



European Monitoring Centre
for Drugs and Drug Addiction



Legal Framework

GERMANY

2021 Report of the National

REITOX Focal Point to the EMCDDA

(Data year 2020 / 2021)

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Gefördert durch:



aufgrund eines Beschlusses
des Deutschen Bundestages

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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. How drugs, drug dealing/trafficking, the provision of drugs for medicinal purposes, drug use and drug addiction are dealt with is governed by rules set at international, European and national levels. At the national level, a range of entities are then responsible for different aspects of the drugs issue, which are subject to very different laws. In Germany, there is the additional factor, due to the federal structure of the country, that legislative powers are split over several levels. All these provisions together set out the legal framework, across multiple sectors, 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. The Act defines which substances are narcotic drugs, regulates the legal trade in narcotics and contains sanctions for unlawful conduct in relation to narcotics. In addition to the administrative provisions that apply to the 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 misdemeanours and crimes, fines for regulatory offences, rehabilitation and prevention measures, and administrative measures such as confiscation. In addition, numerous other laws also 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 split into three categories: 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 fines. 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 enforcement of a sentence 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 support. As a result, a very differentiated range of addiction and drug support services has been built up in Germany over the decades, in particular for prevention, treatment, harm reduction and rehabilitation. In recent 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 30 years now. Substitution-assisted treatment of opioid addicts has been an SHI-approved narcotic service since October 1, 1991 and has been a

standard SHI-approved service since 2002. In 2009, the legislature decided to introduce diamorphine-based substitution treatment as an additional option to treat the most severely addicted opioid patients. Diamorphine (synthetic heroin produced to pharmaceutical quality) was classified for this purpose as a prescription narcotic by a corresponding amendment to the German Regulation on the Prescription of Narcotic Drugs (Betäubungsmittel-Verschreibungsverordnung, BtMVV)¹. The rules were extended by the provisions under narcotics law on diamorphine-assisted substitution and recently, in 2017, fundamentally reformed. 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 specific temporary possibilities for departure from the BtMG and BtMVV provisions in the course of the COVID-19 epidemic (see section 3.1).

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

Politically, there is once again an intense public debate surrounding the question of legalising cannabis for intoxication purposes as well as a discussion on the topic of drug checking (see section 3.4).

1 NATIONAL PROFILE (T1)

1.1 Legal framework (T1.1)

Structure of the legal framework in Germany

The term "legal framework" is used here to mean all legal provisions that govern narcotic drugs, new psychoactive substances (NPS) and precursors as well as the problem of drugs and addiction in Germany. As the drug and addiction problem affects many areas of life, these provisions are many, varied and complex.

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. Accordingly, where national rules provide for a legalisation of narcotic drugs and psychotropic substances for non-scientific and non-medical purposes, thus for intoxication purposes, this is not compatible with the three UN Drug Control Conventions.

¹ Federal Joint Committee, <https://www.g-ba.de/presse/pressemitteilungen/762/> [accessed: 20 Mar. 2021].

At national level, the legal framework in Germany is set across a number of different levels because under the German Constitution (Grundgesetz), legislative and administrative competences are split between the federal, *Land* and municipal authorities (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 medicinal products, social welfare legislation, criminal law, and criminal procedure. These laws apply uniformly across the whole country.
- The Laender (federal states) have legislative competence in all other areas, e.g. in health law, police law and imprisonment. This means that in those areas the legal framework is determined at *Land* level, hence they may be regulated quite differently across the 16 *Laender*.
- Moreover, the *Laender* are responsible for the administrative enforcement and implementation both of federal laws and their own laws. This is a further factor which can 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. For example, the control of so-called drug precursors, is definitively regulated for all Member States through binding EC regulations, with the result that the GÜG today only has a supplementary function. Other EU rules also impact the legal framework in Germany, such as the Framework Decision of 25 October 2004 on minimum penalties in the area of illicit drug trafficking², or the Regulation on information exchange on, and an early warning system and risk assessment procedure for, new psychoactive substances of 15 November 2017³.

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

Dug 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 areas of the law. This includes

² 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: 20 Mar. 2021].

