

# **Draft Act**

## **of the Federal Government**

### **Draft Act on the expansion of online notarial procedures in company and registry law, the digitalisation of certificates of good conduct, and the extension of the application deadline for soldiers seeking compensation for discrimination under public service law**

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

Notarial acts and notarisations may be carried out by means of video communication for certain measures under company law (online notarial procedures). Online notarisations are permitted for all applications for registration in the commercial register, the register of cooperative societies, the companies register, the partnership register and the register of associations, and the companies register. Declarations of intent in the context of the formation of limited liability companies, including certain in-kind formations and powers of incorporation, and decisions taken unanimously to amend the articles of association of limited liability companies (resolutions amending the articles of association), including capital measures (to increase or reduce the share capital), may be recorded by video communication.

On the basis of an evaluation of the online notarial procedures, an extension of the online notarial procedures to other objects of company law subject to notarisation seems appropriate, insofar as these correspond, in terms of their structure, to measures that are particularly suitable for online procedures (formation of a limited liability company, register applications).

It also introduces the legal basis for the digital certificate of good conduct for private purposes. To this end, it is proposed to create a new § 30d in the Act on the Central Criminal Register and the Educative Measures Register (Bundeszentralregistergesetz, BZRG). In addition, legal changes as well as further adjustments, in particular in the area of witness protection, are to be made for both the Central Criminal Register [Bundeszentralregister] and the Central Trade and Industry Register [Gewerbezentralregister].

Following the Act on the rehabilitation of soldiers who were discriminated against under service regulations because of consensual homosexual acts, because of their homosexual orientation or because of their gender identity (SoldRehaHomG), which came into force on 23 July 2021, numerous former soldiers have been rehabilitated. Pursuant to § 3(3) of the SoldRehaHomG, the statutory deadline for applying for compensation is 23 July 2026 – five years after the entry into force of the act. As applications are still being received sporadically, the application deadline is to be extended by law for a further five years, in line with the provisions of the Criminal Rehabilitation Act.

This Draft Act is set against the backdrop of the risk that the goals of the United Nations General Assembly resolution of 25 September 2015, 'Transforming our World: the UN 2030 Agenda for Sustainable Development', will not be achieved in time. The Draft Act is intended to contribute in particular to the achievement of Sustainable Development Goal 10 (reduced inequalities) and Sustainable Development Goal 16 (peace, justice and strong institutions).

## **B. Solution**

The admissibility of online notarial procedures is being extended to include the following measures, which will greatly simplify legal and business transactions, as these procedures can now also be carried out online without the need for an appointment with a notary:

- Duty of registration in the Foundation Register;
- Formation of public limited liability companies and limited partnerships;
- Decisions made by founders on the appointment of the first supervisory board and the registered auditor for the first full and short financial year;
- Powers of attorney for registration in the commercial, company and partnership registers;
- Powers of attorney for voting in shareholders' meetings of limited liability companies;
- Powers of attorney to issue a declaration of acquisition of a share certificate in a limited liability company.

A certificate of good conduct is a document certifying whether a person has a criminal record or not. Until now, this has been printed exclusively on special safety paper and sent to citizens by post. In order to offer the proven and established certificate of good conduct in a timely, user-friendly but also safe format, the digital certificate of good conduct is now being introduced. This is issued as a PDF document and then sent electronically to the applicant quickly and without media discontinuity. As isolated applications for rehabilitation and compensation are still being received, the application deadline in § 3(3) sentence 1 of the SoldRehaHomG is to be extended by law for a further five years, in line with the provisions of the Criminal Rehabilitation Act.

## **C. Alternatives**

None.

## **D. Budgetary expenditure without compliance expenditure**

In connection with the introduction of the digital certificate of good conduct, the Federal Office of Justice [Bundesamt für Justiz – BfJ] will incur total additional expenditure of around EUR 2 420 000 per year for the day-to-day operation of the IT infrastructure. In addition, it is assumed that in future, around 200,000 additional applications per year will no longer be submitted to residents' registration offices but to the Federal Office of Justice, resulting in additional annual revenue of around EUR 1 040 000 for the Federal Office of Justice.

The additional material and staffing requirements will be compensated for in individual plan 07 in terms of funds and jobs.

An average of approximately five applications per year are expected under the SoldRehaHomG, meaning that budget expenditure of EUR 15 000 is to be anticipated in this regard.

## **E. Compliance expenditure**

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

The annual compliance costs for citizens is reduced by around 6 700 hours and by EUR 500 000. This saving constitutes an 'out' as defined by the Federal Government's 'one in, one out' rule.

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

For businesses, this law results in a saving of around EUR 440 000 in annual compliance costs. This saving constitutes an 'out' within the meaning of the Federal Government's 'one in, one out' rule

Administrative costs under this heading arising from information obligations

Every year, bureaucratic costs arising from information requirements will be reduced by around EUR 440 000.

### **E.3 Compliance expenditure for government administrations**

The annual compliance costs for the administration (federal government, Federal Office of Justice) amount to around EUR 1.7 million.

## **F. Additional costs**

None.

## **Draft Act of the Federal Government**

**Draft Act on the expansion of online notarial procedures in company and registry law, the digitalisation of certificates of good conduct, and the extension of the application deadline for soldiers seeking compensation for discrimination under public service law<sup>1</sup>**

**Dated...**

The Federal Parliament has adopted the following Act:

### **Artikel 1**

#### **Amendment to the German Civil Code**

The German Civil Code as promulgated on 2 January 2002 (Federal Law Gazette I p. 42, 2909; 2003 I p. 738), as last amended by Article 1 of the Act of 17 July 2025 (Federal Law Gazette 2025 I Nr. 163), is amended as follows:

§ 77 is replaced by the following § 77:

‘§ 77

Persons required to register and form of registration

(1) Applications for entry in the register of associations are made by members of the board of directors or by the liquidators authorised to represent the association in that respect, by means of a publicly certified statement. The same form is also required for a power of attorney for registration. The application and the power of attorney for the application may be submitted to the court in the original or as a certified copy. Instead of the original or certified copy of the power of attorney, a certificate from a notary public in accordance with § 21(3) of the Federal Code for Notaries (Bundesnotarordnung) may also be submitted.

(1) Public notarisation by means of video communication in accordance with § 40a of the German Notarisation Act (Beurkundungsgesetz) is permitted.’

### **Artikel 2**

#### **Amendment of the Foundation Register Act**

The Foundation Register Act [Stiftungsregistergesetz] of 16 July 2021 (Federal Law Gazette I p. 2947, 2953) is amended as follows:

1. The heading of Section 1(1) is replaced by the following heading:

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<sup>1</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).

## 'Subsection 1

Registration authority and contents of the register.'

2. §3(2) is replaced by the following paragraph 2:

(1) ' The application must be certified by a public authority. The form prescribed in the first sentence is also required for an authorisation to file an application. Public notarisation by means of video communication in accordance with § 40a of the German Notarisation Act is permitted. The application and the power of attorney may be submitted to the registration authority in the original or as a publicly certified copy. Instead of the original or a publicly certified copy of the power of attorney, a certificate from a notary public in accordance with § 21(3) of the Federal Code for Notaries may also be submitted.'

## **Artikel 3**

### **Amendment to the Commercial Code**

The Commercial Code, in the corrected version published in the Federal Law Gazette, Part III, No 4100-1, as last amended by Article 1 of the Act of 28 February 2025 (Federal Law Gazette I, 2025 No 69), is amended as follows:

- § 12(1) is replaced by the following paragraph 1:

(1) ' Applications for registration in the commercial register are to be submitted electronically in a publicly certified form. Public notarisation by means of video communication in accordance with § 40a of the German Notarisation Act is permitted. The form prescribed in the first sentence is also required for an authorisation to file an application. Notarial establishment of the power of attorney may also be carried out by means of video communication in accordance with § 16a to § 16e of the German Notarisation Act; in this case, powers of attorney for declarations to authorities and courts which do not require the notarial form may be recorded in the electronic record. Instead of the power of attorney, a certificate from a notary public in accordance with § 21(3) of the Federal Code for Notaries may also be submitted. The legal successors of a party, to the extent possible, are to furnish proof of succession by means of public documents.'

