material costs in EUR)	Non-recurrent compliance cost (in thousands of EUR) or 'negligible' (justification)
2.1	Article 1 § 2(1 and 3); conversion to digital services with modern registration and authentication procedures					47 283 users	EUR 40.90 (1h * EUR 40.90 per hour [Sector: M at medium qualification level])	1 934
2.2	Article 1 § 2(2); Relief through the option of using WIPO DAS				negligible relief (minimal number of cases)			
2.3	Article 1 § 3; Relief through the option of submitting electronic documents during hearings and oral proceedings				negligible relief (minimal number of cases)			
2.4	Article 1 § 5; Relief through the elimination of the requirement of a confirmation of receipt				negligible relief (minimal number of cases)			
Total (in thousands of EUR)						1 934		
of these, information obligations (IP)								

The long-term relief for businesses associated with the new rules is estimated at around EUR 5 442 000 annually under the following assumptions:

- Extensive elimination of procurement costs for signature cards amounting to approximately EUR 2 515 000 (based on 22 358 users of the signature-based submission option via the DPMAdirektPro software, elimination of the signature requirement in 90 percent of cases (remaining cases with signature requirement), renewal or replacement of the signature card every 2 years and costs of approximately EUR 250 per case);
- Extensive elimination of the signature process amounting to approximately EUR 1 098 000 (based on 358 000 transactions per year requiring a signature, elimination of the signature requirement in 90 percent of cases, and an estimated time requirement of 5 minutes at EUR 40.90 per hour [Sector: M at medium qualification level]) as well as
- loss of software updates due to the shutdown of the DPMAdirektPro software amounting to EUR 1 829 000 (based on 22 358 users of the DPMAdirektPro software, approximately 12 updates per year and an estimated time requirement of 10 minutes at EUR 40.90 per hour [Sector: M at medium qualification level]).

4.3. Administrative compliance costs

The administration will incur one-time compliance costs of EUR 966 000 and negligible annual compliance costs.

Seq. No.	Article Draft Legislation; Standard (§§); Designation of the requirement	Federal Government / Federal State	Annual number of cases and unit	Annual expenditure per case (minutes * labour cost per hour depending on hierarchy level) + material costs in EUR)	Annual compliance costs (in thousands of EUR) or 'negligible' (justification)	Unique case number and unit	One-time expenditure per case (minutes * hourly wage costs (hierarchy level) + material costs in EUR)	Non-recurrent compliance cost (in thousands of EUR) or 'negligible' (justification)
3.1	Article 1 § 2(1 and 3); Structure of the modern registration and authentication procedure for digital services	Federal Government			negligible (minimal time requirement for ongoing maintenance and negligible material expenditure for licenses)	Adaptation of IT systems including technical support, processes, knowledge management, document and form management	EUR 583 994 (6 352 h * EUR 67.60 per hour [senior civil service]; 3 605 h * EUR 40.40 per hour [upper civil service]; 265 h * EUR 33.80 per hour [middle civil service])	601
						Material expenditure for the procurement of software and licenses	EUR 16 560	
3.2	Article 1 § 2(2); Implementation WIPO DAS as requesting office	Federal Government			negligible (minimal number of cases)	Adaptation of IT systems including technical support, processes, knowledge management, document and form management	224 812 (2 917 h * EUR 67.60 per hour [senior civil service]; 605.5 h * EUR 40.40 per hour [upper civil service]; 93.5 h * EUR 33.80 per hour [middle civil service])	224
3.3	Article 1 § 3; Option of submitting documents during hearings	Federal Government			negligible (minimal material expenditure for licenses)			negligible (minimal time requirement and material expenditure)