³ 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: 20 Mar. 2021].

not only criminal legislation but also legislation in the areas of health law, social law, commercial law, traffic law and more. In the following, the BtMG will be presented in section 1.1.1, section 1.1.2 will then set out the system of narcotics criminal law while section 1.1.3 will outline the NpSG. 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**⁴, together with the ordinances issued on the basis of that Act. The Act implements the three UN Drug Control Conventions⁵ in national law. The BtMG regulates the legal trade in narcotic drugs and contains in this respect primarily regulatory and administrative law. It also contains the central (criminal) sanctions for unlawful acts in connection with narcotics.

First, it enumerates the substances that are considered narcotic drugs within the meaning of German law and are thus subject to control under narcotics law. It does not contain a 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 1961 UN Single Convention on Narcotic Drugs).

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

It 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 purposes or other purposes in the public interest. Substances

⁴ German act on the trade in narcotic drugs (BtMG) of 28 July 1981, which came into force on 1 January 1982, current version 1 Mar. 1994, German Federal Law Gazette I p. 681, 1187: http://www.gesetze-im-internet.de/btmg_1981/ [accessed: 20 Mar. 2021].

⁵ 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: 20 Mar. 2021].

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). The basis under narcotics law for substitution treatment is also established in this context. The details on the prescription of narcotics are regulated in the **German Regulation on the Prescription of Narcotic Drugs** (Betäubungsmittel-Verschreibungsverordnung, BtMVV)⁶.

The BtMG also regulates the minimum requirements for setting up and operating drug consumption rooms (Sec. 10a BtMG). The details concerning these facilities must be specified by the individual *Laender* by way of legal ordinances. To date, seven *Laender* have issued legal ordinances on the operation of drug consumption rooms.⁷

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)⁸ and the **German Ordinance concerning the Foreign Trade in Narcotics** (BtM-Außenhandelsverordnung, BtM-AußenhandelsVO)⁹.

Criminal provisions in the BtMG

In addition to the administrative provisions concerning the 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 misdemeanours and crimes, fines for regulatory offences, rehabilitation and prevention measures, and administrative acts such as confiscation.

Sec. 29, Sec. 29a and Sec. 30a BtMG set out the most important acts punishable under criminal law which involve narcotic drugs. Generally, every type of act involving narcotic drugs is prohibited and subject to punishment, whilst the possible statutory penalties vary greatly in terms of severity. These provisions primarily serve to combat narcotics crime and are aimed at criminal acts committed by both dealers and drug users. The system of criminal sanctions under the BtMG is presented in greater detail in section 1.1.2.

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

⁶ BtMVV: http://www.gesetze-im-internet.de/btmvv_1998/BJNR008000998.html [accessed: 20 Mar. 2021].

⁷ BT-Printed Paper 19/13764 of 7 October 2019, <https://dip21.bundestag.de/dip21/btd/19/137/1913764.pdf> [accessed: 31 May 2021]. The seven *Laender* are: North Rhine-Westphalia, Hamburg, Berlin, Lower Saxony, Hesse, Saarland, Baden-Württemberg. In total, there are currently 28 drug consumption rooms in Germany.

⁸ BtM-BinnenhandelsVO: <https://www.gesetze-im-internet.de/btmbinhv/BJNR014250981.html> [accessed: 20 Mar. 2021].

⁹ BtM-AußenhandelsVO: <https://www.gesetze-im-internet.de/btmahv/BJNR014200981.html> [accessed: 20 Mar. 2021].

The general provisions of criminal law and criminal procedure also apply in relation to drug offences. In addition, the StGB¹⁰ contains several provisions which specifically cover drug use and its consequences, such as drunk driving (being in charge of 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 set out in Sec. 29 (1) BtMG, while Sec. 29(3), Sec. 29a, Sec. 30 and Sec. 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 categories¹¹: The term "**consumption-related offences**" describes general violations of the BtMG, including the 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**"¹². Under criminal law it is possible to differentiate, according to the severity of the offence, between "minor offences" (basic offences under Sec. 29(1) BtMG) and "crimes" (qualified offences as per Sec. 29a, Sec. 30, Sec. 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 for the various acts. That applies to the cultivation, manufacture, trade, import, export and transit, sale, supply, bringing onto the

¹⁰ StGB: <https://www.gesetze-im-internet.de/stgb/StGB.pdf> [accessed: 20 Mar. 2021].