## **Artikel 4**

### **Amendment to the Stock Corporation Act**

The Stock Corporation Act (Aktiengesetz) of 6 September 1965 (Federal Law Gazette I p. 1089), as last amended by Article 18 of the Act of 23 October 2024 (Federal Law Gazette 2024 I No. 323) is amended as follows:

1. § 23(1) is replaced by the following paragraph 1:

(1) ' The articles of association must be certified by a notarial act. Notarial certification of the articles of association may also be conducted via video communication in accordance with § 16a to § 16e of the German Notarisation Act, unless other formal requirements preclude it. The second sentence shall apply mutatis mutandis to

declarations of intent and decisions taken unanimously which do not require the notarial form; they shall be recorded in the electronic record established in accordance with the second sentence. Authorised representatives require a power of attorney drawn up or certified by a notary public. Notarial establishment of power of attorney may also take place by means of video communication in accordance with § 16a to § 16e of the German Notarisation Act.'

2. The following sentence shall be inserted after § 30(1) sentence 2:

'If the appointment decision is taken unanimously, notarisation may also be effected by means of video communication in accordance with § 16a to § 16e of the German Notarisation Act; it must be recorded in the electronic record drawn up in accordance with the second sentence of § 23(1).'

3. § 280(1) is replaced by the following paragraph 1:

(1) ' The articles of association must be certified by a notarial act. Notarial certification of the articles of association may also be conducted via video communication in accordance with § 16a to § 16e of the German Notarisation Act, unless other formal requirements preclude it. The instrument shall state, in the case of nominal shares, the nominal value, in the case of ordinary shares, the number, the issue amount and, where there are several classes, the class of shares which each party accepts. The second sentence shall apply mutatis mutandis to declarations of intent and decisions taken unanimously which do not require the notarial form; they shall be recorded in the electronic record established in accordance with the second sentence. Authorised representatives require a power of attorney drawn up or certified by a notary public. Notarial establishment of power of attorney may also take place by means of video communication in accordance with § 16a to § 16e of the German Notarisation Act.'

## **Artikel 5**

### **Amendment to the Limited Liability Companies Act**

The Act on Limited Liability Companies (Gesetz über die Gesellschaften mit beschränkter Haftung), as published in the Federal Law Gazette, Part III, No. , as last amended by Article 21 of the Act of 23 October 4123-12024(Federal Law Gazette I,2024 No 323), is amended as follows:

1. § 47(3) is replaced by the following paragraph 3:

(1) ' Powers of attorney shall be valid only if they are in writing. Notarial establishment of power of attorney may also take place by means of video communication in accordance with § 16a to § 16e of the German Notarisation Act.'

2. The following sentences are inserted after § 55(1), second sentence:

'The form specified in the first sentence shall also apply to the power of attorney to submit the declaration. Notarial establishment of power of attorney may also take place by means of video communication in accordance with § 16a to § 16e of the German Notarisation Act.'

## **Artikel 6**

## **Amendment of the Act on the Central Criminal Register and the Educative Measures Register**

The Act on the Central Criminal Register and the Educative Measures Register, in the version published on 21 September 1984 (Federal Law Gazette I p. 1229, 1985 I p. 195), as last amended by Article 5 of the Act of 19 July 2024 (Federal Law Gazette 2024 I No 245) is amended as follows:

1. In § 1(2) sentence 1, after the reference 'Federal Ministry of Justice', the reference 'and Consumer Protection' shall be added.
2. In § 5(1)(1), after the words 'place of birth', the words 'state of birth' are inserted.
3. § 21a(1) is amended as follows:
  - a) In point 7, the text '30b.' is replaced by the text '30b,'.
  - b) After point 7, the following point 8 is inserted:
    1. 'the indication whether information has been provided with entries.'
4. In § 25(2), second sentence, the words 'and for consumer protection' shall be inserted after the words 'Federal Ministry of Justice'.
5. After § 30c, the following § 30d is inserted:

### **'§ 30d**

#### **Digital certificate of good conduct**

(1) If the certificate of good conduct is applied for electronically (§ 30c), it will be issued in digital form (digital certificate of good conduct) if

1. the applicant requests it; and
2. it is not a certificate of good conduct to be submitted to a public authority (§ 30(5)).

(2) The digital certificate of good conduct is issued by making it available for retrieval via the applicant's user account pursuant to the first sentence of § 3(1) of the Online Access Act (Onlinezugangsgesetz). Granting by other means is not permitted.

(3) Issuance by the registration authority, the date of issue and the authenticity of the digital certificate of good conduct can be verified electronically.

(4) The registration authority shall regulate the details of the provision referred to in the first sentence of paragraph 2 and of the verification referred to in paragraph 3.'

6. In § 39(3), second sentence, the words 'and for consumer protection' shall be inserted after the words 'Federal Ministry of Justice'.
7. The words 'and for consumer protection' shall be inserted after the words 'Federal Ministry of Justice' in the first sentence of § 42a(1a) in the information before point 1.
8. §44a is amended as follows:

- a) The heading is replaced by the following heading:

‘§ 44a

Measures for the purpose of witness protection.’

- b) In paragraph 1, paragraph 2 sentence 2 and paragraph 3 sentence 1 and 3, ‘witness protection unit’ is replaced by ‘witness protection service unit’.

- c) After paragraph 3, the following paragraph 4 is inserted:

(1) ‘ At the request of a witness protection agency, the registration authority may temporarily alter entries relating to a person requiring protection in order to establish or maintain a temporarily changed identity using the data provided by the witness protection agency, and may process the altered data if the witness protection agency informs the registration authority that this is necessary to protect the person as a witness. Assessment by the witness protection service that the measure is necessary is binding on the registration authority. The registration authority shall comply with the request, unless conflicting public interests or the interests of third parties worthy of protection prevail.’

- d) The previous paragraph 4 becomes paragraph 5.

9. In § 49(3), second sentence, the words ‘and for consumer protection’ shall be inserted after the words ‘Federal Ministry of Justice’.

10. §53(1)(1) is replaced by the following § 53(1)(1):

1. ‘ is not to be included in the certificate of good conduct or only in a certificate of good conduct for public authorities (§ 30(5), § 31) or’.

11. In § 55(2), fourth sentence, the words ‘and for consumer protection’ shall be inserted after the words ‘Federal Ministry of Justice’.

## Artikel 7

### Amendment to the Trade, Commerce and Industry Regulation Act

The Trade, Commerce and Industry Regulation Act (Gewerbeordnung), as promulgated on 22 February 1999 (Federal Law Gazette I p. 202), last amended by Article 9 of the Act of 27 December 2024 (Federal Law Gazette 2024 I No. 438), is amended as follows:

1. The table of contents is amended as follows:

- a) The wording for § 150a is replaced by the following wording:

‘§ 150a Information to public authorities’.

- b) The wording for § 155a is replaced by the following wording:

‘§ 155a Measures for the purpose of witness protection’.

2. The heading of § 150a is replaced by the following heading:

'§ 150a

Information to public authorities'.

3. In § 150c(1), first sentence, the words 'and for consumer protection' shall be inserted after the words 'Federal Ministry of Justice'.
4. § 153c sentence 1 is replaced by the following sentence:  
  
'Detailed provisions governing the structure of the register shall be laid down by the Federal Ministry of Justice and Consumer Protection in agreement with the Federal Ministry for Economic Affairs and Energy.'
5. § 155a is replaced by the following § 155a:

'§ 155a

Measures for the purpose of witness protection

§ 44a of the Act on the Central Criminal Register and the Educative Measures Register shall apply accordingly.'

## **Artikel 8**

### **Amendment to the Act on the rehabilitation of soldiers who were discriminated against under service regulations because of consensual homosexual acts, because of their homosexual orientation or because of their gender identity**

Act on the rehabilitation of soldiers who were discriminated against under service regulations because of consensual homosexual acts, because of their homosexual orientation or because of their gender identity of 16 July 2021 (Federal Law Gazette I No 2993, is amended as follows:

In § 3(3), first sentence, the word 'five' is replaced by the word 'ten'.

## **Artikel 9**

### **Entry into force**

- (1) This Act, subject to paragraphs 2 to 4, shall enter into force on the day after its promulgation.
- (2) Article 8 shall enter into force on 24 July 2026 .
- (3) Articles 1, 3 to 5 and 6(5) shall enter into force on 1 October 2026 .
- (4) Article 2 shall enter into force on 1 January 2028 .