Seq. No.	Article Draft Legislation; Standard (§§); Designation of the requirement	Federal Government / Federal State	Annual number of cases and unit	Annual expenditure per case (minutes * labour cost per hour depending on hierarchy level) + material costs in EUR)	Annual compliance costs (in thousands of EUR) or 'negligible' (justification)	Unique case number and unit	One-time expenditure per case (minutes * hourly wage costs (hierarchy level) + material costs in EUR)	Non-recurrent compliance cost (in thousands of EUR) or 'negligible' (justification)
	and oral proceedings				negligible relief (minimal number of cases and minimal time requirement and material expenditure)			
3.4	Article 1 § 5; Presumption of delivery; obtaining consent	Federal Government				Adaptation of IT systems including technical support, processes, knowledge management, document and form management	EUR 104 622 (1011 h * EUR 67.60 per hour [senior civil service]; 775 h * EUR 40.40 per hour [upper civil service]; 147 h * EUR 33.80 per hour [middle civil service])	105
			Elimination of additional claims for confirmations of receipt and substitute delivery		negligible (minimal number of cases)			
3.5	Article 1 § 2 (1, 2, 3 and 4), § 4(3), § 6, § 8(4); notifications on the DPMA website	Federal Government						negligible (minimal time requirement)
3.6	Article 1 § 7; Qualified electronic	Federal Government						negligible (minimal time requirement)

Seq. No.	Article Draft Legislation; Standard (§§); Designation of the requirement	Federal Government / Federal State	Annual number of cases and unit	Annual expenditure per case (minutes * labour cost per hour depending on hierarchy level) + material costs in EUR)	Annual compliance costs (in thousands of EUR) or 'negligible' (justification)	Unique case number and unit	One-time expenditure per case (minutes * hourly wage costs (hierarchy level) + material costs in EUR)	Non-recurrent compliance cost (in thousands of EUR) or 'negligible' (justification)
	signature in appeal procedures							requirement)
	Total (in thousands of EUR)							930
	of which federal government							930
	of which federal states (including municipalities)							

5. Other costs

None.

6. Further regulatory consequences

The amendment to the Ordinance has no impact on equality, consumer policy, or demographics.

VIII. Time limit; evaluation

The provisions adopted will not be subject to a time limit. There is also no provision for an evaluation of the changes, as the thresholds of the federal government's evaluation concept are not met.

B. Specific part

Re **Article 1** (Ordinance on Electronic Legal Transactions with the German Patent and Trademark Office)

Re **§ 1** (Submission of electronic documents)

Re **Paragraph 1**

This provision defines the scope of the Ordinance. This includes procedures under the Patent, Utility Model, Trade Mark and Design Act, as well as procedures under the Act on

International Patent Conventions and under Regulation (EU) 2023/2411. Procedures under the Semiconductor Protection Act are still not covered.

Re Paragraph 2

The provision clarifies that, contrary to Paragraph 1, it is not allowed to submit electronic documents which may contain an official secret (§ 93 of the Criminal Code). Instead, such applications, as well as any associated correspondence, must always be submitted in paper form.

The provision serves to protect official secrets and to raise awareness among applicants.

The wording of the standard is based on the existing provision in § 34(2)(2) of the Patent Act, according to which an application that may contain a official secret (§ 93 of the Criminal Code) may not be submitted with a patent information centre. Just as with § 34(2)(2) of the Patent Act, § 1(2) is a procedural rule for the protection of official secrets, the violation of which does not result in the date of filing being lost.

Re Paragraph 3

The provision clarifies that substantive legal formal requirements are not affected by the Ordinance. Declarations of intent requiring receipt, and which must be submitted to the DPMA (German Patent and Trade Mark Office) and for which written form is legally required, are subject to the provisions of §§ 126 et seq. of the German Civil Code (BGB). They can only be effectively submitted in electronic form if the issuer of the declaration adds their name and provides the electronic document with a qualified electronic signature (see § 126(3) and § 126a of the German Civil Code). This applies in particular to the declaration of waiver of a patent or utility model pursuant to § 20(1)(1) PatG and § 23(3) (1) GebrMG.

Re § 2 (Submission via digital services)

§ 2 ERVDPMAV will henceforth contain the key provisions on the possibilities of submitting electronic documents to the DPMA and the formal requirements for doing so. In this context, the regulatory framework is designed to be flexible and innovation-friendly in light of ongoing technological change.

Paragraph 1 regulates, in a technology-neutral and future-oriented manner, the submission of electronic documents via 'digital services' provided or designated by the DPMA. The provision is supplemented by Paragraph 2, which allows for making the document available in a database as an additional submission method. Additional submission methods during hearings and oral proceedings, as well as on a physical data carrier, are regulated separately in § 3 and § 4 due to the special nature of these submission methods.