¹¹ The police crime statistics 2020, Federal Criminal Police Office, https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/PolizeilicheKriminalstatistik/PKS2020/pks2020_node.html [accessed: 31 May 2021].

¹² "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. 29a(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 administration 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. 29a(1) No. 2 BtMG).

market, obtaining, prescription, administration and providing for direct use, as well as to sales not for profit and to mere possession of narcotic drugs. While the use of narcotic drugs is in itself not a punishable offence, 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 considered a particularly serious case, punishable by a custodial sentence of at least one year (Sec. 29(3) BtMG).

A further increase in the possible 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.

In Sec. 30(1) BtMG, the legislature has classified certain types of narcotics offences, such as gang offences, as particularly dangerous attacks on and stipulated a minimum sentence of not less than two years¹³. Anyone cultivating, manufacturing, importing and exporting and dealing/trafficking in *non-small quantities* 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 can expect a minimum of five years' imprisonment (Sec. 30a BtMG).

The courts have, across numerous decisions, established threshold values for "*non-small quantities*", within the meaning of the aforementioned provisions, for different narcotic drugs. For example, the not small amount of cannabis is 7.5 tetrahydrocannabinol. According to the case law of the German Federal Court of Justice (Bundesgerichtshof, BGH)¹⁴ 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 in the applicable penalty is possible in the majority of less severe cases (Sec. 29a(2); Sec. 30(2); Sec. 30a(3) BtMG). In addition, the court can reduce the punishment or even waive it altogether if the offender cooperates in uncovering other crimes (Sec. 31 BtMG).

Refraining from prosecution - Sec. 31a BtMG

Sec. 31a BtMG has a special significance. That provision provides for the possibility that the public prosecutor's office (without requiring consent from the court) can completely refrain from

¹³ Körner/Patzak/Volkmer/Patzak, 9th edition 2019, BtMG § 30 marg. no. 1.

¹⁴ 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.

prosecution if the act concerned is a misdemeanor under Sec. 29 (1), (2) or (4) BtMG (i.e. not in the case of 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 narcotics, it applies to all drugs. In practice, however, it is mainly applied in relation to cannabis offences.

Since criminal prosecution is a matter for the *Laender*, most of them¹⁵ 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 1994¹⁶, the German Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) called upon 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 a 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 and Paoli, 2006). Following that, the *Laender* Justice Ministers harmonised their guidelines to a great extent at least in respect of the "small quantity" aspect. 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 precisely, each *Land* has set a threshold for the "small quantity" in the case of cannabis. In contrast, only a few *Laender* have done so for other narcotics.

¹⁵ Only Mecklenburg-Western Pomerania has not passed specific guidelines in relation to Sec. 31a BtMG.

¹⁶ BVerfGE (Decisions of the German Federal Constitutional Court) 90. 145 et seqq.

In the case of cannabis, the majority of *Laender* take 6 grams¹⁷ as the threshold for a "small quantity", some *Laender* go up to 10 grams¹⁸, Berlin and Bremen even go 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 dropped¹⁹, in other *Laender*, they "can" be dropped. In some *Laender*, cases "can" be dropped above that level, in most, however, they cannot be.

In the case of other narcotics, most *Land* provisions concerning the administration of justice do not stipulate any thresholds regarding refraining from prosecution²⁰. 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. Five *Laender* set quantity thresholds for other narcotics in addition to those for cannabis: Bremen (heroin: 1 gram; cocaine: 1 gram; amphetamine: 1.6 grams, ecstasy: up to 3 tablets), Hamburg (heroin: 1 gram; cocaine: 1 gram)²¹, Lower Saxony (amphetamine: 3 grams; ecstasy: up to 5 tablets (up to a total of 1.8 grams))²²; North Rhine-Westphalia (heroin: 0.5 grams; cocaine: 0.5 grams; amphetamine: 0.5 grams)²³, and Schleswig-Holstein (heroin: 1 gram; cocaine: 3 grams; amphetamine: 3 grams)²⁴.