## Justification

### A. General part

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

The requirements of Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law (OJ L 186, 11.7.2019, p. 80) (hereinafter referred to as the Digitalisation Directive I) was adopted by the Act transposing the Digitalisation Directive (DiRUG) of 5 July 2021 (Federal Law Gazette I p. 3338), most of which entered into force on 1 August 2022 . As a result, online notarial acts and notarisations were declared admissible for certain measures in company law. The scope of online notarial procedures was extended by the Act supplementing the provisions transposing the Digitalisation Directive and amending further provisions of 15 July 2022 (Federal Law Gazette I No26) (hereinafter: DiREG) with effect from 1 August 2023 .

Online notarisations are now permitted for all applications for registration in the commercial register, the register of co-operative societies, the register of partnerships, the register of associations and the register of companies, as amended by the Act modernising partnership law (Act on the modernisation of partnership law – MoPEG) of 10 August 2021 (Federal Law Gazette I p.3436) introduced on 1 January 2024 . Declarations of intent in the context of the formation of limited liability companies (GmbH), including certain in-kind formations and powers of incorporation, and decisions taken unanimously to amend the GmbH partnership agreement (resolutions amending the articles of association), including capital measures (increase or reduce share capital), can be recorded by means of video communication.

The explanatory memorandum to the DiREG provides for an evaluation of the online notarial procedures with regard to further measures under company law (Bundestag document 20/1672, p. 17 et seq.). It is appropriate to extend the online notarial procedures to other objects of company law subject to notarial certification, insofar as these correspond, in terms of their structure, to measures that are particularly suitable for online procedures (formation of a limited liability company, register applications). This is the case when establishing public limited liability companies and limited partnerships, when applying for registration in the Foundation Register established by the Act on the Standardisation of Foundation Law and the Amendment of the Infection Protection Act of 16.07.2021 (Federal Law Gazette I p. 2947) with effect from 1 January 2026 , in the establishment of authorisations to register, register authorisations, and powers to vote in the general meeting of a limited liability company. By extending online procedures to these operations, the coalition agreement (rows 102 to 104) will be implemented by simplifying notarial procedures and enabling further digital notarial certification processes.

The extension of online procedures shall be carried out in strict compliance with the protective purposes of the specific formal requirements concerned. While, for some formal requirements, exploration of the will of the parties and clarification of the facts by the notary as well as the protection and instruction function of notarial certification are particularly important, other formal requirements are more characterised by the evidence function or the filter and control function vis-à-vis state registers (see Bundestag document 19/28177, p. 115 et seq.). Online procedures are particularly suitable for consensual processes. Past experience with online notarial procedures and general findings on video communication confirm the structural decisions contained in the DiRUG and DiREG, according to which majority decisions and transactions with mutual interests impose specific requirements on

the notary, such as ensuring adequate information and protection of minority shareholders, which are not sufficiently reflected in the online procedure as it currently stands.

Registrations for the Foundation Register, register of powers of attorney and powers of attorney for voting at shareholders' meetings of limited liability companies are particularly suitable for online procedures, as these processes typically involve a legitimate urgent need without the aspect of investigating past events being of particular importance. The possibility of online notarisation of registration applications, which has already been tried and tested in practice, will be extended to the Foundation Register. A new feature is the option of online notarial certification of powers of attorney for the commercial register and, based on existing legal references, for the company and partnership registers. There is a practical need for this, especially in the case of public partnerships, since registrations must in principle be made by all shareholders. This option will not be introduced for powers of attorney for registration in the register of associations and foundations, as there is no practical need for the more expensive notarial certification of powers of attorney for registration in the online procedure for associations and foundations. For associations and foundations, it is more cost-effective to have a certificate of power of attorney publicly certified by a notary.

Under the Digitalisation Directive I, it is left to the Member States of the European Union to also allow online formation for companies not mentioned in Annex IIA to the Digitalisation Directive I. Therefore, even if a public limited liability company is not mandatory for the notarial online procedure, an extension of the provisions currently applicable only to the limited liability company is appropriate. It is true that a public limited liability company usually does not have a personalistic structure, as is often the case with the GmbH. This applies in particular to the entire life cycle of a public limited liability company. A more complex organisational structure and financial constitution only emerge over time. Meanwhile, the number of founders and the initial organisational structures are often manageable, despite other possible objectives. It is true that there are voices in the literature that generally consider the notarial online procedure not suitable for a public limited liability company. However, this reasoning is not convincing, as most public limited liability companies are initially founded by a small number of shareholders and the structures only develop over time. Furthermore, founders are also free to choose whether they actually want to opt for the online notarial procedure. For start-up founders from abroad in particular, the online procedure may be appropriate, as they do not then have to travel to the notary for the start-up date. The relatively small number of public limited companies compared to the number of private limited liability companies does not argue against the introduction of the online procedure. This is because the technical requirements are essentially the same as those that had to be established for the process of founding a limited liability company (GmbH). Insofar as the formation of a public limited liability company as such requires more complex examination (formation report, formation audit, etc.), these steps are already carried out outside the actual notarial procedure, meaning that this additional cost cannot be ascribed to the electronic procedure. Furthermore, a notary can also fulfil any advisory requirements in the online notarial procedure. However, if a notary is unable to fulfil his official duties within the framework of the online procedure, he shall refuse to perform the notarial certification by means of video communication in accordance with § 16a(2) of the German Notarisation Act (BeurkG). The considerations underlying the extension of the online notarial procedure to the formation of a public limited liability company also support an extension to the formation of a limited partnership. This also makes it possible to establish a GmbH & Co KGaA entirely online.

The extension of online notarial procedures is carried out in strict compliance with the high standards introduced by the DiRUG and continued in the DiREG (see Bundestag document 20/1672, p. 12 et seq.). The video communication system operated by the Federal Chamber of Notaries in accordance with § 78p of the Federal Code for Notaries enables founders worldwide, regardless of their location and nationality, to participate in a secure, official notarial certification procedure. The Federal Chamber of Notaries, which, as a

body governed by public law, develops and operates the video communication system to be used under the legal supervision of the Federal Ministry of Justice and Consumer Protection, has created the technical conditions for the all-digital processing of transactions under company law in accordance with the legal requirements. Notarial certification carried out abroad by means of video communication in accordance with the relevant law of foreign procedural regulations may be equivalent to notarial certification by a German notary and therefore effective within Germany if, inter alia, comparable secure personal identification of the parties involved by the notary is required by electronic means of identification with a 'high' level of confidence within the meaning 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, 14.6.2014, p. 44) and by means of electronically transmitted photographs, and the sovereign nature of the notarial certification procedure is taken into account in a comparable manner (cf. Bundestag document 20/1672, p. 12 et seq. and the Higher Regional Court, ruling of 17 July 2024 – 22 W.25/24).

In addition, this draft amendment to the Act on the Central Criminal Register and the Educative Measures Register (BZRG) is intended to create the legal basis for digital certificates of good conduct for private purposes. As one of the key cross-cutting services provided by the Federal Administration, the Federal Office of Justice (BfJ), in its capacity as the registration authority, issues around five million certificates of good conduct per year (around 20 000 per working day). A certificate of good conduct is a document certifying whether a person has a criminal record or not. Until now, this has been printed exclusively on special safety paper and sent to citizens by post. In principle, the certificate of good conduct has proven its worth and enjoys a high level of trust. As a first step towards digitalisation, in 2014, the possibility was created to apply for a certificate of good conduct online at the Federal Office of Justice (online application). Wide use of the application was expected upon introduction. Although the introduction of the online application was a correct and important move towards the digital reality, it was not accepted by the broad mass of the population at first. This is also due, inter alia, to the fact that the certificate of good conduct is not issued digitally. In order to offer the proven and established certificate of good conduct in a timely, user-friendly but also safe format, the digital certificate of good conduct is now being introduced. The latter will convert the certificate of good conduct previously printed on green safety paper into a PDF document, with the design and the information contained in it being based on the printed certificate of good conduct. In addition, a 2D barcode will be written on the document, with which the document can be verified. Thus, any person to whom a certificate of good conduct is submitted – for example as part of an application process – can check whether it is an unaltered document issued by the registration authority.

The SoldRehaHomG provided an important indication for the rehabilitation of homosexual former soldiers 21 years after the repeal of a discriminatory decree of the Federal Armed Forces (decree of 3 July 1984 – P II 1 – 16-02-05/02). Further applications received after 24 July 2026 from affected persons, who are often older and do not use modern information channels as intensively as younger people, should not be rejected on the formal grounds that the deadline has expired. Affected persons who have been permanently traumatised by events in the Federal Armed Forces should also have more time to deal with a possible application.