In addition, Paragraphs 3 to 5 contain the formal requirements for the submission of electronic documents via the digital services regulated in Paragraph 1.

Re Paragraph 1

Re Sentence 1

The electronic submission methods available for submitting electronic documents to the DPMA will in future be grouped under the technology-neutral term 'digital services'. This includes software applications, including apps, as well as web-based offerings. The term is open to future technological developments.

The provision allows the DPMA to flexibly adapt to new technical developments and to the needs of its customers. A digital service can be used for submissions as soon as and as long as it is made available or designated for this purpose on the DPMA website. At the same time, transparency and user-friendliness are increased. Customers can either use the digital services provided directly on the DPMA website (Point 1) or they can find information there about the digital services that can be used elsewhere (Point 2).

However, the term 'digital services' is not to be understood in the sense of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on an internal market for digital services and amending Directive 2000/31/EC (Digital Services Act).

Re Point 1

Point 1 covers those digital services that the DPMA provides on its website.

This includes in particular the web-based user portal planned by the DPMA, in which customers can submit electronic documents, manage their intellectual property rights and retrieve electronic mail from the DPMA after registration. Once the technical work for this is completed, the DPMA will make this user portal available as a digital service on its website.

The technology-neutral concept of digital services also encompasses existing systems: This includes submissions via the DPMAdirektPro software currently available for download from the DPMA website, as well as submissions using the online forms that can be found on this website (DPMAdirektWeb).

Re Point 2

Point 2 covers those digital services that the DPMA does not provide on its own website, but that names on its website. These may be services provided by third parties or by the DPMA.

Point 2 primarily enables the use of digital services from other organisations in the field of industrial property protection for submissions to the DPMA. The technology-neutral and future-oriented design of the provision largely eliminates the need for detailed special schemes and allows future developments to be taken into account without additional legislative effort.

Point 2 currently covers in particular the electronic submission system of the World Intellectual Property Organization (WIPO) for PCT applications (ePCT). The special scheme contained in § 3(5) of the current version of the ERVDPMAG for the submission of international applications pursuant to Article III of the Law on International Patent Conventions with the DPMA using the electronic submission systems of the WIPO intended for these applications can therefore be omitted.

The digital GIportal on the website of the European Union Intellectual Property Office (EUIPO) is also covered by Point 2. The GIportal will be available from 1 December 2025 for applications for geographical indications for craft and industrial products in the EU under Regulation (EU) 2023/2411 and can be used for the electronic submission of applications to the national offices. The special scheme in § 2a of the Ordinance, which is to enter into effect on 1 December 2025, can therefore also be omitted.

The future-oriented and technology-neutral design of Point 2 also covers digital services that will be operated by the DPMA or on its behalf in the future, but cannot be used or accessed via its website. In the future, for example, it is conceivable that an application for smartphones could be downloaded via third-party digital distribution platforms, such as app stores.

Re Paragraph 2

The provision allows applicants to submit electronic documents by making them accessible in a database recognised by the DPMA. This is a special provision relating to Paragraph 1.

A corresponding request for retrieval is required. The applicant's request must be submitted via the generally available channels (in writing or via the digital services referred to in Paragraph 1) and must contain the information required for retrieval depending on the database, such as access data ('access codes').

The databases recognised by the DPMA are published on its website. This also covers the question of when such a database is recognised and, as the case may be, no longer recognised.

In particular, this will enable the DPMA to participate in the WIPO DAS digital service for the electronic exchange of priority documents as a requesting office. This allows the 'transcript of the earlier application' to be submitted for the purpose of claiming a foreign priority (§ 41 PatG, § 6(2) GebrMG in conjunction with § 41 PatG, § 34 MarkenG, and § 14 DesignG) by making it available in the WIPO DAS database.

However, the provision is not limited to the outlined use case of WIPO DAS, but also covers other scenarios of submission using databases, such as might be possible in the future.

Re Paragraph 3

Paragraph 3 governs the formal requirements for the submission of electronic documents via the digital services pursuant to Paragraph 1, in particular via the web-based user portal planned by the DPMA.

