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for Drugs and Drug Addiction



Legal framework

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Werner Sipp¹, Esther Neumeier², Krystallia Karachaliou², Tim Pfeiffer-Gerschel², Charlotte Tönsmeise³, Maria Friedrich⁴ & Franziska Schneider²

¹ External consultant; ² IFT Institute for Therapy Research; ³ German Centre for Addiction Issues (DHS); ⁴ Federal Centre for Health Education (BZgA)

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0 SUMMARY (T0)

The legal framework for drug and addiction policy is multi-layered and complex because this policy affects many areas of life. The handling of drugs, drug dealing/trafficking, medical provision of drugs, drug use and drug addiction are governed by provisions set at international, European and national levels. At the national level, a range of parties are then responsible for different aspects of the issue of drugs, which are subject to very different laws. In Germany, there is the additional factor, due to its federal structure, that legislative powers are split over several levels. All these provisions together form cross-sectoral legal conditions for drug and addiction policy.

In Germany, the central national legislation in the area of drug and addiction policy is the German Narcotic Drugs Act (Betäubungsmittelgesetz, BtMG), together with the ordinances issued on the basis of that Act. It determines which substances are narcotic drugs, regulates the legal trade in narcotics and contains sanctions for unlawful behaviour in relation to narcotics. In addition to the administrative regulations on trade in narcotics, the penal provisions of the BtMG are of great practical significance because narcotics offences play a large role in the day to day business of German courts.

The BtMG provides for a variety of sanctions for violations against its provisions: penalties for misdemeanors and crimes, fines for regulatory offences, rehabilitation and prevention measures, and administrative acts such as confiscation. In addition, numerous other laws contain criminal provisions and sanctions for drug-related offences (German Criminal Code (Strafgesetzbuch, StGB), German Road Traffic Act (Straßenverkehrsgesetz, StVG), German Precursors Monitoring Act (Grundstoffüberwachungsgesetz, GÜG), German New Psychoactive Substances Act (Neue-psychoaktive-Stoffe-Gesetz, NpSG).

Drug offences are usually classified in three categories, namely consumption-related offences, dealing/trafficking offences and other violations. The BtMG does not differentiate between "soft" and "hard" drugs. Generally, all unlawful narcotics-related acts without exception carry the risk of custodial sentences or financial penalties. There is a highly differentiated system of options to make sentences harsher or lighter. In addition, there is the possibility to completely refrain from prosecution, to halt proceedings, to refrain from punishment or to defer the execution of sentences in favour of treatment. Finally, there are alternatives to criminal sanctions.

The legal framework also includes the legislation which governs the addiction support system. Addiction support forms an essential component of the drug and addiction policy in Germany. Persons with dependence disorders or harmful use have a legal right to help. As a result, a very differentiated range of addiction and drug support services has been established in Germany over the decades, in particular for prevention, treatment, harm reduction and rehabilitation. In past years, most changes to the law have been made in this area, such as the provisions under narcotic drugs laws governing substitution treatment for opioid addicts (substitution) that have been enshrined in law for over 20 years now. These provisions are supplemented by the provisions under narcotics laws regarding diamorphine-

assisted substitution therapy and were most recently radically reformed in 2017 (diamorphine is a pharmaceutical-grade “heroin” that is approved in Germany as a medicine for use for the purpose of medical substitution therapy). Just as with substitution, the rules governing syringe exchange (1994) and drug consumption rooms (2000) were introduced for the purpose of harm reduction. The most recent legal changes concern new psychoactive substances (NPS) (2016) and the authorisation of cannabis as a medicine (2017).

Drug criminality has steadily increased in recent years. One reason for this is the fact that trafficking over the internet makes drugs more readily available.

The number of substitution patients has consistently remained at a comparatively high level for years. It is hoped that the reform of substitution law will further improve this situation.

In political discourse, the question of legalising drugs for intoxication purposes, in particular cannabis, is again being intensively discussed in public.

Struktur der rechtlichen Rahmenbedingungen in Deutschland

1 NATIONAL PROFILE (T1)

1.1 Legal framework (T1.1)

Structure of the legal framework in Germany

In the following, the term "legal framework" will be understood as meaning all legislation that governs narcotic drugs, NPS and their precursors as well as the problem of drugs and addiction in Germany. As the drug and addiction problem affects many areas of life, the pool of legislation is very large, multi-faceted and diverse.

The legal framework of drug and addiction policy in Germany is determined by international, national and European law.

At international level, the three UN Drug Control Conventions that have been ratified by Germany (and almost all countries within the UN), contain numerous obligations and provisions which have a binding effect on the national legislation of the Member States. In Germany, in addition to their being directly binding under international law, they have the status of simple federal law. This includes, in particular, the obligation to ensure certain narcotic drugs and psychotropic substances are available in sufficient quantities for medical and scientific purposes, to use these substances exclusively for medical or scientific purposes and to control how they are handled. According to this, national regulations - to the extent they provide for the legalisation of narcotic drugs and psychotropic substances for non-scientific and non-medical purposes, thus for intoxication purposes - are not compatible with the three UN Drug Control Conventions.

At national level, the legal framework in Germany is in turn established at different levels because, in accordance with the German Constitution (Grundgesetz), legislative and

administrative competences are split between the federal, *Land* and municipal levels (Germany is a federation of states):

- The German Federal Government, as the uppermost level, issues laws in the areas that are assigned to it by the Constitution. These areas are, for example, dealing/trafficking in narcotic drugs and medicines, social welfare legislation, criminal law, criminal proceedings, among other things. These laws apply uniformly across the whole country.
- The Laender have legislative competence in all other areas, e.g. in health law, police law, imprisonment among other things, which means that the legal framework is determined by the *Laender* which can lead to a situation whereby these areas are regulated completely differently in the 16 *Laender*.
- Moreover, the *Laender* are responsible for the administrative enforcement and implementation both of federal laws and their own laws. This can also result in differences in administrative practice between the *Laender*.
- Finally, the municipalities - the cities, districts and local authorities - play an important role in regulating local affairs and enforcing laws, for example in the area of addiction support.

There is also binding legislation at European level for specific areas, which also plays a part in determining the legal framework in Germany. In this sense, the control of so-called drug precursors, for example, is definitively regulated for all Member States by binding EC regulations, such that the GÜG today only has a supplementary function. Other EU rules also affect the legal framework in Germany, such as the Framework Decision of 25 October 2004 on minimum penalties in the area of illicit drug trafficking¹ or the Regulation on information exchange on new psychoactive substances and an early warning system and risk assessment procedure for new psychoactive substances of 15 November 2017².

1.1.1 Characteristics of drug legislation and national guidelines for implementation (T1.1.1)

Drug and addiction policy has to regulate the approach to legal and illegal addictive substances and therefore touches many areas of life. The associated legal framework thus comprises many pieces of legislation which originate from very different legal areas. This includes not only criminal legislation, but also legislation in the areas of health law, social law, commercial law, traffic law as well as other legal norms. In the following, the BtMG will be presented in section 1.1.1, section 1.1.2 will then set out the system under narcotics

¹ Council framework decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, OJ L 335/8 of 11 November 2004, <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32004F0757&from=DE> [accessed: 10 Sep. 2019].

² Regulation (EU) 2017/2101 of the European Parliament and of the Council of 15 November 2017 amending Regulation (EC) No 1920/2006 as regards information exchange on, and an early warning system and risk assessment procedure for, new psychoactive substances, OJ L 305/1 of 21 November 2017, <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32017R2101&from=EN> [accessed: 10 Sep. 2019].

criminal law while section 1.1.3 will outline the innovative new law on NPS. The elements of the legal framework which are regulated in other legal areas will be covered under section 1.1.4.

Narcotics law

The central piece of national legislation in the area of drug and addiction policy is the **BtMG**³, together with the ordinances issued on the basis of the Act. That Act implements the three UN Drug Control Conventions⁴ into national law. The BtMG regulates the legal trade in narcotic drugs and contains in this respect primarily regulatory and administrative law. It also contains central (criminal) sanctions for unlawful acts in connection with narcotics.

First, it individually lists, one by one, the substances that are considered narcotic drugs within the meaning of German law and are thus subject to control under narcotics law. It contains no general definition of "narcotic drugs", rather it divides specific psychoactive substances into three categories and lists them accordingly in three schedules, namely:

- narcotics not eligible for trade and non-prescribable narcotics: Schedule I, e.g. heroin, LSD, cannabis, psilocybin, MDMA (ecstasy);
- narcotics eligible for trade but non-prescribable: Schedule II, e.g. meprobamate, methamphetamine;
- narcotics eligible for trade and prescribable: Schedule III, e.g. morphine, methadone, amphetamine, codeine, dihydrocodeine, cocaine, cannabis (to the extent cultivation takes place for medicinal purposes under state control in accordance with the UN Single Convention on Narcotic Drugs, 1961).

The BtMG makes no distinction based on the "level of danger" posed by the substances nor does it differentiate between "hard" and "soft" drugs.

The BtMG regulates the manufacture, cultivation, bringing onto the market, trade, import and export of narcotic drugs. These activities require authorisation, which is granted by the German Federal Institute for Drugs and Medical Devices (Bundesinstitut für Arzneimittel und Medizinprodukte, BfArM) (Sec. 3 BtMG). For substances listed in Schedule I, authorisation can only be granted in exceptional cases for scientific or other purposes in the public interest. Substances in Schedules II and III are subject to special rules governing their use, such as provisions governing the prescription of substances listed in Schedule III (Sec. 13 BtMG). In

³ Act on the trade in narcotic drugs (German Narcotic Drugs Act, Betäubungsmittelgesetz - BtMG) of 28 July 1981, which came into force on 1 January 1982, current version 1 March 1994, Federal Law Gazette I p. 681, 1187:

http://www.gesetze-im-internet.de/btmg_1981/ [accessed: 5 Sep. 2019].

⁴ Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol https://www.unodc.org/pdf/convention_1961_en.pdf; Convention on Psychotropic Substances of 1971 https://www.unodc.org/pdf/convention_1971_en.pdf; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, https://www.unodc.org/pdf/convention_1988_en.pdf [accessed: 10 Sep. 2019].

this context, the basis under narcotics law for substitution treatment is also established. The details on prescribing narcotics are regulated in the **Regulation on the Prescription of Narcotic Drugs** (Betäubungsmittel-Verschreibungsverordnung, BtMVV)⁵ (see on this point section 1.1.4 below).