¹⁷ Baden-Württemberg, Bavaria, Brandenburg, Hamburg, Hesse, Mecklenburg-Western Pomerania, Lower Saxony, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein, Körner/Patzak/Volkmer/Patzak, 9th edition 2019, BtMG § 31a marg. no. 43.

¹⁸ Rhineland-Palatinate, North Rhine-Westphalia, Thuringia, Körner/Patzak/Volkmer/Patzak, 9th edition 2019, BtMG § 31a marg. no. 43.

¹⁹ 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.

²⁰ Körner/Patzak/Volkmer/Patzak, 9th edition 2019, BtMG § 31a marg. no. 44, 45.

²¹ 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: 20 Mar. 2021].

²² Application of Sec. 31a(1) BtMG and conducting preliminary investigations in criminal matters against narcotic drug users, Joint Circular Order (gemeinsamer Runderlass) of the Lower Saxony Ministry of Justice and of the Lower Saxony Ministry of the Interior of 14 December 2020 (4208-401.83 – VORIS 33210): <http://www.voris.niedersachsen.de/jportal/portal/t/r80/page/bsvorisprod.psm!?doc.hl=1&doc.id=VVND-VVND000043435&documentnumber=1&numberofresults=1&doctyp=vvnd&showdoccase=1&doc.part=F¶mfromHL=true#focuspoint> [accessed: 9 Jul. 2021].

²³ Guidelines on the application of Sec. 31a(1) BtMG, Joint Circular Order 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: 20 Mar. 2021].

²⁴ Guidelines on the implementation of Sec. 31a BtMG - 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.psm!&max=true> [accessed: 20 Mar. 2021].

All of these threshold values are only guides 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. In the case of addiction, the question of culpability often arises.²⁵

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)²⁶ 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 would be seen as minor and there is no public interest in the prosecution. Alternatively, the state prosecutor encourages 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 should be noted that differences in the enforcement of crimes under Sec. 31a BtMG by the different state prosecutors continue to exist but 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 und Paoli, 2006). There is no legal right to any case being dropped, even where an 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)²⁷.

²⁵ Lower Saxony, Saxony-Anhalt, Hamburg, Saarland, North Rhine-Westphalia.

²⁶ JGG: <https://www.gesetze-im-internet.de/jgg/BJNR007510953.html> [accessed: 20 Mar. 2021].

²⁷ Körner/Patzak/Volkmer/Patzak, 9. Aufl. 2019, BtMG § 31 Rn. 15.

In youth court proceedings, the judge may discontinue the proceedings pursuant to Section 47 of the Juvenile Courts Act (JGG) if the requirements of Section 153 of the Code of Criminal Procedure (StPO) and some additional requirements are met (Section 47 JGG).²⁸

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 undergo such a treatment.

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

Alternatives to criminal sanctions for youth and adolescents

In some *Laender*, prevention projects, such as the programme "Early Intervention in First-Offence Drug Users – FreD"²⁹ 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 (see Bartsch et al., 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 Europe³⁰.

Principle of mandatory prosecution/discretionary principle

In Germany, the principle of mandatory prosecution generally applies (Sec. 152(2), Sec. 160(1), Sec. 163 StPO). The police are therefore obliged to file a criminal complaint against any suspect and present it to the respective public prosecutor, even in misdemeanours involving small quantities of drugs. This means that the latitude afforded to the police when dealing with suspected offenders is very limited. The police can not waive the preparation of a criminal complaint. 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 questioning 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.

²⁸ StPO: <https://www.gesetze-im-internet.de/stpo/> [accessed: 20 Mar. 2021].

²⁹ http://www.lwl.org/ks-download/downloads/fred/FreD_Broschuere_de.pdf [accessed: 20 Mar. 2021].

³⁰ At the end of 2010, there were FreD projects in 15 European countries.

Sentencing

When handing down sentences, there are many factors which have to be taken into account, including the severity of the offence, the circumstances surrounding it, the personality of the offender. There is extensive case law of the highest court regarding issues of sentencing.

Even though the BtMG generally does not differentiate between different types of narcotics, 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 relevant graduation from so-called "hard" drugs like heroin, fentanyl, cocaine and crack, to "medium" drugs like amphetamine down to so-called "soft" drugs like cannabis³¹.