The ongoing digitalisation requires a secure yet user-friendly procedure for accessing digital services, which maintains an appropriate level of security while also meeting the users' need for easy access to and usability of digital services. Against this background, the provision provides for a tiered procedure: First, registration for the digital service is required, which can be carried out in particular via the already established OZG user accounts. After successful registration, it should be possible to use lower-threshold authentication methods for everyday use of the digital service – in particular two-factor authentication. This improves user-friendliness without a significantly lowering of the level of protection.

The technical details of further registration procedures and authentication methods will be notified by the DPMA on its website. This creates a flexible and technology-neutral framework that also takes future developments and innovations into account.

For the modern digital services of the DPMA, the requirement for a qualified electronic signature will therefore generally no longer apply. An exception applies only to submissions in appeal procedures pursuant to § 7 and § 1(3).

Paragraph 3 does not apply to submissions via the digital service DPMAdirektPro, which will continue to operate until the user portal is operational. The special provisions under § 8(1 and 2), apply here, which, as a transitional provision, continue to require a qualified electronic signature.

Re Sentence 1

The use of the digital services pursuant to Paragraph 1 requires registration by means of proof of identity in a procedure via an OZG user account or in another registration procedure offered by the DPMA.

Re Sentence 2

Re Point 1

Registration can be completed with proof of identity via an OZG user account. In this way, the DPMA's digital services build on the existing and widely used infrastructure of the OZG and utilise cross-cutting solutions. The OZG user account does not serve as a mailbox for sending electronic documents, but merely as an access key to the DPMA user portal.

For identity verification in the citizen account (currently via the BundID), customers can use all identification methods mentioned in § 3(4)(1)(a) and (b) OZG. These are currently the ELSTER software certificate pursuant to § 87a(6) of the German Fiscal Code (AO), the online identity card pursuant to § 18 of the German Identity Card Act, the eID card pursuant to § 12 of the German eID Card Act, the electronic residence permit pursuant to § 78(5) of the German Residence Act and other electronic identification means that have been recognised with a level of security of 'substantial' or 'high' as defined by § 8(2)(b) and (c) of Regulation (EU) No 910/2014 pursuant to Article 6 of Regulation (EU) No 910/2014, i.e. notified eID cards or eID systems of other Member States of the European Union.

For identity verification in the unified organisational account, the identification means mentioned in § 3(4)(2) OZG can be used. These are currently the ELSTER software certificate pursuant to § 87a(6) AO and other electronic identification means which have been recognised with at least the security level 'substantial' as defined by Article 8(2)(b) of Regulation (EU) 910/2014 pursuant to Article 6 of Regulation (EU) No 910/2014.

Through the dynamic reference to the identity documents mentioned in the OZG, the customers of the DPMA benefit from a possible future expansion of the identity documents mentioned therein, without requiring any further amendment to the ERVDPMAV.

Re Point 2

As an alternative to registration via identity verification using an OZG user account, another registration procedure recognised by the DPMA can also be used.

In this case, registration takes place in a separate procedure before the DPMA, independent of OZG user accounts. This provision takes into account that numerous DPMA customers do not have access to OZG user accounts since their residence or registered office is outside Germany or the European Union. In 2024, the number of patent applications from abroad was approximately 34 percent. The majority of these come from outside the European Union. The separate registration procedure enables these users to access electronic legal transactions with the DPMA. It is available to all customers of the DPMA.

Re Sentence 3

Paragraph 3 enables low-threshold authentication for everyday use of the digital service after initial registration using authentication methods recognised by the DPMA.

Re Sentence 4

The DPMA publishes on its website the registration procedures offered pursuant to Sentence 2 Point 2 and the details thereof, as well as the recognised authentication methods pursuant to Sentence 3. This flexible provision takes into account the fact that the technical market in the field of electronic authentication is developing very rapidly. A specific mention of the other usable registration methods and authentication methods in the regulation would mean that technical developments could not be quickly implemented, even though this would be advisable in terms of technical security or customer friendliness. Therefore, a flexible and technology-neutral framework is deliberately created here as well, which also takes account of future developments and innovations.

In the technical implementation, the DPMA will take account of the state of the art, in particular the relevant technical guidelines of the Federal Office for Information Security, and consider the level of trust of the online services achievable with the authentication means.

An additional registration method, a PIN letter procedure, is planned for the web-based user portal.