The BtMG also regulates the minimum requirements for setting up and operating drug consumption rooms (Sec. 10a BtMG) (see on this point section 1.1.4 below). The details regarding these facilities must, however, be specified by the individual *Laender* by way of legal ordinances. To date, only seven *Laender* have issued legal ordinances on the operation of drug consumption rooms.⁶

The rules on legal domestic and foreign trade in narcotics (import and export) are specified in greater detail in the **German Ordinance concerning the Domestic Trade in Narcotics** (BtM-Binnenhandelsverordnung, BtM-BinnenhandelsVO)⁷ and the **German Ordinance concerning the Foreign Trade in Narcotics** (BtM-Außenhandelsverordnung, BtM-AußenhandelsVO)⁸.

Criminal provisions of the BtMG

In addition to the administrative provisions concerning trade in narcotics, which account for a large part of the BtMG, the penal provisions of the BtMG are of great practical significance. As narcotics offences play an important role in the day to day operation of German courts and in criminal statistics, the BtMG is one of the most important laws in the area of so-called secondary criminal law.

The BtMG provides for a variety of sanctions for violations against its provisions: penalties for misdemeanors and crimes, fines for regulatory offences, rehabilitation and prevention measures, administrative acts such as confiscation.

Sec. 29, Sec. 29a and Sec. 30a BtMG specify the most important acts under threat of punishment in connection with narcotic drugs. Generally, every type of act in connection with narcotic drugs is prohibited and subject to punishment, whilst the statutory penalties vary greatly in terms of severity. These provisions primarily serve to combat narcotics crime and are aimed at criminal acts of both dealers and drug users. The system of criminal sanctions under the BtMG is presented in more detail in section 1.1.2.

⁵ BtMVV: http://www.gesetze-im-internet.de/btmvv_1998/BJNR008000998.html [accessed: 5 Sep. 2019].

⁶ North Rhine-Westphalia, Hamburg, Berlin, Lower Saxony, Hesse, Saarland. In total, there are currently 25 drug consumption rooms in Germany.

⁷ BtM-BinnenhandelsVO: <https://www.gesetze-im-internet.de/btmbinhv/BJNR014250981.html> [accessed: 5 Sep. 2019].

⁸ BtM-AußenhandelsVO: <https://www.gesetze-im-internet.de/btmahv/BJNR014200981.html> [accessed: 5 Sep. 2018].

German Criminal Code (StGB) and German Code of Criminal Procedure (StPO)

The general provisions of criminal law and criminal procedure also apply in relation to drug offences. In addition, the StGB⁹ contains several provisions which specifically cover drug use and its consequences, such as drunk driving (driving a vehicle under the influence of intoxicating substances (Sec. 316 StGB)), committing offences while intoxicated (Sec. 323a StGB), jeopardising a detoxification treatment (Sec. 323b StGB), referral to a detoxification facility (Sec. 64 StGB), driving ban (Sec. 69 (2) StGB).

1.1.2 The system of narcotics penalties (T1.1.2)

The central criminal provisions in narcotics law are found in Sec. 29, Sec. 29a, Sec. 30, Sec. 30a BtMG. The basic offences are contained in Sec. 29 (1) BtMG, while Sec. 29 (3), 29a, 30 and 30a BtMG contain carefully graduated increases in the severity of penalties. In addition, there are provisions which allow a reduction of penalties or even refraining from prosecution or punishment.

Classification of drug offences

In the police crime statistics, drug offences are divided into three categories¹⁰: The term "**consumption-related offences**" defines general violations of the BtMG, which includes possession, acquisition and supply of narcotics and similar offences under Sec. 29 BtMG. The term "**dealing/trafficking offences**" encompasses offences of unlawful trade in and smuggling of narcotics as per Sec. 29 BtMG as well as offences involving the unlawful import of narcotics as per Sec. 30 (1) No. 4 BtMG. The remaining offences are described in the criminal statistics as "**other violations**"¹¹. Under criminal law it is possible to differentiate, according to the severity of the offence, between "minor offences" (basic offences as per Sec. 29 (1) BtMG) and "crimes" (qualified offences as per Sec. 29a, 30, 30a BtMG) and "regulatory offences" (Sec. 32 BtMG).

Basic offences

Sec. 29 (1) BtMG lists all unlawful narcotics related acts without exception and stipulates custodial sentences of up to five years, or financial penalties. That applies to the cultivation,

⁹ StGB: <https://www.gesetze-im-internet.de/stgb/StGB.pdf> [accessed: 5 Sep. 2019].

¹⁰ The police crime statistics (Polizeiliche Kriminalstatistik, 2017), Federal Criminal Police Office (Bundeskriminalamt, BKA), https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/PolizeilicheKriminalstatistik/PKS2017/pks2017_node.html [accessed: 7 Sep. 2019].

¹¹ "Other violations" are: Unlawful cultivation of narcotics (Sec. 29 (1) No. 1 BtMG), the cultivation of, manufacture of and dealing/trafficking in narcotics as a member of a gang (Sec. 30 (1) No. 1, Sec. 30a BtMG), making available financial means or similar assets (Sec. 29 (1) No. 13 BtMG), promotion of narcotics (Sec. 29 (1) No. 8 BtMG), supplying, administering or providing narcotics to minors (Sec. 29 a (1) No. 1, and possibly Sec. 30 (1) No. 2 BtMG), negligently causing the death of another by supplying, administering or providing narcotics for direct use (Sec. 30 (1) No. 3 BtMG), prescription and administering by doctors in breach of Sec. 13 BtMG (Sec. 29 (1) No. 6 BtMG) and unlawful dealing/trafficking in or manufacturing, supplying, possessing narcotics in non-small quantities (Sec. 29 a (1) No. 2 BtMG).

manufacture, trading, import, export and transit, sale, supply, bringing onto the market, obtaining, prescribing, administering and providing for direct use, as well as to not for profit sales and to mere possession of narcotic drugs. The use of narcotic drugs is in itself not a punishable offence, however the possession associated with use is. This basic rule applies to all narcotic drugs. The BtMG does not distinguish between "hard" and "soft" drugs.

Increases in penalties

If an act in the scope of Sec. 29 (1) BtMG is committed for commercial purposes or endangers the health of multiple people, this is a particularly serious case punishable by a custodial sentence of at least one year (Sec. 29 (3) BtMG).

A further increase in the threat of punishment is provided for in Sec. 29a BtMG: according to that provision, the severity of the penalty increases to a minimum of one year if a narcotic drug has been given to a young person or if the acts listed above under Sec. 29 BtMG involve a non-small amount of a narcotic drug.

Anyone doing so for commercial purposes will receive a penalty of imprisonment of not less than two years (Sec. 30 (1) No. 2 BtMG). A minimum two-year sentence is likewise given for acts committed in a gang, recklessly causing the death of a person and for importing narcotic drugs in *non-small amounts* (Sec. 30 (1) and (3) BtMG).

A minimum of five years' imprisonment should be expected by anyone cultivating, manufacturing, importing and exporting and dealing/trafficking in *non-small amounts* of drugs while at the same time operating in a gang, inciting an under 18-year-old to deal in drugs or carrying a weapon while committing the act (Sec. 30a BtMG).

Over numerous decisions, the courts have set out threshold values for "*non-small amounts*" within the meaning of the aforementioned provisions for different narcotic drugs. According to the case law of the German Federal Court of Justice (Bundesgerichtshof, BGH)¹² these threshold values are established on the basis of a multiple of the average consumption unit of a user not accustomed to its use. Reports from users of the substance as to their experience of its effects can be used as the basis for determining the consumption unit.

Reductions in penalties

A reduction is possible in the majority of less severe cases (Sec. 29a (2); Sec. 30 (2); Sec. 30a (3)). In addition, the court can reduce the punishment or even waive it altogether if the offender cooperates in detecting other crimes (Sec. 31 BtMG).

Refraining from prosecution - Sec. 31a BtMG

There is special significance for Sec. 31a BtMG, which provides for the possibility that the public prosecutor's office (without requiring consent from the court) can completely **refrain**

¹² BGH decision of 7 February 2018, StV 2018, p. 504 and BGH, judgment of 14 January 2015, BGHSt 60, 134, 136 et seq. para. 35 with further refs.

from prosecution if the act concerned is a misdemeanor under Sec. 29 (1), (2) or (4) BtMG (i.e. not for serious or qualified offences). For this, four requirements must be met:

- (a) the offender must have cultivated, manufactured, imported, exported, carried in transit, bought or otherwise obtained or possessed the narcotic drugs solely for personal use,
- (b) it must be a small quantity of narcotic drugs,
- (c) the offender's guilt would be deemed to be minor and
- (d) there is no public interest in prosecution.

This provision was introduced in 1992, to relieve the judicial system and law enforcement authorities in the case of minor offences involving personal use. This possibility of refraining from prosecution is not limited to specific drugs, it applies to all drugs. However, in practice it is mainly applied in relation to cannabis offences.

Since criminal prosecution is a matter for *Laender*, most of them¹³ have issued judicial administrative provisions on "refraining from prosecution" according to Sec. 31a BtMG, which are binding on the public prosecutor's office of the respective *Land*. In its so-called "cannabis decision" of 9 March 1994¹⁴, the German Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) encouraged the *Laender* to ensure "an essentially uniform practice for prosecutors regarding refraining from prosecution". Originally, considerable differences existed both in the administrative provisions across the *Laender* and in the practice of the public prosecutors. For example, the definition of small quantity of cannabis varied between 3 and 30 grams. A large-scale analysis of criminal prosecution practice in 2006 concluded that these differences were no longer in line with the call from the BVerfG for "an essentially uniform practice regarding refraining from prosecution" (Schäfer & Paoli, 2006). Following that, the *Laender* Justice Ministers harmonised their guidelines to a great extent at least in respect of the aspect of the "small quantity". Nevertheless, differences between the different *Land* provisions still exist, some of them considerable. An additional factor is that the state prosecutor offices involved have a certain degree of latitude in the application of the law - for example in the interpretation of the term "minor guilt" or "public interest in a criminal prosecution" - which in turn can lead to quite different decisions concerning refraining from prosecution.

Small quantity

As the BtMG does not define the meaning of "small quantity" more closely, each *Land* has set a threshold for the "small quantity" for cannabis. Only a few *Laender* have done so for other narcotics.

¹³ Only Bremen and Mecklenburg-Western Pomerania have passed specific guidelines in relation to Sec. 31a BtMG.