The draft act is in line with the Federal Government's guiding principles on sustainable development in the sense of the German Sustainability Strategy (DNS), which serves the implementation of the United Nations Agenda (UN 2030 Agenda2030) for Sustainable Development and contributes to the achievement of the Sustainable Development Goal 10 (reduced inequalities) and Sustainable Development Goal 16 (peace, justice and strong institutions).

## **II. Main content of the Draft Act**

The possibility of the online notarisation of applications will be extended to the Foundation Register. Online notarial certification is declared admissible for the formation of public limited liability companies and limited partnerships, for decisions by founders appointing the first supervisory board and the registered auditor for the first full and short financial year, and for the drawing up by a notary of powers of attorney to register with the commercial, company and partnership register, of powers of attorney to vote at general meetings of limited liability companies and of powers of attorney to make a declaration of acquisition of a share certificate.

It also introduces the legal basis for the digital certificate of good conduct for private purposes. For this purpose, the creation of a new § 30d in the BZRG is proposed. In addition, legal changes as well as further adjustments, in particular in the area of witness protection, are to be made for both the Central Criminal Register and the Central Trade and Industry Register.

The application period under the SoldRehaHomG is extended from five to ten years from 23 July 2021 .

## **III. Executive footprint**

The Federal Chamber of Notaries contributed to this Draft Act by suggesting the subject matter of an extension of online notarial procedures. No interest representatives or commissioned third parties contributed significantly to the content of the Draft Act.

## **IV. Alternatives**

None. The only alternative to the current draft act would be not to implement the projects in question. However, particularly with regard to the introduction of the digital certificate of good conduct, this would mean foregoing considerable simplifications for citizens, businesses and public authorities. This would also run counter to the goal of reducing bureaucracy.

## **V. Legislative powers**

The legislative powers of the Federal Government derive from Article 74(1)(1) (civil law, judicial procedure, notarisation) and Article 74(11) (commercial law) of the Basic Law (Grundgesetz, GG) in conjunction with Article 72(2) GG.

With regard to the regulations based on Article 74(1)(11) of the Basic Law (commercial law), a federal regulation is necessary in order to safeguard legal and economic unity in accordance with Article 72(2) of the Basic Law, since a uniform register system is essential in the Federal Republic of Germany in the national interest in order to ensure transparent and unhindered legal and commercial trade across federal state borders. Without uniform federal legislation, there would be a risk of legal fragmentation with problematic consequences, which must be avoided in the interests of both the federal government and the federal states in order to prevent unreasonable obstacles to cross-border legal transactions.

The legislative competence of the Federal Government with regard to amendments to the BZRG arises from Article 74(1)(1) of the Basic Law due to the fact that criminal records fall within the scope of criminal law and criminal procedure law.

The legislative competence of the Federal Government arises from Article 74(1)(11) of the Basic Law (business law) for the amendments to the Trade, Commerce and Industry Regulation Act (GewO). The Federal Government has conclusively and comprehensively regulated the establishment, tasks and powers of the Central Trade Register in § 149 et seq. of the GewO. The amendments are therefore necessary in order to maintain legal unity in the national interest (see Article 72(2) of the Basic Law).

For Article 8, the legislative competence of the Federal Government results from Article 73(1)(1) and (8) of the Basic Law.

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

According to the Digitalisation Directive I, the application of the notarial online procedure to public limited liability companies is not mandatory. The second subparagraph of Article 13g(1) of the Digitalisation Directive I in conjunction with Annex IIA excludes the public limited liability company. However, this does not mean that Member States of the European Union cannot go beyond the minimum requirements of the Digitalisation Directive I. The meaning and purpose of the Digitalisation Directive I is to promote digitalisation in company law, but not to formalise the digitalisation process according to its specifications. The amendment to this Draft Act is compatible with the law of the European Union. In extending the online notarial procedure to the formation of public limited liability companies, applications for registration in the Foundation Register, the establishment of register authorisations and powers of attorney for voting in general meetings of limited liability companies, the Draft Act goes beyond European requirements, meaning that there is an obligation to carry out a notification procedure to the European Commission 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).

The Draft Act is also compatible with the international treaties concluded by the Federal Republic of Germany.

## **VII. Impact of the legislation**

### **1. Legal and administrative simplification**

The newly introduced regulations on online procedures for establishing a public limited liability company and a limited partnership, for registrations in the Foundation Register, and for registration powers of attorney and voting powers of attorney for limited liability companies represent a substantial simplification for legal and business transactions, as these procedures can now also be carried out online without the need for an appointment with a notary.

### **2. Sustainability aspects**

The Draft Act is in line with the guiding principles of the Federal Government on sustainable development as set out in the German Sustainability Strategy, which supports the implementation of the 2030 UN Agenda for Sustainable Development. The planned provisions promote digitalisation in company and commercial law, as in-person appointments can be eliminated and the parties involved save on unnecessary travel. In addition, the Draft Act aims to simplify processes and safeguard the environment by reducing travel. In this respect, the Draft Act complies with principle 4 of the principles of sustainable development contained in the German Sustainability Strategy, 'Strengthen sustainable economic activity'.

The amendment to the SoldRehaHomG (Article 8) is consistent with the Federal Government's guiding principles regarding sustainable development under the German Sustainability Strategy. By today's standards, discrimination on the basis of homosexual orientation or gender identity is contrary to fundamental rights and human rights. Due to the serious violation of the personal rights of the persons concerned, a reasonable extension of the deadline for applying for financial compensation is appropriate to promote social cohesion within the meaning of management rule number 10 (management rules of the sustainability strategy – interim report of the Federal Environment Agency, as at 12/2017)

### 3. Budgetary expenditure excluding compliance costs

In connection with the introduction of the digital certificate of good conduct, the Federal Office of Justice will incur total additional expenditure of around EUR 2 420 000 per year for the day-to-day operation of the IT infrastructure. Of this amount, an amount of 660 000 Euro per year is attributable to non-cash expenses for the use of licences from the federal printing office (Bundesdruckerei) and for consulting services in the areas of IT security, data protection and accessibility. In addition, 18.5 permanent positions (2.5 A 14 / 3.0 A 13 g / 13.0 A 12) are required. This corresponds to additional annual expenditure of EUR 1 760 000 .

The additional material and staffing requirements will be compensated for in individual plan 07 in terms of funds and jobs.

Because certificates of good conduct will be issued digitally, it is assumed that in the future around 200 000 applications will no longer be submitted to residents' registration offices, but to the Federal Office of Justice. The fee of EUR 5.20 per certificate of good conduct, which was previously payable to the local authorities, will in future be collected by the Federal Office of Justice. Accordingly, the Federal Office of Justice will thus generate annual additional revenue of around EUR 1 040 000 .

With regard to the amendment to the SoldRehaHomG provided for in Article 8, an average of five applications for compensation per year, each amounting to EUR 3 000 , can be expected, resulting in budgetary expenditure of EUR 15 000 per year.

### 4. Compliance costs

In addition to the actual relief effects, such as the acceleration of notarial certification procedures or the application for certificates of good conduct, the project will lead to the following changes in terms of compliance costs.

#### a) Compliance costs for citizens

With the introduction of the digital certificate of good conduct, the annual compliance burden for citizens is reduced by around 6 700 hours and by EUR 500 000 . This saving constitutes an 'out' within the meaning of the Federal Government's 'one in, one out' rule.

Seq. No.	Article of draft legislation; provision (articles); designation of the requirement	Annual number of cases and unit	Annual expenditure per case (in minutes or EUR)	Annual compliance costs (in hours or thousands of EUR) or 'minor' (justification)	Unique case number and unit	One-off expenditure per case (in minutes or EUR)	One-off compliance costs (in hours or thousands of EUR) or 'minor' (justification)
1.1	Article 6(5); § 30d BZRG; Application for the issuance of a	-400 000 scans	Time expenditure:	Time expenditure: -6 667	0	0	0

Seq. No.	Article of draft legislation; provision (articles); designation of the requirement	Annual number of cases and unit	Annual expenditure per case (in minutes or EUR)	Annual compliance costs (in hours or thousands of EUR) or 'minor' (justification)	Unique case number and unit	One-off expenditure per case (in minutes or EUR)	One-off compliance costs (in hours or thousands of EUR) or 'minor' (justification)
	digital certificate of good conduct		1 minute	hours			
1.2	Article 6(5); § 30d BZRG; Application for the issuance of a digital certificate of good conduct	-500,000 postage	Material expenditure: EUR 1	Material expenditure: -500 thousand EUR	0	0	0
One-off time required (in hours)				-6 667	0		
Total material costs (in thousands of EUR)				-500	0		

**b) Compliance costs for businesses**

With the expansion of online procedures, annual compliance costs for businesses is reduced by around EUR 166 000 .