Two-factor authentication should be accepted as the authentication method for the web-based user portal. This addresses the user's need for easy access to and usability of digital services. In addition, the existing structure of OZG user accounts should also be used here and recognised as a means of authentication.

Re Paragraph 4

Re Sentence 1

Paragraph 4 provides for exceptions to the requirements of Paragraph 3 for certain procedural acts. These are the procedural acts for which, according to § 2(1)(1) and (2) of the current version of the ERVDPMAV, a signature-free submission is currently possible. For the submission of electronic documents for these procedural acts (for example, trade mark and design applications), customers will continue to have a very low-threshold submission option available.

Within the framework of the planned user portal, submissions should be possible in these cases without registration via a guest access.

However, submissions via the established digital service DPMAdirektWeb are also recorded; for the time being this service will continue to operate and will continue to allow low-threshold submissions without registration or qualified electronic signature. In practice, for the time being there will be no change to the current situation regarding the use of DPMAdirektWeb.

The signature-free submission option for international applications in procedures under Article III of the Law on International Patent Conventions, previously mentioned in § 2(1)(3) ERVDPMAV, falls under the new Paragraph 5. Since these applications are submitted via WIPO's digital services, only the requirements for the use of these services apply. The special scheme in § 2(1)(3) ERVDPMAV can be omitted.

Re Sentence 2

Sentence 2 corresponds to the existing provision in § 2(2) of the current version of the ERVDPMAV. The provision, which gives the Federal Ministry of Justice and Consumer Protection the option to determine further procedural acts in which a low-threshold submission option exists, is simply being adapted to the altered system and terminology.

Re Paragraph 5

Insofar as § 2(1)(2) provides for the option of submission via external digital services of international or European organisations in the field of industrial property protection, the requirements of this service apply due to the technical and organisational nature of the matter.

The proposed standard partially continues the regulatory content of the currently applicable § 3(4 and 5) of the ERVDPMAV, according to which applications could also be submitted using the respective modules of the electronic application system of the European Patent Office (EPO) and the WIPO.

The provision will be adapted to the structure of the new version and extended to all European or international organisations active in the field of industrial property protection, so that the EUIPO is also covered. Furthermore, the proposed new rules are open to additional areas of cooperation compared to the applicable provisions.

Re § 3 (Submission during a hearing or oral proceedings)

Re Paragraph 1

This Paragraph provides the legal basis for the submission of electronic documents during hearings and oral proceedings. This particularly facilitates the submission of electronic documents during hearings and oral proceedings, which are conducted as video hearings in accordance with § 128a of the Code of Civil Procedure (ZPO) in conjunction with § 46(1)(2) of the Patent Act (PatG), § 17(2)(6) of the Utility Model Act (GebrMG), § 60(1)(2) of the Trade Mark Act (MarkenG), and § 34a(3)(4) of the Design Act (DesignG). During the video hearings, the parties to the proceedings can exchange electronic documents via a digital exchange platform ('digital mailbox') provided by the DPMA. The digital exchange platform can also be used in face-to-face negotiations if a party to the proceedings wishes to submit documents electronically.

The provision reduces the need to use fax machines for submissions during hearings and oral proceedings. This avoids media disruptions and can speed up hearings and oral proceedings.

The digital exchange platform is only accessible to the parties involved during the hearing or oral proceedings and represents the sole electronic submission method in this context.

Only electronic documents related to the hearing or oral proceedings may be submitted via the exchange platform. The exchange platform is only 'provided for this purpose'. The submission of other documents, for example for a different procedure, is not permitted.

The digital exchange platform also allows documents to be made accessible to the other parties involved in the proceedings, particularly in video hearings. This allows the adjudicating body to transmit these documents informally and electronically to the other parties to the proceedings in accordance with § 21(2)(2) of the DPMA Regulation (DPMARV).

Re Paragraph 2

Access to the digital exchange platform is restricted. Participants must prove their identity to access the digital exchange platform.

In a video hearing or video trial, proof of identity – as in a face-to-face hearing – is always provided by all parties involved in the proceedings at the beginning of the hearing or trial. This applies regardless of whether an electronic document is to be submitted during the hearing or trial. This proof of identity does not necessarily have to be a proof of identity as

defined by the OZG (Online Access Act). Rather, proof can also be provided in a manner similar to personal attendance, for example by having the person presiding verify an identity card, patent attorney ID or another official identification document.