¹⁴ BVerfGE 90. 145 et seq.

In the case of cannabis, the majority of *Laender* take 6 grams as the threshold for a "small quantity", some *Laender* go up to 10 grams, Berlin even goes up to 10-15 grams. However, the significance of the threshold is not the same everywhere: In some *Laender*, cases involving quantities up to that limit "should" be dropped¹⁵, in other *Laender*, they "can" be dropped. In some *Laender*, cases "can" be dropped above that level, in most, however, they may not be.¹⁶¹⁷

In the case of other narcotics, most *Land* provisions concerning the administration of justice do not stipulate any thresholds regarding refraining from prosecution. It is either the case that other narcotic drugs are not mentioned at all or that the possibility of refraining from prosecution is generally excluded or only allowed in exceptional cases. Only three *Laender* set quantity thresholds for other narcotics in addition to those for cannabis: Hamburg (heroin: 1 gram; cocaine: 1 gram),¹⁸ North Rhine-Westphalia (heroin: 0.5 grams; cocaine: 0.5 grams; amphetamine: 0.5 grams)¹⁹, and Schleswig-Holstein (cocaine and amphetamine no more than 3 grams; heroin no more than 1 gram (gross weight in each case)²⁰.

All of these threshold values are only guidance and can be deviated from on a case by case basis.

Minor guilt; public interest

Multiple types of case are subsumed within these imprecise legal terms, such as repeat offence, endangering of others and the level of danger posed by respective drugs.

Large differences exist between the regulations of the various *Laender* in relation to the treatment of repeat offenders: in most cases, prosecution may only be refrained from in the case of first time offenders or opportunistic offenders but not in the case of repeat offenders.

¹⁵ Baden-Württemberg, Bavaria, Berlin (up to 10g "should", up to 15g "can"), Rhineland-Palatinate, Brandenburg, Bremen, Hamburg, Hesse, Saarland (up to 6g "should", up to 10g "can"), Schleswig-Holstein, Thuringia.

¹⁶ Baden-Württemberg, Bavaria, Brandenburg, Bremen, Hamburg, Hesse, Mecklenburg-Western Pomerania, Lower Saxony, Saxony, Saxony-Anhalt, Schleswig-Holstein.

¹⁷ Rhineland-Palatinate, North Rhine-Westphalia, Saarland, Thuringia.

¹⁸ General order (allgemeine Verfügung) of the Department of the Interior (Behörde für Inneres) and the Department of Justice (Justizbehörde) on the application of Sec. 31a (1) BtMG: Justizbehörde AV No. 52/2010 of 22 November 2010:

<https://www.hamburg.de/contentblob/3838546/c9a3da385339247fa71b83acce544334/data/hmbjvbl-2011-01.pdf> [accessed: 5 Sep. 2019].

¹⁹ Guidelines on the application of Sec. 31a (1) BtMG, Common Circular Order (gemeinsamer Runderlass) of the German Ministry of Justice (4630 - III. 7 "IMA") and of the Ministry for Internal and Municipal Affairs (42 - 62.15.01) of 19 May 2011 - Justice Ministry Gazette NRW p. 106:

<http://www.jvv.nrw.de/anzeigeText.jsp?daten=969> [accessed: 5 Sep. 2019].

²⁰ Guidelines on the implementation of Sec. 31a BtMG - GI.No. 4500.9 in General Order (Allgemeine Verfügung) of the Ministry for Justice, Employment and Europe (Ministeriums für Justiz, Arbeit und Europa) of 25 July 2006 – II 302/4061 – 75 c SH - Official Journal SH 2006, 679: <http://www.gesetze-rechtsprechung.sh.juris.de/jportal/?quelle=jlink&query=vvsh-4500.9-0001&psml=bsshoprod.psml&max=true> [accessed: 5 Sep. 2019].

At the same time, however, users suffering from dependence have sometimes been afforded exemptions.²¹

Some *Laender* have special provisions for young people: the rule is usually that in the case of adolescents and young adults to whom criminal law relating to young offenders applies, measures under the German Youth Courts Act (Jugendgerichtsgesetz, JGG)²² take precedence over Sec. 31a BtMG. According to Sec. 45 JGG, the state prosecutor can refrain from prosecution, without the consent of the judge, if the offender's guilt can be seen as minor and there is no public interest in the prosecution. At the same time, the state prosecutor requests the issuing of a warning or conditions by the youth court judge. Giving the JGG precedence is intended to take account of the principle of "education" in juvenile criminal law, with a view to the personality and development of young people.

Overall, it can be concluded that differences in the enforcement of crimes under Sec. 31a BtMG by the different state prosecutors continue to exist, that these differences are due less to the varying thresholds for "small quantities" and more to their stipulation as minimum or maximum limits as well as to variations in the interpretation of the elements "minor guilt" and "public interest" (Schäfer & Paoli, 2006). There is no legal right to any case being dropped, even where amount is below the threshold, because the state prosecutor can exercise discretion in respect of Sec. 31a BtMG.

Ceasing prosecution, refraining from punishment

If court proceedings have already been initiated, there are a number of possibilities for abandoning prosecution or refraining from punishment.

In the case of simple drug offences (Sec. 29 (1), (2) and (4) BtMG), the court can refrain from issuing a punishment if the perpetrator has used the narcotic drug only for personal use (i.e. cultivated, imported, exported, carried in transit, purchased or otherwise obtained or possessed in small quantities, Sec. 29 (5) BtMG). In addition, the court can, under certain conditions, reduce the punishment or even waive it altogether if the offender cooperates with the judicial authorities. (Sec. 31 BtMG).

In youth court proceedings, the judge can halt proceedings if the requirements under Sec. 153 StPO²³ as well as some additional requirements are met (Sec. 47 JGG).

Suspension of enforcement of penalties - "treatment not punishment" Sec. 35 BtMG

The enforcement authorities can (with the consent of the court) suspend enforcement where someone has committed a crime due to a narcotics dependence and has been sentenced to no more than two years and if they are in treatment for their dependence or agree to submit to such a treatment.

²¹ Lower Saxony, Saxony-Anhalt, Hamburg, Saarland, North Rhine-Westphalia.

²² JGG: <https://www.gesetze-im-internet.de/jgg/BJNR007510953.html> [accessed: 6 Sep. 2019].

²³ § 153 StPO: https://www.gesetze-im-internet.de/stpo/_153.html [accessed: 6 Sep. 2019].

The suspension of enforcement can be revoked if the treatment is not commenced or is not continued. If the suspension is revoked, the prison sentence can be enforced.

Alternatives to criminal sanctions

In some *Laender*, prevention projects, such as the programme "Early Intervention in First-Offence Drug Consumers – FreD"²⁴ are used as a way of avoiding court proceedings. They represent a possibility for intervention without immediately initiating criminal proceedings. The programme is aimed at 14 to 18-year-olds but also at young adults up to 25 years old who have come to the attention of law enforcement for the first time due to their use of illicit drugs (vgl. Bartsch, Friedrich, Schneider, Dammer, & Pfeiffer-Gerschel, 2018). The German nationwide pilot project FreD has been taken up at European level and further developed through the European cooperation project "FreD goes net". Today, the FreD idea has spread to many parts of Europe.²⁵

Principle of mandatory prosecution / discretionary principle

In Germany, the principle of mandatory prosecution generally applies (Sec. 152 (2), Sec. 160 (1), Sec. 163 StPO) and not the discretionary principle. The police are therefore obliged to file a criminal complaint against any suspect and refer them to the respective public prosecutor, even in misdemeanours involving small amounts of drugs. This means that the latitude afforded to the police when dealing with suspected offenders is very limited. In the case of possession of only a small quantity for personal use (user offence), the so-called simplified criminal complaint is applied in some *Laender*: this means that police action is limited, in general, to weighing the substance, seizing it, conducting a drug test and interviewing the suspect. The state prosecutor has a certain degree of discretion in the scope of Sec. 31a BtMG (discretionary principle) because they can refrain from prosecution under certain conditions.

Sentencing

When handing down sentences, factors which must be taken into account include the severity of the offence, the circumstances surrounding it, the personality of the offender and many others. There is extensive case law of the highest court regarding questions of sentencing.

Even though the BtMG generally does not differentiate between different types of narcotic, the type of intoxicant and how dangerous it is do have an independent significance in the scope of sentencing for a narcotics offence. For sentencing, there is a key graduation of so-called "hard" drugs like heroin, fentanyl, cocaine and crack to "medium" drugs like amphetamine to so-called "soft" drugs like cannabis.²⁶

²⁴ http://www.lwl.org/ks-download/downloads/fred/FreD_Broschuere_de.pdf [accessed: 6 Sep. 2019].

²⁵ At the end of 2010, there were FreD projects in 15 European countries.

²⁶ BGH decision of 15 June 2016, NSTZ 2016,614-615.

1.1.3 Control of new psychoactive substances (NPS) (T1.1.3)

German New Psychoactive Substances Act (NpSG)

On 16 November 2016, the NpSG²⁷ came into force. That Act intended to combat the distribution of new psychoactive substances (NPS) and thus restrict their availability as substances for use and intoxication. The idea is thereby to protect the health of the population and of the individual, in particular adolescents and young adults, against the often incalculable and serious risks associated with the consumption of NPS.

The NpSG differentiates between prohibitions under administrative law and prohibitions under criminal law²⁸: The Act contains a far-reaching administrative law ban on handling NPS (including purchase and possession), which creates the basis on which NPS may be seized and, where applicable, destroyed on the basis of the police laws, independent of any criminal proceedings. Moreover, it provides for the imposition of criminal penalties for acts which aim at the passing on of NPS, in particular trading in NPS, bringing them onto the market, administering NPS as well as manufacturing and introduction of NPS in the scope of the Act (imprisonment of up to three years or a fine). The penalty can be increased if the acts are committed for commercial purposes or in a gang, if the NPS are given to under 18s or if there is a danger to health (imprisonment of between one and ten years). Approved uses for commercial, industrial or scientific purposes are exempt from the ban (Sec. 3 (2)). The NpSG also does not apply to medicines and narcotic drugs (Sec. 1 (2)).

The criminal provisions in the Act are aimed in particular at manufacturers, dealers/traffickers and "persons bringing NPS onto the market" but not at consumers.