The introduction of the digital certificate of good conduct will reduce the annual compliance costs for businesses by around EUR 273 000 .

This results in an annual saving of around EUR 440 000 for businesses as a whole. This saving constitutes an 'out' within the meaning of the Federal Government's 'one in, one out' rule.

Seq. No.	Article of draft legislation; provision (articles); 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 'minor' (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 'minor' (justification)
2.1	Article 1, Article 2(2), Article 3, Article 4, Article 5; § 77 BGB-E, § 3 StiftRG-E, § 12 HGB-E, § 23, § 30, § 280 AktG-E, § 47, § 55 GmbHG-E; possibility of		4 000 proceedings	0.56 * 4 000 * EUR 62.40 per hour * 2 * -15 minutes: 60 = - EUR 69 888 + 0.56 * 4 000 * 2 * -EUR 1.10 = -EUR	-166	0	0	0

Seq. No.	Article of draft legislation; provision (articles); 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 'minor' (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 'minor' (justification)
	online proceedings, elimination of travel time and travel costs			$4\,928 + 0.44 * 4\,000 * \text{EUR } 62.40 \text{ per hour} * 2 * -22 \text{ minutes:}$ $60 = -\text{EUR } 80\,537.60)$ $+ 0.44 * 4\,000 * 2 * -\text{EUR } 3.10 = -\text{EUR } 10\,912$				
2.2	Article 6(5); § 30d of the BZRG; documentation of submitted certificates of good conduct	Yes	-425 000 scans	$\text{EUR } 0.64 = (1 / 60 * \text{EUR } 38.60/\text{h}$ (economic sector: A-S excluding O))	-273	0	0	0
Total (in thousands of EUR)					<b>-439</b>			<b>0</b>
of which information duties (IP)					<b>-439</b>			

**c) Compliance costs for the administration**

The introduction of the digital certificate of good conduct will result in an annual compliance cost of around EUR 1 700 000 for the Federal Office of Justice.

Seq. No.	Article of draft legislation; provision (articles); designation of the requirement	Federal Government / Federal State	Annual number of cases and unit	Annual expenditure per case (minutes * labour costs per hour (hierarchy level) + material costs in EUR)	Annual compliance costs (in thousands of EUR) or 'minor' (justification)	Unique case number and unit	One-off expenditure per case (minutes * hourly wage costs (hierarchy level) + material costs in EUR)	Non-recurrent compliance cost (in thousands of EUR) or 'minor' (justification)
3.1	Article 1, Article 2(2), Article 3, Article 4, Article 5; § 77 BGB-E, § 3 StfRG-E, § 12 HGB-E, § 23, § 30, § 280 AktG-E, § 47, § 55 GmbHG-E; technical systems for online procedures have already been purchased and set up, minor additional expenditure required				negligible (minimal time requirement)			
3.2	Article 6(5); § 30d BZRG; ongoing operation of IT infrastructure	Federal Government	527 person days (PD)	EUR 564 = 480 minutes * EUR 70.50/hour (hourly rate)	298			
3.3	Article 6(5); § 30d BZRG; ongoing operation of IT infrastructure	Federal Government	3 319 person days (PD)	EUR 372 = 480 minutes * EUR 46.50/hour (gD)	1 235			
3.4	Article 6(5); § 30d BZRG; Material costs for ongoing operation of IT infrastructure	Federal Government			660			
3.5	Article 6(5); § 30d BZRG;	Federal Gov-	-918 000	EUR 0.61 (material costs per	-560			

Seq. No.	Article of draft legislation; provision (articles); designation of the requirement	Federal Government / Federal State	Annual number of cases and unit	Annual expenditure per case (minutes * labour costs per hour (hierarchy level) + material costs in EUR)	Annual compliance costs (in thousands of EUR) or 'minor' (justification)	Unique case number and unit	One-off expenditure per case (minutes * hourly wage costs (hierarchy level) + material costs in EUR)	Non-recurrent compliance cost (in thousands of EUR) or 'minor' (justification)
	savings due to elimination of postal delivery	ernment		certificate of good conduct)				
3.6	Article 8; § 3 SoldReha-HomG; extension of application period, no measurable expenditure, the posts created for processing applications when the law came into force in 2021 have already been withdrawn again	Federal Government			negligible (minimal number of cases)			
Total (in thousands of EUR)					<b>1 633</b>			-
of which federal government					<b>1 633</b>			-
of which federal states (including municipalities)					-			-

**5. Other costs**

None.

## **6. Other legal consequences**

As a result of the introduction of the digital certificate of good conduct for private purposes, significant indirect reduction of the burden is expected in addition to the direct effects described in point VII.4. A significant reduction of the burden will result from the elimination of postal delivery and the associated significantly shortened period between application and receipt of a certificate of good conduct. It is expected that the volume of complaints at the Federal Office of Justice due to delayed or failed postal deliveries will be significantly reduced. Reuse of digital certificates of conduct, for example in application processes, will also be possible more quickly and without media discontinuities.

Article 8 of the Draft Act has implications for equal opportunities policy: It concerns the equal treatment under public service law of people who were discriminated against on the grounds of their homosexual orientation or gender identity in the German Armed Forces until 2000 and in the National People's Army [of the former GDR] until its dissolution in 1990 .

## **VIII. Time limit; evaluation**

There is no provision for a time limit. The possibilities for online notarial procedures will be extended on a permanent basis.

An evaluation must be planned for all major regulatory projects in accordance with the decision of the Committee of State Secretaries for Better Regulation and Reduction of Administrative Burdens of 30 September 2024 . Accordingly, draft regulations for which an annual compliance cost of at least EUR 5 million in material costs or 500 000 hours of work for citizens or EUR 5 million for businesses or the authorities is to be expected are considered material. These thresholds are not reached with this Draft Act. However, at least with regard to the legal basis for the digital certificate of good conduct, this law will in any case be assessed on an ongoing basis. In doing so, the Federal Government, together with the registration authority, will look at the actual operation of the digital certificate of good conduct to check whether the practical requirements are met and whether the planned reduction of the burden has taken place. If necessary, adjustments of a technical or legal nature will be made.

No later than four years after this Act comes into force, an assessment shall be made – in particular on the basis of further usage figures and experience with online notarial procedures – as to whether the online procedure can be made available for other company law transactions that require notarial certification.

The amendment provided for in Article 8 shall set the application deadline at ten years. The law as a whole is limited in time until 2040 . An evaluation was carried out two years after entry into force. No further evaluation is envisaged.

## **B. Specific part**

### **Re Artikel 1 (Amendment of the Civil Code)**

The amendment to § 77 of the Civil Code regulates the requirements for authorisations for register applications. It is clarified that powers of attorney for registration in the register of associations must also be publicly certified. This is in line with the previous legal situation. As proof of power of attorney, the original or certified copy of the power of attorney document presented to the notary public when the application was certified must be enclosed.

## **Re Artikel 2 (Amendment to the Foundation Register Act [StiftRG])**

Article 2 is intended to extend the possibility of online notarisation of applications to the Foundation Register.

### **Re Nummer 1**

This is an editorial amendment in order to make the heading more precise.

### **Nummer 2 (Amendment to § 3 of the StiftRG)**

The amendment recasts § 3(2) of the StiftRG and adds provisions allowing online notarial certification for the purpose of public notarial certification of applications for the Foundation Register. The Foundation Register is essentially modelled on the register of associations, meaning that the protective purposes of the formal requirement of § 3 of the StiftRG are the same as those of § 77 of the Civil Code. Public notarisation of applications ensures that the certifying body verifies the identity of applicants, meaning that the registration authority can trust that applications submitted to it originate from the members of a board of trustees or the liquidators of a foundation (see Bundestag document 19/28173, p. 91). This is ensured in the online notarial procedure.

In addition, the possibility of online notarisation leads to the avoidance of media discontinuities, since electronic filing of applications is already provided for in § 3(2) sentence 2 StiftRG (loc. cit., p. 92).