The digital exchange platform is also a 'digital service'. However, it is only accessible in a special situation, only certain electronic documents can be submitted via it, and access and access restrictions are regulated completely differently than in § 2. Therefore, the provision is contained in a separate standard.

Re § 4 (Submission on a data carrier)

Re Paragraph 1

Paragraph 1 is based on the current version of § 3(2) ERVDPMAS. Submitting electronic data on a physical data carrier (for example, a DVD) is still possible. The DPMA sometimes needs to receive large amounts of data (for example, sequence protocols for patent applications).

Re Paragraph 2

The submission of a data carrier must be accompanied by an explanation as to who is responsible for the electronic documents stored on it. This declaration must be submitted in its original form. In this respect, § 10(1) DPMAS applies, according to which the declaration must be signed by the person responsible for the content.

An electronic signature of the files stored on the data carrier is not required if there is sufficient reference to the attached signed physical declaration. If, for example, a signed application form is included with the data carrier and the data carrier contains parts of the application or supporting documents to the application such as a trade mark representation, this requirement is usually met. However, the declaration can also be made in the form of a signed cover letter accompanying the data carrier, from which the person responsible for the content of the data carrier can be identified.

The provision takes into account the dual nature of data carrier submissions: Submitting electronic documents on a data carrier is considered a physical submission of non-physical documents.

The ability to identify the person responsible for the content of the data carrier even before the data carrier is read also protects the DPMA's interest in the security of its information technology systems and prevents misuse.

Re Paragraph 3

The DPMA publishes the permissible data carrier types and their formats on its website. Paragraph 3 is based on the current version of § 3(2) ERVDPMAS. The addition of the word 'their' after 'data carrier' is inserted to clarify that it refers to the formatting of the data carrier. With regard to the requirements for the files stored on the data carrier, § 6 applies, and with regard to the permissible file formats, in particular § 6(1).

Re § 5 (Delivery of electronic documents)

The current version of the ERVDPMAS already contains a provision in § 5 regarding the delivery of electronic documents in exchange for confirmation of receipt. Since 2017, customers have been able to communicate with the DPMA in both directions without media disruption, provided they have explicitly requested this from the DPMA beforehand. From a technical point of view, this already constitutes a notification for retrieval, which takes place in the digital service DPMAdirektPro. According to § 5(4) ERVDPMAS in its current version, delivery is currently made in exchange for confirmation of receipt. The

confirmation of receipt must be accompanied by a specific qualified electronic signature when returned electronically.

§ 5 is now to be linguistically and systematically adapted to the norms of other laws that also regulate the retrieval of electronic documents (for example, § 122a AO, § 9 OZG). Furthermore, the requirement for a confirmation of receipt will be eliminated, which will simplify the process for both the DPMA and its customers.

This lays the foundation for the delivery via a web-based user portal of the DPMA. The new rules also cover delivery via the established service DPMAdirektPro, which will continue to operate until a user portal is technically implemented. § 8 contains supplementary special schemes for this continued operation.

Re Paragraph 1

Re Sentence 1

§ 5(1)(1) stipulates that electronic documents can be served by notification for retrieval.

Electronic delivery is carried out via digital services provided and specified by the DPMA on its website. Once the technical work for the DPMA's central, web-based user portal is completed, the DPMA will make this user portal available as a digital service on its website.

The technology-neutral concept of digital services also encompasses existing systems: For the time being, such delivery by notification for retrieval will continue to take place via an electronic mailbox in the digital service DPMAdirektPro – however, without the requirement of confirmation of receipt.

The provision is optional. At the discretion of the competent authority, other forms of delivery may also be chosen if notification for retrieval is impractical.

Re Sentence 2

This form of the delivery requires the recipient's cooperation for actual knowledge to be obtained. Therefore, according to Sentence 2, consent is required. Consent can be withdrawn.

The party concerned may be represented by an authorised representative. In this case, the notification for retrieval is made by the authorised representative.