The NpSG follows a new innovative approach in that it does not list the substances individually (as is the case in the Schedules of the BtMG), rather it bans entire substance groups. Until now, emerging substances had to be scheduled individually in the Schedules of the BtMG in order for them to be controlled or banned. Due to the high number of emerging NPS and the relatively long period of time required by the banning procedures, it had become almost impossible to incorporate these substances into the BtMG in a timely manner, even if the new substances often exhibited only minor changes in chemical structure to the substances already scheduled under the BtMG. Thus, the appearance of a supposed "legality" could be exploited, because the lack of a ban gave the impression, especially to young users, that the substance was harmless. At the same time, the criminal provisions in the BtMG were being circumvented.

Prior to the introduction of the Act, action was taken against dealing/trafficking in NPS through the criminal provisions of the German Medicinal Products Act (Arzneimittelgesetz, AMG). According to the judgment of the Court of Justice of the European Union (CJEU) of 10

²⁷ <https://www.gesetze-im-internet.de/NpSg/NpSG.pdf> [accessed: 6 Sep. 2019].

²⁸ Klaus Weber, (2017) Kommentar, Einleitung zum NpSG, marg. no. 27.

July 2014²⁹, however, NPS do not fall under the definition of medicines and the AMG. Consequently, there were gaps in regulation and in criminal liability which were then closed by the NpSG.

Through the new Act, in the case of two categories of substances it will no longer be possible to circumvent bans by making small chemical modifications and thus to bring dangerous substances onto the market. The two categories of NPS subject to the ban are listed in the Schedules to the NpSG:

- 2-phenethylamine derived compounds (i.e. substances related to amphetamine, including cathinone),
- cannabimimetic agents / synthetic cannabinoids (i.e. substances which imitate the effects of cannabis).

In the broadly defined group of 2-phenethylamine, around 2,000 substances are described which have a pharmacological effect and in the case of which, according to current knowledge, an abuse for intoxication purposes can be assumed³⁰. Depending on how the market develops, it may be appropriate in future to subject further categories of substances to the provisions of the NpSG or to extend or limit categories of substances.

Substances which do not just have a slight psychoactive effect and have proved especially harmful to health and which are abused to a not insignificant extent are to continue to be scheduled under the Schedules to the BtMG.

A two-year research project funded by the German Federal Ministry of Health (Bundesministerium für Gesundheit, BMG) intends to assess the effects of the NpSG on users, the addiction support system and law enforcement authorities and the justice system as well as the market on a qualitative and quantitative basis (period from June 2017 to end of May 2019). In the scope of that project, primarily structured narrative interviews are being carried out with NPS users, representatives of the addiction support system and law enforcement authorities or the justice system as well as surveys in correctional institutions and by forensic medicine institutes and poison control centres. The aim of the project is to achieve the objectives of the Act and to make recommendations for indicators which will enable a long-term evaluation of the effectiveness of the Act. Additionally, findings from chemical toxicological analyses of cases of poisoning (patterns of use, possible interactions) can be used for the development of prevention measures.

Further development of the NpSG

²⁹ CJEU, judgment of 10 July 2014. Joined cases C-358/13 and C-181/14, <http://curia.europa.eu/juris/document/document.jsf?docid=154827&doclang=DE> [accessed: 6 Sep. 2019].

³⁰ Explanatory memorandum: Bundesrat Printed Paper 231/16 of 6 May 2016, p. 22, https://www.bundesrat.de/SharedDocs/drucksachen/2016/0201-0300/231-16.pdf?__blob=publicationFile&v=1 [accessed: 6 Sep. 2019].

With the “Regulation Amending the Annex to the New Psychoactive Substances Act and Schedules to the Narcotic Drugs Act” (Verordnung zur Änderung der Anlage des Neuepsychoaktive-Stoffe-Gesetzes und von Anlagen des Betäubungsmittelgesetzes, NpSGuBtmGAnlÄndV), eight additional NPS were adopted into Schedule II of the BtMG: two synthetic cannabinoids and six synthetic opioids. The adoption of seven of these substances was recommended by the Federal Government’s expert committee in accordance with Sec. 1(2) BtMG and Sec. 7 NpSG, the adoption of one additional substance was based on the amendment to Schedule I of the Single Convention on Narcotic Drugs of 1961.

In addition, the German Act for More Safety in the Supply of Medicinal Products (Gesetz für mehr Sicherheit in der Arzneimittelversorgung, GSAV) extended the enabling provision in Sec. 1(4) BtMG. That made it possible for those NPS, for which it has been established at an EU level, on the basis of a risk assessment, that they represent a high risk to public health and which have therefore been included in the “EU definition of drugs”, to add them to the BtMG Schedules in a simplified and thus faster process.

In addition, the Regulation Amending the Annex to the New Psychoactive Substances Act and Schedules to the Narcotic Drugs Act adjusted the Schedule to the NpSG in line with the current state of knowledge. The NpSG has encompassed, since it came into force in November 2016, around two thirds of the known substances (on the market at that time). This gives the authorities the ability to take action against the majority of these substances. The development of the market since then has shown that it is necessary, due to the extent of abusive use of certain psychoactive substances and their effects, to further develop both of the substance groups in the NpSG (phenethylamine and synthetic cannabinoids) and to expand the NpSG to include three additional substance groups (benzodiazepine, N- (2-aminocyclohexyl)amide derived compounds and tryptamine). Substances which have been seen to have not just a slight psychoactive effect and which have proved especially harmful to health while also being abused to a not insignificant extent should continue to be included in the Schedules to the BtMG, the stricter provisions of which take precedence over those of the NpSG.

The expansion of the substance groups in the NpSG and the adoption of eight further NPS in the BtMG serves the protection of health and prevention of risk. They do not constitute a limitation of the legal trade in medicinal drugs, since they medicines are excluded from their scope of application as per Sec. 1(2) No. 2 NpSG, and with respect to the eight substances to be subject to the BtMG, no medicinal drugs containing these substances are known. The aforementioned regulation came into force on 18 July 2019.

In addition, in the 62nd meeting of the United Nations Commission on Narcotic Drugs (CND) in March 2019 it was decided that nine additional NPS would be included in the 1961 and 1971 UN Drug Control Conventions. Six of those substances are already subject to the BtMG, the three others are to be included in a BtMG Schedule with the next amending regulation.

1.1.4 Drug related norms in other areas of the law (T1.1.4)

As drug policy affects many areas of life, norms in other areas of law also form part of its legal framework. The following areas will be presented below:

- (a) Monitoring of trade in precursors
- (b) Drugs in road traffic
- (c) Framework conditions of addiction support
- (d) Provisions on harm reduction

(a) Precursor monitoring

Closely related to the BtMG is the GÜG. The objective of precursor monitoring is to monitor the legal trade in certain chemical products (precursors), in order to prevent their being illegitimately diverted and used for the purpose of illegally manufacturing narcotics. Precursors are chemicals which are sold, sometimes in large quantities, in legal trade but which are also needed for the illegal manufacture of narcotics. The original GÜG from 7 October 1994 regulated this area exhaustively and in great detail. In 2005, the European Union issued two regulations in which the monitoring of precursors was harmonised, i.e. regulated directly and equally bindingly in all EU Member States. Since then, the German GÜG merely supplements and provides additional precision in the area of administrative control and monitoring, namely in respect of the regulations on national competence, of modifications of national administrative proceedings and of the design of certain monitoring measures (Körner, Patzak, & Volkmer, 2016). In addition, it contains criminal provisions and provisions regarding fines, the regulation of which the EU left to the national legislatures.

The two EU regulations - the regulation on internal trade³¹ and the regulation on external trade³² - are based in turn on international law, namely the UN narcotic drugs convention of 1988³³, which contains binding provisions on, among other things, which substances are subject to control as well as the numerous modalities of the control of the international trade in precursors. The narcotic drugs convention of 1988 defines 26 substances³⁴ which have to

³¹ Regulation (EC) No. 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors, OJ L 47/1 of 18 February 2004, <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32004R0273&from=DE> [accessed: 6 Sep. 2019].

³² Regulation (EC) No. 111/2005 of the Council of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors, OJ L 22 of 26 January 2005, p.1, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2005R0111:20050215:DE:PDF> [accessed: 06 Sep. 2019].

³³ United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, http://www.unodc.org/pdf/convention_1988_en.pdf [accessed: 6 Sep. 2019].

³⁴ Version October 2017
https://www.bgbl.de/xaver/bgbl/start.xav?start=//%5B@attr_id=%27bgbl293s1136.pdf%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl293s1136.pdf%27%5D_1572443196069 [accessed: 6 Sep. 2019].

be controlled. The EU regulations divide these into four categories, which are subject to control measures of varying degrees of strictness.

In addition to this statutory control system, there is a voluntary monitoring system based on cooperation between the chemicals and pharmaceuticals industries and the law enforcement authorities, with the goal of preventing abuse of the products. In this system, laboratory chemicals are also monitored which are not covered by the UN narcotic drugs convention and the EU regulations.

The GÜG contains a series of provisions on criminal sanctions and fines which are aimed at preventing precursors being diverted for the illegal manufacture of narcotics (Sec. 19, Sec. 20 GÜG) and which are based strongly on the criminal provisions of the BtMG.

(b) Drugs in road traffic

Drugs in road traffic are a subject matter of the StGB and the StVG.

German Criminal Code (StGB)

Anyone who is in charge of a vehicle despite not being able safely to drive that vehicle as a result of consuming alcoholic drinks or other intoxicating substances is considered to have committed a crime under Sec. 316 StGB (driving while drunk). This is punished with imprisonment of up to one year or a fine. Unfitness to drive exists if there are indications which prove an incapability of driving an automobile. This incapability can follow from the presence of physical or mental defects or be based on the influence of drugs. If the driver has, in addition, endangered other persons or property of significant value (impairing the safety of road traffic), the sentence may be increased to up to 5 years (Sec. 315c StGB).

German Road Traffic Act (StVG)

A regulatory offence within the meaning of Sec. 24a (2) StVG³⁵ is deemed to be whenever someone consumes an "intoxicant" and then drives a vehicle in traffic while under its effects. The "intoxicating agents and substances" are listed in the Schedule to Sec. 24a StVG. As a regulatory offence, driving a vehicle under the influence of drugs can be punished with a fine of up to €3,000 (Sec. 24a (4) StVG). In addition to the fine, a driving ban is also usually imposed (Sec. 25 (1) second sentence StVG)³⁶. The details on this are regulated in the German Driving Licence Ordinance (Fahrerlaubnis-Verordnung, FeV)³⁷.