## **Re Artikel 3 (Amendment to the Commercial Code)**

The amendment recasts § 12(1) of the German Commercial Code (Handelsgesetzbuch, HGB). The new sentence 4 declares online notarial certification to be permissible for the notarial execution of powers of attorney for registration in the commercial register, known as registration powers of attorney. There is a practical need for this, especially in the case of public partnerships, since registration applications, with the exception of mere business addresses, must be signed by all shareholders. In practice, for the sake of speed, one shareholder is often authorised to register the company in the commercial register on behalf of all other shareholders.

It is possible for a power of attorney to be drawn up by a notary in accordance with § 16a to § 16e of the German Notarisation Act (BeurkG) as an electronic record. This is in line with the other existing legal provisions on the establishment of powers of attorney by means of notarial video communication. When the application is filed by legal representatives, the registry court may require submission of the original or a copy of the power of attorney, because only possession of the original or a copy indicates that the power of attorney continues to exist (cf. Bundestag document 19/28177, p. 123 et seq.). Only these documents make it possible to check the number of legal documents in circulation, which acquires significance in particular in the event of revocation of the power of attorney to enforce compensation claims under § 175 of the Civil Code or of a declaration of nullity under § 176 of the Civil Code. However, the electronic original pursuant to § 45(3) of the BeurkG is not marketable, and copies can only be made from records that remain in notarial custody. In order to ensure the practical usability of powers of attorney drawn up using the notarial online procedure, they must therefore be established as an electronic record in accordance with § 16a to § 16e of the BeurkG. A copy of the electronic record may be produced which, pursuant to § 47 of the BeurkG, represents the original in legal transactions. If the electronic original is kept by the notary who certifies the registration, it is sufficient to refer to the original if the representative is entitled to receive a copy, which is equivalent to delivery of the original (see Higher Regional Court Stuttgart, ruling of 24 March 1998 – 8 W 67/98).

Powers of attorney for declarations to authorities and courts which do not require the notarial form may be included in registration powers of attorney, provided that they are substantively related to the relevant commercial register application. The prerequisite is that an online notarial certification permitted under the fourth sentence of § 12(1) HGB-E takes place and that an entry is made in the electronic record drawn up for that purpose. In practice, there is a need for this, as commercial register applications are regularly associated with a large number of administrative procedures. To set up a business, for example, business registration, registration with the Transparency Register, application for tax number and business number and, where applicable, entry on the Official Register of Handicrafts are regularly required in order to start a business activity.

Powers of registration in respect of applications for registration in the partnership register and in respect of applications for registration in the companies register can now also be recorded in the online notarial procedure, since § 5(2) of the Partnership Act (Partnerschaftsgesellschaftsgesetz) and § 707b of the Civil Code declare § 12 of the Commercial Code to be applicable *mutatis mutandis*.

## **Re Artikel 4 (Amendment to the Stock Corporation Act)**

### **Nummer 1 (Amendment to § 23 of the Stock Corporation Act (AktG))**

Paragraph 1 is reworded. The new second sentence states that the notarial certification of the articles of association may also be conducted via video communication in accordance with § 16a to § 16e of the BeurkG.

The new second sentence is intended to extend the digitalisation of notarial involvement in the formation of a public limited liability company. As stated in the general part above, transferring the procedure already applied to private limited companies (GmbH) to public limited liability companies is another useful step towards the digitalisation of notarial procedures in company law.

For details on the implementation of the online formation of a public limited liability company, reference is made to the regulations on notarial certification using the online procedure in § 16a to § 16e of the BeurkG (see Bundestag document 19/28177, p. 115 et seq.). In particular, § 16a(1) of the BeurkG allows the notarial certification of declarations of intent by means of video communication, in so far as this is permitted by law, which is now expressly provided for in the second sentence of § 23(1) of the AktG-E.

The new sentence 3 clarifies that, in addition to the substantive components of the articles of association, ancillary agreements under the law of obligations between founders, which do not require notarial form, can also be certified by means of video communication. The prerequisite is that video notarial certification permitted under § 23(1), sentence 2 of the AktG-E and inclusion in the electronic record established for this purpose pursuant to § 16b of the BeurkG, as amended, take place.

However, in parallel with § 2(3) sentence 3 of the Act on Limited Liability Companies (GmbHG), notarial certification by means of video communication is not permitted if the necessity for notarial certification of a collateral agreement under the law of obligations follows from a provision other than § 23(1) sentence 1 or sentence 2 of the AktG. This is without prejudice to the validity of other formal requirements that require notarial certification via the face-to-face procedure (e.g. § 311b(1) and the second sentence of § 2033(1) of the Civil Code). These regulations focus on other formal purposes, which is why the online procedure is not suitable or permitted for them (cf. Bundestag document 20/1672, p. 23).

Therefore, formation by subscription in specie using the online procedure is permissible only if the agreement does not require the obligation to transfer the objects in accordance with general provisions of notarial certification (cf. Bundestag document 20/1672, p. 23).

According to this, in the case of formation by subscription in specie, compliance transactions (which are not subject to certification) can also be certified in the notarial online procedure (see Bundestag document 20/1672, p. 22).

The third sentence also stipulates that the second sentence shall apply, *mutatis mutandis*, to decisions taken unanimously. This ensures that decisions taken in the context of company formation can also be authenticated in the online procedure together with the articles of association. The possibility of notarial certification by means of video communication extends only to decisions that are closely related to formation or are necessary for it. Capital measures and conversion processes are excluded from this. As in § 2(3) of the German Limited Liability Companies Act (GmbHG), the inclusion of resolutions is only appropriate insofar as their structure corresponds to the consensual formation of the company. Consequently, the scope of application is limited to resolutions passed unanimously. However, this requirement will generally be met in connection with the establishment of the company. The online procedure remains unsuitable for resolutions taken by majority decision against a minority of shareholders (cf. Bundestag document 20/1672, p. 24).

The provision does not lay down a formal requirement for such resolutions. However, the provision contains a legal reference to the preceding sentence. Accordingly, resolutions passed at the time of incorporation may only be certified if no other formal requirements preclude this. The requirement for notarial certification must not be based on provisions other than § 23(1) and (1a) sentence 1 of the draft Stock Corporation Act (AktG-E), unless the provision itself permits notarial certification by means of video communication (as in the case of § 30(1) sentence 3 of the draft Stock Corporation Act (AktG-E)). For this reason too, conversion processes are excluded from the online procedure.

Since assembly decisions are not declarations of intention but other operations within the meaning of § 36 of the BeurkG, § 16a to § 16e of the BeurkG, as amended, apply only *mutatis mutandis*. This is in line with today's standard certification practice, which also takes place during in-person proceedings in the case of unanimous decisions of the assembly in accordance with stricter provisions on the certification of declarations of intention, instead of the procedure under § 36 and § 37 of the BeurkG.

The previous second sentence becomes the fourth sentence and now includes the possibility of certifying the power of attorney for clarification purposes. Newly introduced in sentence 5 is the possibility to also establish powers of attorney by means of video communication.

### **Nummer 3 (Amendment to § 30 of the Stock Corporation Act (AktG))**

Appointment of the first supervisory board and of the registered auditor for the first full or short financial year shall be included in the online notarial procedure. This is appropriate because both appointments are regularly part of formation minutes and are incumbent on the founders of the company.

The admissibility of certification by video communication is subject to the condition that resolutions are taken unanimously and included in the electronic record of the drawing up of the articles of association pursuant to § 23(1), second sentence, AktG-E. § 16a to § 16e of the BeurkG shall apply accordingly. With regard to the justification for these provisions, reference is made to the justification for the second sentence of § 23(1a) AktG-E.

### **Re Nummer 3 (Amendment to § 280 of the Stock Corporation Act (AktG))**

Paragraph 1 is reworded. The new second sentence states that the notarial certification of the articles of association may also be conducted via video communication in accordance with § 16a to § 16e of the BeurkG. The previous sentence 2 becomes sentence 3. The new fourth sentence corresponds to the third sentence of § 23(1) AktG-E. With regard to

the statement of reasons, reference is made to the statement of reasons for § 23(1) AktG-E.

The possibility of certifying the appointment of the first supervisory board and the registered auditor for the first full or short financial year by video communication, when resolutions are taken unanimously and included in the electronic record of the drawing up of the articles of association pursuant to § 280(1) sentence 2 AktG-E, results from the reference of § 278(3) AktG to § 30(1) AktG-E.

The previous third sentence becomes the fifth sentence and now includes the possibility of certifying the power of attorney for clarification purposes. Newly introduced in sentence 6 is the possibility to also establish powers of attorney by means of video communication.