Re Sentence 3

Sentence 3 stipulates that the same requirements apply to the retrieval of electronic documents as to the submission of electronic documents. Here too, registration and subsequent authentication are required to use the digital service.

According to § 8(3), these requirements do not apply to the continued operation of the digital service DPMAdirektPro. A separate authentication procedure according to § 8(4) still applies for retrieval there.

Re Sentence 4

The person authorised to retrieve the data shall be notified of the option of retrieval no later than the day of the notification for retrieval. The notice on the notification for retrieval has an advisory function.

Re Paragraph 2

According to Paragraph 2(1), the electronic document is deemed served on the fourth day after notification for retrieval. Delivery is deemed to have taken place.

This is linked to the act of disposal in relation to the electronic document. The notification and its timing are documented and can be verified. However, linking the presumption of access to notification that the document has been made available for retrieval does not offer comparable legal clarity. Because the DPMA could prove that the notification was sent, but not that it was received.

By giving their consent, the consenting person assumes the obligation to regularly check the mailbox – comparable to their own physical mailbox. This justifies the fact that, with regard to the electronic mailbox in a digital service of the DPMA, it must be treated in a manner comparable to that of a physical mailbox.

Due to the presumption of delivery, the need for confirmation of receipt, as provided for in § 5(3 and 4) of the applicable ERVDPMAV, is eliminated. Until now, it was necessary to confirm every receipt with confirmation of receipt. This had to be electronically signed with a qualified signature and submitted via DPMAdirektPro. For the customers of the DPMA, the new rules therefore result in a simplified practice and a time saving, which can already be implemented when using DPMAdirektPro. The elimination of the confirmation of receipt also represents a procedural simplification for the DPMA: Previously, a failure to acknowledge receipt triggered a substitute delivery by post. This will no longer be the case in the future. This provision will thus contribute to reducing bureaucracy and easing the burden both on customers and on the DPMA.

Re Paragraph 3

The provision already contained in § 5(5) ERVDPMAV concerning inapplicable provisions of the Administrative Service Act is to be supplemented.

The new provisions in § 5(1 and 2) contain special schemes regarding delivery by notification for retrieval and the presumption of delivery. The provisions thus contain special schemes regarding the transmission methods, the form and proof of electronic delivery (§ 127(1)(5) PatG, § 21(1) GebrMG, § 94(1)(4), MarkenG, § 23(3)(3), and § 24(4) DesignG). § 5(3) therefore clarifies that § 5(5)(3), § 5(6 and 7) of the Administrative Service Act (VwZG), which regulates delivery by electronic transmission and proof of delivery by confirmation of receipt, does not apply. The same applies – as before according to § 5(5) of the current version of the ERVDPMAV – to § 7(2) VwZG.

Re § 6 (Notification of processing requirements)

In order to make electronic legal transactions future-oriented and technology-neutral, certain technical details are not directly provided for in the proposed Draft. These aspects are subject to continuous development. According to § 6, this information will be published by the DPMA on its website. Point 1 corresponds to § 4(4) of the applicable ERVDPMAV. Point 2 corresponds to the provision in § 5(1)(5) ERVV and concerns the cases of § 1(3), § 7, and § 8(2), in which a qualified electronic signature is still required. Point 3 corresponds to § 4(5) of the applicable ERVDPMAV. The provisions address aspects that are relevant regardless of the submission method. Otherwise, provisions on disclosure are contained in the substantive standards (see § 2(2)(2), § 2(3)(4), § 2(4)(2), § 4(3) and § 8(4)(2)).

Re § 7 (Submission in appeal procedures)

As a rule, a qualified electronic signature is no longer required to use the digital services. § 7 provides an exception to this for the submission of electronic documents to the DPMA

in appeal procedures. It should be noted that complaints must be submitted with the DPMA and submitted to the Federal Patent Court within one month. As a result, the appeal procedure is a judicial procedure before the Federal Patent Court, which is merely initiated by filing a complaint with the DPMA. In order to avoid falling short of the requirements for submitting electronic documents to the Federal Patent Court in these procedures pursuant to § 99(1) PatG, § 20 GebrMG, § 82(1) MarkenG, and § 24(4)(4) DesignG in conjunction with § 130a ZPO, a signature requirement will continue to be standardised for appeal procedures.