³⁵ StVG in the version of 5 March 2003 (German Federal Law Gazette I p. 310, 919), last amended by the Act of 17 August 2017 (German Federal Law Gazette I p. 3202) <https://www.gesetze-im-internet.de/stvg/StVG.pdf> [accessed: 6 Sep. 2019].

³⁶ Körner/Patzak Kommentar zum BtMG, before §§ 29 et seqq., marg. no. 416.

³⁷ Ordinance on the licensing of persons to drive in traffic of 13 December 2010 (German Federal Law Gazette I p. 1980), last amended by Ordinance of 3 May 2018 (German Federal Law Gazette I p. 566) https://www.gesetze-im-internet.de/fev_2010/FeV.pdf [accessed: 6 Sep. 2019].

Whilst the StVG sets a blood alcohol threshold for fitness to drive of 0.5 mg/ml, there is no statutory limit for other intoxicants. Therefore, for a long time any amount of narcotics detected in the blood, no matter how small, was punished as a violation of Sec. 24a StGB.

The German Federal Constitutional Court declared, in a decision of 21 December 2004, the so-called "zero value limit" to be anti-constitutional and set a limit of 1 nanogram tetrahydrocannabinol (THC) per millilitre of blood (ng/ml). Since then, however, research has produced new findings as to the concentration of THC above which an impairment in ability can actually be expected. The Commission on Legal Limits (Grenzwertkommission), which advises the German Federal Ministry of Transport (Bundesverkehrsministerium) issued a new recommendation in 2015, according to which an impairment of the fitness to drive can only be assumed from a level of 3ng/ml and above.

However, case law has not followed this recommendation. Whilst the appeal courts could not agree as to whether an act constituting a regulatory offence within the meaning of Sec. 24a (2) and (3) StVG had occurred from an analytical threshold of 1.0 ng/ml THC concentration, the BGH has now decided that a regulatory offence could be considered even from a level of 1.0 ng/ml.³⁸ One must assume that tests could show THC concentrations above that level even several days after the last use. In a study from the USA, several participants exceeded the threshold of 1 nanogram THC per millilitre of blood up to 12 days after the last joint.

Limits have also been set in case law³⁹ for other narcotics (amphetamine: 25 ng/ml; benzoylecgonine: 75 ng/ml; morphine: 10 ng/ml).

An act is deemed not to be a regulatory offence if the substance comes from the proper use of a prescribed medicine for a specific illness (Sec. 24a (2) third sentence StVG). With the entry into force of the legal basis for prescribing cannabis as a medicine in March 2017⁴⁰, this exception also now applies to cannabis patients.

Irrespective of whether a regulatory offence has been committed or not, the question of fitness to drive still arises in the case of cannabis medicines.

Under Sec. 2 (2) first sentence No. 3 StVG, applicants for a driving licence must be capable of driving vehicles and meet the physical and mental requirements. Regularly taking cannabis will generally rule out a fitness to drive. In case law, it has been clarified that

³⁸ BGH, Decision of 14 Feb. 2017 – 4 StR 422/15, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2017&Sort=3&nr=77913&pos=3&anz=51> [accessed: 6 Sep. 2019].

³⁹ Case law references at Körner/Patzak BtMG 8th Ed. 2016, before §§29 et seqq., marg. nos. 399-404.

⁴⁰ Act Amending Narcotics and Other Provisions (Gesetz zur Änderung betäubungsmittelrechtlicher und anderer Vorschriften) of 6 March 2017, German Federal Law Gazette I 2017, p. 403; https://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F%5B%40attr_id%3D%27bgbl117s0403.pdf%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl117s0403.pdf%27%5D_1572442083854 [accessed: 12 Sep. 2019] and Lagodny, Münchner Kommentar zum StGB, Nebenstrafrecht I, BtMG before §§ 29 et seqq. marg. nos. 38-40.

regular consumption of cannabis in this sense means taking cannabis daily or almost daily for a period of at least half a year.⁴¹

The Standing Working Group on Evaluation Criteria (Ständige Arbeitsgruppe Beurteilungskriterien, StAB) of the German Society for Traffic Psychology (Deutsche Gesellschaft für Verkehrspsychologie, DGVP) and the German Society for Traffic Medicine (Deutsche Gesellschaft für Verkehrsmedizin, DGVM) created recommendations for action in relation to the evaluation of fitness to drive (version: August 2018)⁴². These recommendations attempt to resolve the conflict between the legitimate treatment option on the one side and the possibility of negatively impacting traffic safety on the other. Just like the German Driving Licence Ordinance (Schedule 4 to Sec. 11, Sec. 13 and Sec. 14 FeV), the recommendations assume an unfitness to drive in the case of persons who regularly consume cannabis - even if prescribed by a doctor - and assume that fitness to drive can only be assumed in exceptional cases if no impairment of driving skills is present in a specific case and if there is a high probability that consumption and driving are kept separate. In some cases, a doctor's report or a medical-psychological report can be requested. The recommendations for action provide a large number of criteria for the evaluation of an individual case, whereby there remains uncertainty as to how they are to be interpreted and applied.⁴³

The 2018 German Conference on Traffic Law (Verkehrsgerichtstag) addressed this problem.⁴⁴ These details of this issue are the subject of much debate.⁴⁵

(c) Framework conditions of addiction support

Addiction support forms an essential component of the drug and addiction policy in Germany. Persons with dependence disorders or harmful use have a legal right to support in Germany. The social funding agencies have created, together with the service providers and self-help groups, a very varied range of addiction and drug support services over the decades. The legal framework of this system is predominantly governed by legislation in social and health law. The addiction support system is funded by numerous parties and is characterised by different competences at many levels both in the governmental and the social realm. The legal framework for this system is accordingly complex and hard to understand.

⁴¹ c.f. BVerwG, judgment of 26 February 2009 - 3 C 1.08 - BVerwGE 133, 186.

⁴² DGVP-DGVM: Handlungsempfehlung der Ständigen Arbeitsgruppe Beurteilungskriterien (StAB), revised version August 2018 https://www.dgvp-verkehrspsychologie.de/wp-content/uploads/2018/08/Handlungsempfehlung-Cannabismedikation_v2_Stand-15.08.2018.pdf [accessed: 10 Sep. 2018].

⁴³ Pogarell u.a., Medizinisches Cannabis - eine praxisbezogene Hilfestellung. Bay. Akademie für Suchtfragen, version: 21 June 2018, https://www.bas-muenchen.de/fileadmin/documents/pdf/Publikationen/Papiere/Med_Can_Hilfestellung_2106_2018.pdf [accessed: 10 Sep. 2018].

⁴⁴ Craw, Cannabis und Fahreignung aus verkehrsmedizinischer Sicht, Neue Zeitschrift für Verkehrsrecht - NZV 2018, p. 18.

⁴⁵ In detail on this point, Kalus: Rechtsprechungsübersicht Verkehrsverwaltungsrecht, Deutsches Auto-Recht - DAR 2017, p. 61.

The most important elements of the addiction support system are⁴⁶:

- the prevention of drug use and early intervention,
- addiction and drug counselling,
- psychosocial care and help with education,
- low-threshold support and measures for harm reduction,
- Addiction treatment, in particular
 - Detoxification and withdrawal
 - Pharmacotherapy
 - Substitution treatment
 - Outpatient/inpatient medical rehabilitation
 - Aftercare
- Occupational and social rehabilitation as well as employment support.

For these interventions, which in Germany are generally carried out by independent bodies and social institutions and are only carried out by the state in exceptional cases (subsidiarity principle), a large number of different legal provisions apply. The addiction support system is characterised by international agreements, national laws and ordinances but also by specialist norms, guidelines and standards.

At an international level, the United Nations narcotic drugs conventions⁴⁷ obligate the state to "take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved"⁴⁸. As far as the reintegration of drug addicted persons is concerned, the 2006 United Nations Convention on the Rights of Persons with Disabilities⁴⁹ enshrines the right of disabled persons (whereby "disability" means any form of physical, mental, intellectual or sensory impairment) to full participation in all activities in society.

At a national level, the social state principle of the German Constitution obliges the legislature to allow social insurance services (health, social care, pension, unemployment

⁴⁶ Deutsche Hauptstelle für Suchtfragen (DHS) (2014): Suchthilfe und Versorgungssituation in Deutschland, <http://www.dhs.de/dhs-stellungnahmen/versorgungsstrukturen.html> [accessed: 17 Sep. 2018].

⁴⁷ Single Convention on Narcotic Drugs of 1954 as amended by the 1972 Protocol https://www.unodc.org/pdf/convention_1961_en.pdf; Convention on Psychotropic Substances of 1971 https://www.unodc.org/pdf/convention_1971_en.pdf; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, https://www.unodc.org/pdf/convention_1988_en.pdf [accessed: 10 Sep. 2018].

⁴⁸ Art. 38 of the Single Convention of 1954 and Art. 20 of the Convention on Psychotropic Substances of 1971.

⁴⁹ United Nations Convention on the Rights of Persons with Disabilities of 13 December 2006: <http://www.un.org/Depts/german/uebereinkommen/ar61106-dbgbl.pdf> [accessed: 12 Sep. 2018].

insurance) as well as care and welfare services also to be received by persons affected by drugs.

Prevention

At the forefront of drug and addiction policy in Germany is the prevention of the use of addictive substances. On 25 July 2015, the German Act to Strengthen Health Promotion and Prevention (Prevention Act, Präventionsgesetz - PräVG)⁵⁰ came into force. Its aim was to improve the basis for cooperation between statutory social insurance providers, the *Laender* and municipalities in the areas of prevention and health promotion for all age groups and in many areas of life. It also covers the prevention of use of addictive substances.⁵¹ Addiction prevention targets three factors: increasing the age of first use, reducing harmful use and preventing the development of dependence. Preventive measures against substance use are, depending on the target group, classified into universal, selective and indicated approaches. Prevention programmes are carried out by many independent and state institutions at many different levels. The nationwide delivery of universal addiction prevention is, in particular, the responsibility of the Federal Centre for Health Education (Bundeszentrale für gesundheitliche Aufklärung, BZgA). Research and pilot projects of the BMG enable the development, testing and evaluation of new approaches for selective and indicated measures.⁵²

Treatment

The legal framework for the funding of the prevention and treatment of addiction and drug dependence is determined by the German Codes of Social Law (Sozialgesetzbücher, SGB). "Addiction" is defined as a "chronic psychosocial illness and disability with psychiatric relevance and requiring treatment". Detoxification treatment and substitution therapy are funded by the statutory health insurance providers according to the SGB, Volume 5 (SGB

⁵⁰ German Act to Strengthen Health Promotion and Prevention (Gesetz zur Stärkung der Gesundheitsförderung und der Prävention, Präventionsgesetz - PräVG):

https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//%255B@attr_id=%27bgbl115s1368.pdf%27%255D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl115s1368.pdf%27%5D_1572442905414 [Letzter Zugriff: 12.09.2019] [accessed: 12 Sep. 2018].