### **Re Artikel 5 (Amendment to the Act on Limited Liability Companies)**

#### **Re Nummer 1 (Amendment to § 47 of the Act on Limited Liability Companies (GmbHG))**

Powers of attorney to vote in decision-making (second sentence of § 47(3) GmbHG-E) can now also be authenticated by means of video communication. According to the first sentence, which is reproduced verbatim, powers of attorney in principle require only text form. In practice, however, they are regularly notarised or certified for evidentiary reasons. In addition, there is a certification requirement if a power of attorney to vote in a capital increase decision also includes the power of attorney to submit the declaration of acquisition.

#### **Re Nummer 2 (Amendment to § 55 GmbHG)**

The new sentence 3 clarifies that the power of attorney to submit the declaration of acquisition for a share certificate in the company must be in the same form as the declaration itself. For the sake of clarity, the possibility of authenticating the power of attorney by means of video communication (cf. Bundestag document 20/1672, p. 22) is included in the text of the law as a new sentence 4. The provision shall apply mutatis mutandis to the approval of a declaration of acquisition submitted by a representative without power of attorney.

### **Re Artikel 6 (Amendment to the Act on the Central Criminal Register and the Educational Measures Register)**

#### **Nummer 1 (Amendment to § 1 of the BZRG)**

In accordance with § 9 of the Rules of Procedure of the Federal Government, the Federal Chancellor issued an organisational decree on 6 May 2025 (Federal Law Gazette 2025 I No 131 of 9 May 2025) ordering the Federal Ministry of Justice to be designated as the 'Federal Ministry of Justice and Consumer Protection'. The amendment to § 1(2) of the BZRG incorporates the changed name of the authority into the Act.

#### **Nummer 2 (Amendment to § 5 of the BZRG)**

The data to be stored in the Central Criminal Register will be extended to include the country of birth of the person concerned. The background to this is the obligation under Article 11(1)(a)(i) of Framework Decision/JHA 2009/315 to transmit the State of birth in the framework of the European Criminal Records Information System (ECRIS). The regular absence of this information in the Federal Central Criminal Register sometimes leads to problems in some EU Member States with the processing of notifications and requests from the Federal Republic of Germany via ECRIS. These will be removed in the future in order to increase the overall level of security in the European Union. The amendment also does not lead to increased expenditure for authorities required to transmit data in accor-

dance with § 5 of the BZRG pursuant to § 20(1) of the BZRG. This is because, in order to establish the personal circumstances of the accused, it is necessary to determine not only their place of birth but also their country of birth, which is also stored in the Central Public Prosecutor's Office Case Register in accordance with § 4(1)(5) of the Regulation on the Operation of the Central Public Prosecutor's Office Case Register. This means that the information on the country of birth is already available and can be forwarded to the Federal Office of Justice without any significant effort.

### **Re Nummer 3 (Amendment to § 21a of the BZRG)**

#### **Re Buchstabe a**

This is an editorial adjustment with regard to point (b) below.

#### **Re Buchstabe b**

§ 21a of the BZRG regulates the logging of all information provided by the Federal Office of Justice and serves to ensure the implementation of data protection controls and for internal evidence purposes. The latter may be particularly significant where, in individual cases, there is a presumption that information may have been misrepresented or given to unauthorised persons. In this context, it is essential to specify whether the information has been obtained from the Central Criminal Register or from a foreign register containing entries. This is relevant, for example, in so-called authenticity checks to determine whether a certificate of good conduct presented is a forgery. This procedure is also in line with the previous practice of the registration authority, which has proved its worth. The amendment is intended to create a clarifying legal basis for this purpose. Encroachment on data protection is already limited by the fact that the entire content of information is not logged with the corresponding decision data, but only the fact whether the information contained entries or not.

### **Nummer 4 (Amendment to § 25 of the BZRG)**

With regard to the change in the name of the authority, reference is made to the reasons for the amendment to § 1(2) sentence 2 of the BZRG (see Article 6(1)).

### **Re Nummer 5 (Insertion of § 30d BZRG)**

The proposed regulation is intended to enable the introduction of the digital certificate of good conduct for private purposes. As one of the key cross-cutting services provided by the federal administration, the Federal Office of Justice, in its capacity as registration authority, issues around five million certificates of good conduct per year (around 20,000 per working day). A certificate of good conduct is a document certifying whether a person has a criminal record or not. Until now, this has been printed exclusively on special safety paper and sent to citizens by post. In principle, the certificate of good conduct has proven its worth and enjoys a high level of trust. As a first step towards digitalisation, the possibility was created in 2014 to apply for a certificate of good conduct online at the Federal Office of Justice (online application). Wide use of the application was expected upon introduction. Although the introduction of the online application was a correct and important move towards the digital reality, it was not accepted by the broad mass of the population at first. This is also due, inter alia, to the fact that the certificate of good conduct is not issued digitally.

In order to offer the proven and established certificate of good conduct in a timely, user-friendly but also safe format, the digital certificate of good conduct is now being introduced. The latter will convert the certificate of good conduct previously printed on green safety paper into a PDF document, with the design and the information contained in it being based on the printed certificate of good conduct. In addition, a 2D barcode will be written on the document, with which the document can be verified. Thus, any person to whom

a certificate of good conduct is submitted – for example as part of an application process – can check whether it is an unaltered document issued by the registration authority.

Digitalisation as described above is limited to certificates of good conduct for private purposes. Certificates of good conduct for public authorities pursuant to § 30(5) sentence 3 of the BZRG and § 31 of the BZRG differ considerably in terms of procedure in some respects and can already be transmitted electronically by the registration authority to the respective authority, meaning that there is no need to include them in the digitalisation project described here. Otherwise, in the interests of citizen-friendliness, all types of certificates of good conduct for private purposes (basic, extended and European certificates of good conduct) should be digitised without restriction to certificates of good conduct with no entries.

The proposed § 30d of the new BZRG is intended to create the legal basis for the digital certificate of good conduct.

Paragraph 1 provides that, for the reasons set out above, the issue of a digital certificate of good conduct is possible only if the certificate of good conduct is requested exclusively for private purposes, for example in connection with applications for employment or voluntary work. On the other hand, the application must be submitted electronically in accordance with § 30c of the BZRG. Only then will the applicant have the choice between the traditional paper certificate of good conduct, for which there may still be widespread demand during the transition period, and the digital certificate of good conduct. However, in the case of a conventional application to the registration authority for a certificate of good conduct, only the certificate of good conduct in paper form should be issued. This creates an incentive to apply online, not least to relieve the burden on the registration authorities, although it is generally assumed that willingness to use the digital certificate of good conduct goes hand in hand with a high willingness to apply digitally. In addition, the complex connection of the municipalities to the required infrastructure to the digital certificate of good conduct is eliminated, which limits implementation costs.

Paragraph 2 regulates provision, i.e. the question of how a digital certificate of good conduct is securely and efficiently transmitted to citizens after it has been issued (return channel). This return channel should, as far as possible, be involved in the implementation of the Online Access Act (Onlinezugangsgesetz, OZG). Citizens should therefore receive the digital certificate of good conduct via their federal user account in accordance with the OZG. For this purpose, a digital certificate of good conduct is placed in the applicant's mailbox as an electronic document, from where it can then be downloaded. Connection to the federal user account serves to securely authenticate citizens so that they can access administrative services online. In addition, the secure mailbox of the user account enables electronic delivery of administrative services by the authority upon request. The user account therefore already offers an infrastructure for the secure exchange of electronic documents between citizens and public authorities in compliance with data protection regulations.

Paragraph 3 provides for the possibility of verifying the digital certificate of good conduct. By means of a code contained in the document, each person to whom the digital certificate of good conduct is presented should be able to verify whether and when the document was issued by the registration authority to the person concerned and what information the certificate of good conduct contained at the time of issue. With user-friendliness in mind, verification will be carried out using a smartphone app. This will be available to download free of charge for all common operating systems as soon as the digital certificate of good conduct is available.

Paragraph 4 authorises the registration authority to regulate details of the provision and verification of a digital certificate of good conduct. This is necessary because the introduction of the digital certificate of good conduct is a complex IT project, the concrete details of

which can only be ascertained and determined in detail by the registration authority during implementation.

#### **Nummer 6 (Amendment to § 39 of the BZRG)**

With regard to the change in the name of the authority, reference is made to the reasons for the amendment to § 1(2) sentence 2 of the BZRG (see Article 6(1)).