§ 7 thus adds further special provisions that still require a qualified electronic signature: This applies to the cases of § 1(3), in which, due to a substantive legal requirement of written form pursuant to § 126(3) and § 126a of the Civil Code (BGB), a declaration in electronic form can only be effectively submitted if the issuer of the declaration adds their name and provides the electronic document with a qualified electronic signature (see in particular cases of § 20(1)(1) of the Patent Act (PatG), and § 23(3)(1) of the Utility Model Act (GebrMG)). In addition, the transitional provision in § 8(2) also requires a qualified electronic signature for the submission of electronic documents during the continued operation of the digital service DPMAdirektPro.

No further special schemes are required in appeal procedures. Regarding notifications of processing requirements pursuant to § 6, the DPMA also takes into account special concerns in appeal procedures.

Re § 8 (Special schemes for the use of the digital service DPMAdirektPro)

Until the web-based user portal is operational, the established digital service DPMAdirektPro will continue to be operated and improved in specific areas. For this continued operation, § 8 sets out special provisions for the establishment and delivery of electronic documents via this digital service.

Components of the digital service DPMAdirektPro are the access and transmission software, which the DPMA offers for download on its website, and the transmission channels that the DPMA provides for transmission to the DPMA. DPMAdirektPro also enables the delivery of electronic documents from the DPMA to the users.

These transitional provisions shall remain in effect as long as DPMAdirektPro is made available as a digital service pursuant to § 2(1)(1) on the DPMA website. The digital service DPMAdirektPro will no longer be available as soon as the DPMA no longer provides the software or the transmission method on its website, regardless of whether the customer still has the software.

The digital service DPMAdirektPro will continue to operate largely unchanged for the time being and will only be improved in specific areas with regard to the elimination of the confirmation of receipt for the delivery of electronic documents. Since certain provisions are not suitable for the submission and delivery of electronic documents via DPMAdirektPro in its existing form, § 8 contains exceptions to the requirements for digital services provided for in § 2 and § 5.

Re Paragraph 1

The two-stage registration and authentication procedure for the use of digital services should not apply to the submission of electronic documents via the digital service DPMAdirektPro. Paragraph 1 therefore stipulates that § 2(3) does not apply to the submission of electronic documents via the digital service DPMAdirektPro.

Re Paragraph 2

Instead, electronic documents submitted via the digital service DPMAdirektPro must still be provided with a qualified electronic signature. Paragraph 2 corresponds to § 3(3)(1)(1) of the applicable ERVDPMAY.

Only qualified electronic signatures can be used in connection with DPMAdirektPro. The option of using an advanced electronic signature issued by an international organisation active in the field of industrial property protection, as contained in § 3(3)(1)(2) of the applicable ERVDPMAY, referred to the usability of EPA smartcards. Since the EPO no longer issues EPO smartcards and existing cards could only be used until 31 December 2024, the provision will not be adopted.

Re Paragraph 3

The two-stage registration and authentication procedure for the use of digital services should also not be applicable to the delivery of electronic documents via the digital service DPMAdirektPro. Paragraph 3 therefore stipulates that § 5(1)(3) in conjunction with § 2(3) does not apply to the delivery of electronic documents via the digital service DPMAdirektPro.

Re Paragraph 4

Instead, retrieving electronic documents via the digital service DPMAdirektPro still requires authentication using the authentication methods offered by the DPMA for this purpose.

The DPMA publishes the authentication methods offered and the details thereof on its website.

DPMA customers use an authentication procedure established since 2017 for retrieval. The authorised person creates a software certificate using DPMAdirektPro and applies for registration for electronic document receipt. Using a PIN, which the authorised person receives by mail at the delivery address registered during registration, they can confirm their application and complete the registration for electronic document receipt. The software certificate can now be used as an authentication method for retrieving electronic documents.

Re Article 2 (abrogation)

Article 2 regulates the abrogation of the currently applicable version of the ERVDPMAY on the date of entry into force of the new version of the ERVDPMAY.

Re Article 3 (entry into force)

The DPMA requires lead time for technical changes and for preparing the delivery by notification for retrieval, in particular for obtaining the necessary consents.

The proposed revision of the ERVDPMAY is therefore scheduled to come into force on 1 March 2026.