⁵¹ Federal framework recommendations of the Prevention Conference 19 February 2016, pp. 14, 27:

https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/P/Praevention/160219_Bundesrahmenempfehlungen.pdf [accessed: 6 Sep. 2018].

⁵² BMG - Prävention des Suchtmittelkonsums (Prevention of use of addictive substances):

<https://www.bundesgesundheitsministerium.de/ministerium/ressortforschung/krankheitsvermeidung-und-bekaempfung/drogen-und-sucht/paevention-des-suchtmittelkonsums.html> [accessed: 6 Sep. 2018].

V)⁵³. The funding agencies for the costs of withdrawal treatment are, according to the SGB, Volume 6, the pension insurance providers (SGB VI).⁵⁴

Statutory health insurance also includes access to treatment for addiction disorders, in accordance with the legal catalogue of services.⁵⁵ However, this access is today impeded by the large number of different service providers and due to administrative hurdles - for example in the case of the transition of rehabilitation patients released from prison into health insurance protection (vgl. Schneider, Dammer, Pfeiffer-Gerschel, Bartsch, & Friedrich, 2018b).

Substitution

Substitution treatment in Germany is based, from a legal perspective, on three pillars: there are statutory provisions in the BtMG and the BtMVV as well as guidelines of the German Medical Association (Bundesärztekammer, BÄK), which describe the current status of medical science and set standards accordingly, as well as social law provisions of statutory health insurance providers regarding the assumption of costs.

Substitution treatment was legally approved in the 1990s by the BtMG (Sec. 13 (1) first sentence BtMG). In 1998⁵⁶ and 2001⁵⁷, very detailed provisions regarding substitution were incorporated into the German Regulation on the Prescription of Narcotic Drugs (Sec. 5 BtMVV). These provisions stipulate, among other things, the objectives of substitution, the approved substances and the indication or grounds for exclusion respectively. They require the proof of a specific qualification of the participating doctor. They also stipulate that medical substitution treatment must be accompanied by psychotherapeutic and social care. Finally, a substitution register was set up at the BfArM. All substitution treatments must be reported, in anonymised form, to that register. As a rule, substitution drugs are taken orally with supervision. Under certain circumstances, the doctor can allow the patient to take the substitution drug home with them (so-called take-home prescription).

⁵³ 5th Volume, German Code of Social Law - Statutory health insurance (5. Buch Sozialgesetzbuch – Gesetzliche Krankenversicherung) of 20 December 1988, German Federal Law Gazette I pp. 2477, 2482), last amended by the Act of 17 August 2017 (German Federal Law Gazette I p. 3214): https://www.gesetze-im-internet.de/sgeb_5/SGB_5.pdf [accessed: 6 Sep. 2019].

⁵⁴ 6th Volume, German Code of Social Law - Statutory pension insurance (6. Buch Sozialgesetzbuch – Gesetzliche Rentenversicherung) - in the version of 19 February 2002, (German Federal Law Gazette I pp. 754, 1404, 3384), last amended by the Act of 17 July 2017 (German Federal Law Gazette I p. 2575): https://dejure.org/BGBl/2002/BGBl_I_S_754 [accessed: 6 Sep. 2019].

⁵⁵ German Act to Strengthen Competition in Statutory Health Insurance (GKV-Wettbewerbsstärkungsgesetz (GKV-WSG)) of 26 March 2007 see Sec. 5 (1) No. 13 SGB V https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//%255B@attr_id=%2527bgbl107s0378.pdf%2527%255D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl107s0378.pdf%27%5D_1536313995620 [accessed: 6 Sep. 2019].

⁵⁶ 10th Amending Regulation on Narcotic Drugs (10th BtMÄndV) of 20 January 1998, German Federal Law Gazette I p. 74 https://dejure.org/BGBl/1998/BGBl_I_S_74 [accessed: 6 Sep. 2019].

⁵⁷ 15th Amending Regulation on Narcotic Drugs (15th BtMÄndV) of 19 June 2001, German Federal Law Gazette I p. 1180. https://dejure.org/BGBl/2001/BGBl_I_S_1180 [accessed: 10 Sep. 2019].

These statutory provisions were supplemented in 2001 by the "Guidelines of the BÄK on the delivery of substitution-based treatment of opioid addicts", which set out the generally recognised status of the findings of medical science for substitution treatment (Sec. 5 (12) BtMVV). Parallel to this, the Federal Committee of Doctors and Health Insurance Providers (Bundesausschuss der Ärzte und Krankenkassen) also issued guidelines for the assumption of costs in substitution treatment by the statutory health insurance providers⁵⁸, which opens access to treatment - under specific conditions - for all insured persons.

"Third Amending Regulation of the German Regulation on the Prescription of Narcotic Drugs (Dritte Verordnung zur Änderung der Betäubungsmittel-Verschreibungsverordnung) (substitution therapy for opioid addicts)

The "Third Amending Regulation of the German Regulation on the Prescription of Narcotic Drugs was announced on 29 May 2017. It governs general improvements in the substitution therapy of patients who have become dependent as a result of opioid abuse. On 6 September 2018, the Joint Federal Committee (Gemeinsamer Bundesausschuss, G-BA) adopted a resolution to implement the new provisions of the BtMVV, taking into account the above guidelines of the German Medical Association (Bundesärztekammer, BÄK). The resolution was amended again on 22 November by the G-BA (reinstatement of the quality assurance sampling scheme) and came into force on 7 December 2018. In this way, the changes to the statutory health insurance treatment practice of opioid addicts created under the Third Amending Regulation of the BtMVV can take effect.

1.2 Implementation of legislative framework (T1.2)

1.2.1 Data on actual sentencing practice related to drug legislation (T1.2.1)

The most important data sources for recording drug crime and the state handling of drug offences in Germany are the Police Crime Statistics (Polizeiliche Kriminalstatistik, PKS), the nationwide Federal Situation Survey (Bundeslagebild) as well as the criminal prosecution statistics of the judicial authorities. However, there are different methods in the recording and classification of data in each case, and even in the type of differentiation used at the detail level. By way of illustration, the police statistics contain information regarding the type of substance whereas the criminal prosecution statistics do not. This makes sequencing and comparative analyses more difficult.

The PKS⁵⁹, in which all crimes known to the police by way of their own investigations or criminal complaints are recorded and registered, shows that in 2018 350,662 drug offences were documented.

⁵⁸ Federal Joint Committee: Guidelines on substitution-based treatment of opiate addicts of 28 October 2002 <https://www.kvhb.de/sites/default/files/rili-substitution.pdf> [accessed: 10 Sep. 2019].

⁵⁹ Report by the German Federal Ministry of the Interior, Building and Community on the PKS 2017, p. 18 <https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/PolizeilicheKriminalstatistik/2017/pks2017ImkBericht.html> [accessed: 6 Sep. 2019].

There were 274,787 consumption related offences, 51,829 dealing/trafficking offences 1,538 and 22,147 other violations in 2018.

More details are provided in the 2018 Federal Situation Report (Bundeslagebild) from the BKA.⁶⁰

Further prosecution data can be found in the Drug Market and Crime workbook (vgl. Schneider, Neumeier, Pfeiffer-Gerschel, Tönsmeise, & Friedrich, 2019).

1.2.2 Data on actual sentencing practice related to NPS (T1.2.2)

In 2017, the PKS included crimes under Sec. 4 NpSG in the total figure for narcotics offences, namely 495, for the first time. In this figure, one cannot differentiate between dealing/trafficking and manufacturing. Other than that, the statistics from the Federal Criminal Police Office (Bundeskriminalamt, BKA) or German Federal Statistical Office (Destatis) do not (yet) offer enough information points on which to assess the sentencing practice in connection with NPS.

1.2.3 Discussion (T1.2.3)

A commonly stated reason for the increase in drug crime is the fact that buying and selling via the internet makes drugs more readily available.⁶¹ There are selling platforms, especially on the darknet, on which drugs of all types are offered for sale and often then sent to the purchaser via mail order. In 2018, 3,239 narcotics cases were registered, with the internet being the instrument used (increase of 27.5 %). It is however assumed that there is a large number of unknown cases. The general increase in cultivation areas for heroin, cocaine and marijuana is also further proof of availability. The same applies for synthetic drugs. Previously, these were manufactured in small laboratories, whereas today manufacture takes place increasingly in professional facilities with extensive production capacity.

A particularly critical aspect is that the number of adolescents suspected of a drug offence increased again to 34,294 people (2016: 30,661 criminal suspects; 2017: 34,132). The most frequent accusation made against 14 to under-18 year-olds was cannabis possession, manufacture, or dealing (30,640 suspected criminals). Recognising and recording hard drug users is difficult and incomplete, because it can be assumed that a crime suspect's drug addiction is often not recognised. The proportion of offences committed by users of hard drugs should therefore likely be registered at a higher level than that statistically recorded - especially for theft and robbery offences. The development of registered narcotics offences heavily depends on how often customs and the police make checks.

⁶⁰ Bundeskriminalamt, Drug Related Crime, Bundeslagebild 2018 https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/PolizeilicheKriminalstatistik/PKS2018/pks2018_node.html [accessed: 6 Sep. 2019].

⁶¹ Die Polizei - Das Präventionsportal: Zahlen zu Drogendelikten, <https://www.polizei-dein-partner.de/themen/sucht/drogen/detailansicht-drogen/artikel/zahlen-zu-drogendelikten.html> [accessed: 10 Sep. 2019].

2 TRENDS (T2)

In the following, the most important changes to the legal framework since 2000 will be presented. In the course of this, not only criminal provisions, but also legal provisions on the handling of drug addicts and on harm reduction will be looked at.