#### **Nummer 7 (Amendment to § 42a of the BZRG)**

With regard to the change in the name of the authority, reference is made to the reasons for the amendment to § 1(2) sentence 2 of the BZRG (see Article 6(1)).

#### **Nummer 8 (Amendment to § 44a of the BZRG)**

The proposed regulation is intended to create an explicit legal basis for the Federal Office of Justice to implement necessary witness protection measures in the Central Criminal Register. § 44a of the BZRG currently only expressly provides for the options of blocking a data record, refusing to disclose information about such a blocked data record, and creating a specially marked personal data record. In addition, the registration authority has in the past been asked in specific individual cases by witness protection services to amend decision data in the Central Criminal Register for witness protection purposes. The background to this is that witness protection services had produced amended criminal court judgements in these cases, as the persons to be protected were serving prison sentences under false identities and judgements had to be issued that matched their respective false identities. Entries in the Central Criminal Register then had to be adjusted accordingly, whereby only changes not relevant to the time limits within the meaning of § 33 et seq. of the BZRG were made. The Federal Office of Justice complied with these requests by applying § 5 of the Witness Protection Harmonisation Act (Zeugenschutz-Harmonisierungsgesetz – ZSHG) *mutatis mutandis*. However, the lack of specific rules for the registration authority led to legal uncertainty in practice, which is why the proposed addition to § 44a BZRG is now intended to create a specific legal basis for the aforementioned witness protection measures. The wording of the new paragraph 4 is based on § 5 ZSHG. Only the sequence of sentences differs slightly. Minor linguistic adjustments have also been made to the previous § 44a of the BZRG. For example, the authorities responsible for the protection of a person are referred to as witness protection services in § 5 ZSHG, whereas § 44a BZRG so far designates them as witness protection bodies. For the sake of consistency and legal clarity, the terminology used in the ZSHG is to be adopted in the BZRG – both in the new paragraph 4 and in the existing paragraphs 1 to 3. However, a change in previous practice is not associated with these deviations from § 5 ZSHG.

The proposed insertion of paragraph 4 (new) will enable the registration authority to comply with requests from witness protection services in a legally certain manner in the future and to amend certain data of entries in the register. However, the registration authority may comply with such requests under the second sentence of the proposed statutory provision only in so far as conflicting public interests or interests of third parties worthy of protection do not prevail. If this is the case, the witness protection measure is inadmissible and must be rejected by the Federal Office of Justice. Conflicting public interests are likely to prevail in any event where witness protection measures would lead to favourable registration-specific treatment of the persons to be protected. This would include, in particular, the reduction of penalties or the complete removal of entries. However, the registration authority shall not have any own powers of review with regard to the question of the necessity of the witness protection measure. If the witness protection agency with jurisdiction considers this to be the case, the Federal Office of Justice is bound by this in accordance with sentence 3 of the proposed regulation. This is because the registration authority does not have sufficient knowledge of the specific circumstances of the witness protection measure to assess its necessity. Nor should the witness protection service be compelled by

such a reservation to disclose all facts relating to the witness protection measure to the Federal Office of Justice. After all, it is inherent in witness protection that the circle of those fully privy to the matter should be kept as small as possible.

The proposed amendment to the title takes account of the extension of the scope of the provision.

#### **Nummer 9 (Amendment to § 49 of the BZRG)**

With regard to the change in the name of the authority, reference is made to the reasons for the amendment to § 1(2) sentence 2 of the BZRG (see Article 6(1)).

#### **Nummer 10 (Amendment to § 53 of the BZRG)**

This is an adaptation of the reference to certificates of good conduct for public authorities. These can be found in some places within the BZRG, for example in § 32(4) BZRG. There, and in all other places, the BZRG refers to a 'certificate of good conduct for authorities (§ 30 (5), § 31)'. Only the amended provision deviates from this, without there being an objective reason for this. Therefore, the linguistic adaptation of this standard is proposed for the purpose of uniformity.

In addition, a syntactic error in the provision is corrected on this occasion. The word "is" has so far only been found in § 53(1)(2) of the BZRG, although it applies equally to § 53(1)(1) of the BZRG. The missing word 'is' should therefore be inserted there.

#### **Nummer 11 (Amendment to § 55 of the BZRG)**

With regard to the change in the name of the authority, reference is made to the reasons for the amendment to § 1(2) sentence 2 of the BZRG (see Article 6(1)).

#### **Re Artikel 7 (Amendment to the Trade, Commerce and Industry Regulation Act)**

##### **Re Nummer 1 (Amendment to the Table of Contents)**

###### **Re Buchstabe a**

This is a consequential adjustment to the table of contents due to the change in Article 7(3).

###### **Re Buchstabe b**

This is a consequential adjustment to the table of contents due to the change in Article 7(7).

##### **Re Nummer 2 (Amendment to § 150a of the GewO)**

The Act introducing the Competition Register and amending the Act against Restraints of Competition (WRegGEG) of 18 July 2017 last amended the second sentence of § 150a(1) of the GewO with effect from 1 June 2025 and deleted the words 'and contracting authorities within the meaning of § 99 of the Act against Restraints of Competition'. Due to a clerical error, the title was not adapted to reflect this change. This is now rectified.

##### **Re Nummer 3 (Amendment to § 150c of the GewO)**

With regard to the change in the name of the authority, reference is made to the reasons for the amendment to § 1(2) sentence 2 of the BZRG (see Article 6(1)).

#### **Re Nummer 4 (Amendment to § 153c of the GewO)**

In accordance with § 9 of the Rules of Procedure of the Federal Government, the Federal Chancellor issued an organisational decree on 6 May 2025 (Federal Law Gazette 2025 I No 131 of 9 May 2025), ordering that the Federal Ministry of Justice be given the name 'Federal Ministry of Justice and Consumer Protection' and the Federal Ministry for Economic Affairs and Climate Action the name 'Federal Ministry for Economic Affairs and Energy'. The amendment to the first sentence of § 153c of the GewO incorporates the amended designation of the authorities into the Act.

#### **Re Nummer 5 (Amendment to § 155a of the GewO)**

The proposed amendment adapts the reference in § 155a of the GewO to § 44a of the BZRG. The reason for this is the extension of the legal basis in § 44a of the BZRG, which, via the reference in § 155a of the GewO, is also to apply to the Central Trade Register. Previously, § 44a of the BZRG only stipulated that the Federal Office of Justice (BfJ) could refuse to disclose information from the Central Criminal Register for the purpose of witness protection. Therefore, the reference in § 155a GewO was previously only 'for the refusal of information'. However, the amendment to § 44a of the BZRG now opens up further options for action for the registration authority in relation to the Central Trade Register. The previous reference would therefore be insufficient. Therefore, § 155a GewO will in future provide for the corresponding application of the whole of § 44a BZRG. The extension of the reference is also taken into account by adapting the title of § 155a GewO.

#### **Re Artikel 8 (Amendment to the Act on the rehabilitation of soldiers who were discriminated against under service regulations because of consensual homosexual acts, because of their homosexual orientation or because of their gender identity)**

Pursuant to § 3(1), once a conviction has been quashed pursuant to § 1(1) and discrimination has been established pursuant to § 1(2), the rehabilitated person is entitled to monetary compensation from the federal budget. Pursuant to the first sentence of § 3(2), the application for compensation must be submitted to the Federal Ministry of Defence within five years from 23 July 2021. The current application deadline is therefore 23 July 2026. However, since it cannot be ruled out that persons entitled to compensation could submit an application for compensation after that date, the period is to be extended until 23 July 2031. This is to prevent justified applications for compensation received by the Federal Ministry of Defence after 23 July 2026 from having to be rejected due to the expiry of the application deadline.

#### **Re Artikel 9 (Entry into force)**

This Act shall enter into force on the day after promulgation. The legal basis for the digital certificate of conduct shall enter into force on the date on which the technical requirements for the issuance of the digital certificate of conduct are met. The registration authority is already working on this. However, this is a complex IT solution, implementation of which will take some time. According to current plans, the project is expected to be completed in October 2026. In order to enable the technical and organisational preparations for practical application, the expansion of online procedures is scheduled to come into effect in the third quarter 2026, i.e. on 1 October 2026. Article 2, together with § 1 to § 18 and § 20 of the Foundation Register Act, shall enter into force on 1 January 2028. Article 8 is to enter into force on 24 July 2026 in order to ensure the uninterrupted processing of applications.