2.1 Changes in criminal provisions (T2.1)

A fundamental change in the criminal provisions of the BtMG most recently took place in the 1990s, when new criminal offences were introduced into the BtMG, as well as the extension of the range of sentencing and high minimum penalties for cases of serious drug trafficking, through the Act to Combat Organised Crime (Gesetz zur Bekämpfung der Organisierten Kriminalität, OrgKG) of 1992⁶² and the Act to Combat Crime (Verbrechensbekämpfungsgesetz) of 1994.⁶³ In 1992, Sec. 31a BtMG was created, which provided for the possibility of refraining from prosecution.⁶⁴ Since then, the central criminal provisions of the BtMG have remained broadly unchanged.⁶⁵

The new Act on NPS introduced new criminal provisions (see section 1.1.3 above), however these were not primarily aimed against users, rather they only penalised illegal supply.

2.2 Legislation on treating drug addiction (T2.2)

While the BtMG of 1981⁶⁶ originally primarily regulated the legal trade in narcotic drugs and sanctions for violations of these provisions, other elements were increasingly added as time went on, which had as their object the treatment of drug addicts, the medical use of narcotic drugs and harm reduction. At the political level, the 1992 "national plan to combat narcotics" ("Nationale Rauschgiftbekämpfungsplan") was superseded in 2003 by the "Action Plan for Drugs and Addiction" ("Aktionsplan Drogen und Sucht"), which was based on a balanced approach and which, in addition to the areas of "prevention", "counselling/treatment" and

⁶² Art. 2 of the Act Combatting Illegal Narcotics Drugs Trafficking and Other Forms of Organised Crime (Gesetz zur Bekämpfung des illegalen Rauschgifthandels und anderer Erscheinungsformen der Organisierten Kriminalität, OrgKG) of 15 July 1992, German Federal Law Gazette I p. 1302, https://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F%5B%40attr_id%3D%27bgbl192s1302.pdf%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl192s1302.pdf%27%5D_1572514494471 [accessed: 6 Sep. 2019]

⁶³ Art. 9 of the Act to Combat Crime (Verbrechensbekämpfungsgesetz, VerbrBekG) of 28 October 1994, Federal Law Gazette I, p. 3186, https://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F%5B%40attr_id%3D%27bgbl194s3186.pdf%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl194s3186.pdf%27%5D_1572514564300 [accessed: 6 Sep. 2019].

⁶⁴ On these amendments in detail, Harald H. Körner, Die Strafrechtspraxis im Labyrinth neuer Betäubungsmittelrechtsbestimmungen, NJW 1993, pp. 233-239.

⁶⁵ Overview of all amendments to the BtMG in Lagodny, Münchner Kommentar zum StGB, Nebenstrafrecht I, BtMG before §§ 1 et seqq. BtMG, marg. no. 50.

⁶⁶ BtMG of 28 July 1981, Federal Law Gazette I pp. 681, 1187, which came into force on 1 January 1982 https://www.gesetze-im-internet.de/btmg_1981/BJNR106810981.html [accessed: 6 Sep. 2019].

"repression/service reduction", recognised for the first time "survival support/harm reduction" as the fourth pillar of drug policy. The already expired action plan was superseded in 2012 by the "National Strategy on Drug and Addiction Policy"⁶⁷ but this did not introduce any new legal trends.

The German Narcotic Drugs Act introduced the regulation on needle exchange as far back as 1994 (Sec. 29 (1) second sentence BtMG), the goal of which was harm reduction (see section 1.1.4 above). In 2000, the regulation on drug consumption rooms followed, in Sec. 10a BtMG (see section 1.1.4 above), with the same legislative objective.

The provisions on substitution treatment (see section 1.1.4 above), which were tested in the 1980s in pilot projects, initially without express legal foundation and not enshrined in the BtMG until the end of the 1990s, then the introduction of diamorphine substitution in 2009 and finally, the most recent reform, in 2017, can all be regarded as harm reduction provisions.

The NpSG, introduced in 2016, and the "Cannabis as Medicine" Act introduced in 2017 are also important legislative amendments in recent years (see section 3.1).

2.3 Changes in implementation (T2.3)

There have been no readily apparent long-term changes in criminal law practice over the last two decades. The development of the application of Sec. 31a BtMG (refraining from prosecution in cases of personal use of small amounts) has already been reported on above (see section 1.1.2). There have been no noteworthy changes to case law over the last year either.⁶⁸

Of note is the trend in traffic accidents while under the influence of drugs or intoxicants (excluding alcohol). While the number of road traffic accidents overall has significantly fallen since 2000 (2000: 382,949 accidents with 7,503 deaths; 2018: 308,553 accidents with 3,270 deaths), the number of accidents while under the influence of drugs has doubled (1999: 880 accidents; 2018: 2,242 accidents).⁶⁹

The "Cannabis as Medicine" Act of 2017 (see section 1.1.4 above) has affected case law practice in two ways:

- (a) Prior to that, an exemption was required under Sec. 3 BtMG in order to obtain or cultivate cannabis for therapeutic purposes, which was issued by the BfArM. Under the case law of the German Federal Administrative Court (Bundesverwaltungsgericht,

⁶⁷ The Federal Government Commissioner on Narcotic Drugs:
https://www.drogenbeauftragte.de/fileadmin/dateien-dba/Drogenbeauftragte/2_Themen/1_Drogenpolitik/Nationale_Strategie_Druckfassung-Dt.pdf
[accessed: 10 Sep. 2019].

⁶⁸ Detlev Schmidt, The development of narcotics law up to mid-2017 (Die Entwicklung des Betäubungsmittelstrafrechts bis Mitte 2017), NJW 2017, pp. 2876-2881.

⁶⁹ Statistisches Bundesamt, Time series, 2018 No. 6.

BVerwG) prior to the law change⁷⁰ there was a "public interest" in supplying individual severely ill patients with cannabis, if through this the cure or alleviation of symptoms was possible and the person affected had no equally effective therapy alternative available and affordable to them. As the acquisition and use of cannabis as a medicine must now follow the rules of the new act, there is no longer scope to issue an exemption under Sec. 3 BtMG, hence such actions are now rejected by the administrative courts.

- (b) The question of cannabis patients' fitness to drive increasingly occupies the courts. Above all, the question of whether and to what extent patients who are being treated with cannabis can rely on the exemption in Sec. 24a (2) third sentence StVG, which stipulates that taking a prescribed medicine as intended cannot be a regulatory offence within the meaning of subsection 1 of that section. The problem was also discussed at the 2018 German Conference on Traffic Law (Graw, 2018). In this context, a revision of the Driving Licence Regulation (Fahrerlaubnisverordnung, FeV) was called for. In addition, the view was taken that a cannabis user coming to the attention of the police for the first time while driving should not be automatically regarded as unfit to drive motor vehicles. Instead, it should only raise doubts as to their fitness to drive which can be dispelled by means of a medical psychological assessment (MPU). There was also the opinion that a lack of ability to separate (occasional cannabis use from driving) should not be assumed from a detected blood serum concentration of 1ng/ml THC. This should only be the case from a THC value of 3ng/ml in blood serum. A medical indication, in particular the prescription of cannabis flowers, also creates doubt in the ability to drive due to being under the influence of cannabis. The ability to drive must therefore also be assessed in this case and this can only be performed by qualified doctors. They must inform and support the respective patient with regard to the impairment to their ability to drive and driving safety.
- (c) The GSAV, which came into force on 16 August 2019, contributes to the de-bureaucratisation of the prescription of cannabis for medicinal use under Sec. 31(6) SGB V. In the case of an adjustment of the dosage or a change in the type of flower following authorisation, no renewed application to the health insurance provider is necessary. If a service under Sec. 31(1) first sentence SGB V is prescribed by a SHI doctor in the scope of discharge management or directly following treatment in an inpatient hospital facility, a decision on the application for approval must be issued within three days of submission.

The implementation of the rules on substitution treatment led to a situation whereby in the early years after reporting became obligatory, the number of registered substitution patients continuously increased (from 46,000 patients in 2002 to 77,400 patients in 2010). The

⁷⁰ BVerwG, judgment of 19 May 2005 - 3 C 17.04.

number has remained at a comparably high level since 2011 and was at 79,400 patients on 1 July 2018 ⁷¹(vgl. Tönsmeise et al., 2019).

3 NEW DEVELOPMENTS (T3)

3.1 Changed laws in 2018 and 2019 (T3.1)

On 18 July 2019, important changes to the schedules to the NpSG and BtMG came into force. The object is to facilitate the legally effective countering of NPS and to combat their distribution and availability. To this end, the schedules to the NpSG and the BtMG have been adjusted in line with the current state of knowledge

- (a) The development of the market has shown that it is necessary, due to the extent of abusive use of certain psychoactive substances and their effects, to further develop the two substance groups in the NpSG (phenethylamine and synthetic cannabinoids) and to expand the NpSG to include three additional substance groups (benzodiazepine, N- (2-aminocyclohexyl)amide derived compounds and tryptamine).
- (b) Moreover, the new regulation has added eight particularly harmful individual substances (six synthetic opioids and two synthetic cannabinoids) to Schedule II of the BtMG, the stricter provisions of which take precedence over those of the NpSG. These are substances whose chemical structure has been altered to such a degree in comparison to previously scheduled narcotics that the respective new substance is no longer subject to the BtMG and its prohibitions. The effect they cause which enables them to be abused remains the same however or may even be enhanced.
- (c) The GSAV, which came into force on 16 August 2019, extended the enabling provision in Sec. 1(4) BtMG. The amendment made it possible for those NPS, for which it has been established at an EU level, on the basis of a risk assessment, that they represent a high risk to public health and which have therefore been included in the definition of drugs, to add them to the BtMG Schedules in a simplified and thus faster process. The amendment serves to improve the protection of the health of the population and the implementation of European law.

3.2 Implementation in the last year (T3.2)

There are no separate findings regarding changes in connection with the introduction and implementation of legal provisions and laws in the past year.

⁷¹ BfArM, Report on the substitution register (Bericht zum Substitutionsregister), January 2019 https://www.bfarm.de/DE/Bundesopiumstelle/Substitutionsregister/_node.html [accessed: 6 Sep. 2019].

3.3 Evaluation (T3.3)

No current information is available on the evaluation of laws. Results of the evaluation of the NpSG (see section 1.1.3 above) are expected in 2019. The accompanying data collection which is taking place in the context of the "Cannabis as Medicine" Act is described above (see section 1.1.4 above). An evaluation of the reform to narcotics law regarding substitution is currently being prepared.

3.4 Political discussions (T3.4)

Debate on the legalisation of cannabis

In the German Bundestag, the topic of legalising cannabis for intoxication purposes has once more been on the agenda.

On 5 December 2017, the FDP parliamentary party tabled a "minor request" on the "controlled supply of cannabis"⁷², which the German Federal Government responded to on 21 December 2017.⁷³ In its response, the German Federal Government rejected the legalisation of the use of cannabis for enjoyment purposes on the grounds of the protection of the health of the population.

At the beginning of 2018, a motion of the FDP ("Cannabis pilot projects"), a motion of the Linken ("Allow possession of cannabis for personal use") and a draft bill from Bündnis 90/Die Grünen ("Cannabis Control Act", "Cannabiskontrollgesetz") were presented for debate.

In its motion⁷⁴, the FDP advocated enabling pilot projects for free cannabis use. It called on the German Federal Government to create the basis for approving pilot projects for the controlled supply of cannabis as a luxury/non-dietary item. It suggests that previous applicants should be actively supported. This request was rejected by the Bundestag.⁷⁵

The draft bill from the Grünen⁷⁶ proposes exempting cannabis from the criminal provisions of the BtMG and instead creating a strictly controlled legal market for cannabis. Under the draft bill, the entire supply chain for cannabis from cultivation to wholesale to import and export and retail would be regulated. Sale to minors would have to be banned and this ban effectively monitored. The answer for this request is still pending.

⁷² BT-Printed Paper 19/181 of 5 December 2017, <http://dip21.bundestag.de/dip21/btd/19/001/1900181.pdf> [accessed: 6 Sep. 2019].

⁷³ BT-Printed Paper 19/310 of 21 December 2017, <http://dip21.bundestag.de/dip21/btd/19/003/1900310.pdf> [accessed: 6 Sep. 2019].

⁷⁴ BT-Printed Paper 19/515 of 24 January 2018, <http://dip21.bundestag.de/dip21/btd/19/005/1900515.pdf> [accessed: 6 Sep. 2019].

⁷⁵ BT-Printed Paper 19/13099 of 10 September 2019, <http://dip21.bundestag.de/dip21/btd/19/130/1913099.pdf> [accessed: 17.10.2019].

⁷⁶ BT-Printed Paper 19/819 of 20 February 2018, <http://dip21.bundestag.de/dip21/btd/19/008/1900819.pdf> [accessed: 6 Sep. 2019].

In its motion, "Protection of health not criminal prosecution - for a progressive approach to cannabis use"⁷⁷, the Linke party calls for possession of cannabis for personal use to be allowed and for the pillars of addiction prevention, counselling and treatment to be strengthened in drug policy relative to the pillar of repression and stigmatisation.

These motions were debated in the plenary of the German Bundestag on 22 February 2018. On 27 June 2018, a public hearing on these motions was held in the Committee for Health in the German Bundestag. In that hearing, it was evident that the legalisation and controlled supply of cannabis for intoxication purposes is still a very controversial topic among experts and is rejected by many with regards to the potential for harm to health.⁷⁸

Issue of state-assisted suicide by granting a licence under narcotics law to obtain narcotic drugs for the purpose of committing suicide

A topic which goes far beyond narcotics law has recently gained attention in public discourse, namely, whether and under what conditions there a right to be granted a licence under narcotics law to obtain narcotic drugs for the purpose of committing suicide could exist. The German Federal Administrative Court (Bundesverwaltungsgericht, BVerwG) decided, in a judgment of 2 March 2017⁷⁹ that the purchase of a narcotic (in the specific case, sodium pentobarbital) generally cannot be permitted for the purpose of committing suicide. In the view of the BVerwG, an exception from this principle can only be assumed if the purchaser who intends to commit suicide is in an extreme emergency due to a serious and terminal illness.

The BMG is of the opinion that it cannot be the task of the state and the employees within its authorities actively to support acts of suicide through the granting of licences by an authority (specifically the BfArM) by way of an administrative act for the purpose of obtaining specific substances for committing suicide. The purpose of the BtMG is to ensure the population receives necessary medical care. A purchase licence for the purpose of committing suicide is incompatible with that. The ending of a life cannot be considered as having a therapeutic objective. In addition, the BMG refers to serious constitutional issues.⁸⁰ In order to improve end of life care and alleviate pain, in 2015 the German legislature approved, in regard to issues of palliative and hospice care, new regulations with which this support will be expanded. The BMG's objective is to further develop and improve support for persons requiring nursing care, who are most severely ill and people wishing to die.

⁷⁷ BT-Printed Paper 19/832 of 21 February 2018, <http://dip21.bundestag.de/dip21/btd/19/008/1900832.pdf> [accessed: 6 Sep. 2019].

⁷⁸ Report on the public hearing, see Deutsche Bundestag, Documents <https://www.bundestag.de/dokumente/textarchiv/2018/kw26-pa-gesundheit-cannabis/558286> [accessed: 6 Sep. 2019].

⁷⁹ BVerwG of 2 March 2017, 3C 19/15, BVerwGE 158, 142-163 <https://www.bverwg.de/020317U3C19.15.0> [accessed: 6 Sep. 2019].

⁸⁰ See, on this point, the legal opinion by Prof. Dr. Udo Di Fabio "Licensing lethal drugs for committing suicide in Erwerbserlaubnis letal wirkender Mittel zur Selbsttötung in existential emergencies", <https://www.bfarm.de/SharedDocs/Pressemitteilungen/DE/2018/pm1-2018.html> [accessed: 1 Oct. 2019].

4 ADDITIONAL INFORMATION (T4)

4.1 Additional sources of information (T4.1)

No additional sources of information are available on this.

4.2 Further aspects (T4.2)

No further information on further aspects of the legal framework is currently available.

5 SOURCES AND METHODOLOGY (T5)

5.1 Sources (T5.1)

Relevant legislation

International Conventions

- Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol https://www.unodc.org/pdf/convention_1961_en.pdf [accessed: 10 Sep. 2019].
- Convention on Psychotropic Substances of 1971 https://www.unodc.org/pdf/convention_1971_en.pdf [accessed: 10 Sep. 2019].
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, https://www.unodc.org/pdf/convention_1988_en.pdf [accessed: 10 Sep. 2019].
- Convention of the United Nations on the rights of persons with disabilities / Übereinkommen der Vereinten Nationen über die Rechte von Menschen mit Behinderungen vom 13.12.2006: <http://www.un.org/Depts/german/uebereinkommen/ar61106-dbgbl.pdf> [accessed: 12 Sep. 2019].

European regulations

Drug precursors:

- Regulation (EC) No. 1111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors, OJ L 22/1 of 26 January 2005, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:022:0001:0010:DE:PDF> [accessed: 10 Sep. 2019].
- Regulation (EC) No. 273/2004 of 11 February 2004 on drug precursors, OJ L 47/1: https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/customs_controls/drugs_precursors/drug_precursors/consolidated_version_273_de.pdf [accessed: 10 Sep. 2019].

- Regulation (EU) No 1258/2013 of the European Parliament and of the Council of 20 November 2013 amending Regulation (EC) No 273/2004 on drug precursors, OJ L 330/21: <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=OJ:L:2013:330:FULL&from=DE> [accessed: 10 Sep. 2019].
- Regulation (EU) No 1259/2013 of the European Parliament and of the Council of 20 November 2013 amending Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors, OJ L 330/30: <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=OJ:L:2013:330:FULL&from=DE> [accessed: 10 Sep. 2019].

Criminal law:

- Council framework decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, OJ L 335/8 of 11 November 2004, <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32004F0757&from=DE> [accessed: 12 Sep. 2019].

New Psychoactive Substances:

- Directive (EU) 2017/2103 of the European Parliament and of the Council of 15 November 2017 amending Council Framework Decision 2004/757/JHA in order to include new psychoactive substances in the definition of 'drug' and repealing Council Decision 2005/387/JHA OJ <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32017L2103&from=EN> [accessed: 12 Sep. 2019].
- Regulation (EU) 2017/2101 of the European Parliament and of the Council of 15 November 2017 amending Regulation (EC) No 1920/2006 as regards information exchange on, and an early warning system and risk assessment procedure for, new psychoactive substances, OJ L 305/1 of 21 November 2017, <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32017R2101&from=EN> [accessed: 10 Sep. 2019].

National legislation

Narcotics law:

- Act on the trade in narcotic drugs (German Narcotic Drugs Act, Betäubungsmittelgesetz - BtMG) of 28 July 1981, which came into force on 1 January 1982, current version 1 March 1994 (German Federal Law Gazette I p. 681, 1187): http://www.gesetze-im-internet.de/btmg_1981/ [accessed: 5 Sep. 2019].
- Regulation on the Prescription of Narcotic Drugs (BtMVV) of 20 January 1998 (German Federal Law Gazette I p. 74, 80), last amended by the Regulation of 2 July 2018 (German Federal Law Gazette I p. 1078): http://www.gesetze-im-internet.de/btmvv_1998/BJNR008000998.html [accessed: 5 Sep. 2019].
- Ordinance concerning the Domestic Trade in Narcotics (BtMBinHV) of 16 December 1981 (German Federal Law Gazette I p. 1425), last amended by the Regulation of 17

- August 2011 (German Federal Law Gazette I p. 1754): <https://www.gesetze-im-internet.de/btmbinhv/BJNR014250981.html> [accessed: 5 Sep. 2019].
- Ordinance concerning the Foreign Trade in Narcotics (BtMAHV) of 16 December 1981 (German Federal Law Gazette I p. 1420), last amended by the Act of 6 March 2017 (German Federal Law Gazette I p. 403): <https://www.gesetze-im-internet.de/btmahv/BJNR014200981.html> [accessed: 5 Sep. 2019].
 - Act Amending Narcotics and Other Provisions (Gesetz zur Änderung betäubungsmittelrechtlicher und anderer Vorschriften) of 6 March 2017 (German Federal Law Gazette I 2017, p. 403): https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl1117s0403.pdf%27%5D_1572526832028 [accessed: 12 Sep. 2019].
 - Act Monitoring the Trade in Precursors that can be Misused for the Unlawful Manufacture of Narcotic Drugs (GÜG) of 11 March 2008 (German Federal Law Gazette I p. 306), last amended by the Act of 13 April 2017 (German Federal Law Gazette I p. 872): http://www.gesetze-im-internet.de/g_g_2008/G%3%9CG.pdf [accessed: 12 Sep. 2019].
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