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

German New Psychoactive Substances Act (NpSG)

The NpSG³² came into force on 26 November 2016. That Act was 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 law³³: 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 under police laws and independent of any criminal proceedings. Moreover, it provides for the imposition of criminal penalties for acts aimed at passing on NPS to others, in particular trading in NPS, bringing them onto the market, administering NPS as well as the manufacture and bringing onto the market of NPS, within 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) NpSG). The NpSG also does not apply to medicinal products and narcotic drugs (Sec. 1(2) NpSG).

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

The NpSG follows a new, innovative approach in that it does not list the substances individually (as is the case in the Schedules to the BtMG), rather it bans entire substance groups. In the

³¹ BGH decision of 15 June 2016, NSTZ 2016, 614-615.

³² <https://www.gesetze-im-internet.de/npsg/> [accessed: 20 Mar. 2021].

³³ Klaus Weber, (2017) Kommentar, Einleitung zum NpSG, marg. no. 27.

past, emerging substances had to be added individually to the schedules to 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 though the new substances often represented only minor changes in chemical structure to substances already scheduled under the BtMG. Thus, the appearance of a supposed "legality" could be exploited because the lack of a ban gave the false impression, especially to young users, that the substance was harmless. At the same time, the criminal provisions in the BtMG were being circumvented.

When the law came into force, the following two substance groups were initially included in the Schedule 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 for which, according to current knowledge, an abuse for intoxication purposes can be assumed³⁴.

Due to the extent of abusive use of certain psychoactive substances and their effects, the schedule to the NpSG was expanded in 2019 to include the following three substance groups:

- benzodiazepines,
- N-(2-aminocyclohexyl)amide-derived compounds,
- tryptamine-derived compounds.

Substances which have more than a slight psychoactive effect, have proved especially harmful to health and which are abused to a not insignificant extent are to continue to be included under the schedules to the BtMG.

- A two-year research project funded by the German Federal Ministry of Health (Bundesministerium für Gesundheit, BMG) intended to assess the effects of the NpSG on users, the addiction support system, law enforcement authorities, the justice system and on the market both qualitatively and quantitatively (period from June 2017 to end of May 2019). This involved, in the main, carrying out structured narrative interviews 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 was to evaluate to what extent

³⁴ 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: 20 Mar. 2021].

the objectives of the Act had been achieved and to propose indicators which would 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. A study is now available - the "Evaluation of the effects of the Act on combatting the spread of new psychoactive substances - EVA NpSG" - which looks at the effects of the introduction of the NpSG on users, the market situation and various relevant actors such as addiction support or law enforcement authorities. In addition, the authors recommend indicators intended to enable continuous monitoring of the effect of the Act in future³⁵.

Further development of the NpSG as well as the Schedules to the NpSG and the BtMG

Depending on how the market develops, it may be appropriate to subject further categories of substances to the provisions of the NpSG and to extend or limit categories of substances. Particularly dangerous individual substances will continue to be subject to the BtMG. The schedule to the NpSG and the schedules to the BtMG are updated at regular intervals, by way of legal ordinances, to reflect the current state of scientific knowledge, in order to counteract abusive use of substances and substance groups (see Sec. 7 NpSG and Sec. 1(2) BtMG).

In addition to the aforementioned expansion of the substance groups in the schedule to the NpSG, eleven further NPS were added to Schedule II of the BtMG³⁶ in 2019, which consisted in particular of synthetic opioids and synthetic cannabinoids.

In July 2020, two further ordinances came into force which led to the following changes to the schedules to the NpSG and BtMG:

- In the schedule to the NpSG, the side chain of compounds defined under 2.1.4 derived from indole, pyrazole and 4-quinolone, has been expanded by rewording paragraph (b) and adding (c) to cover more synthetic cannabinoids.
- The synthetic cannabinoid 5F-MDMB-PICA was added to Schedule II to the BtMG.

In Schedule III to the BtMG³⁷, the existing exemption for solid dosage forms relating to the drug clobazam was expanded to include certain liquid forms. If an exemption situation exists, therefore, the narcotic in question is not one included in Schedule III of the BtMG.

The 2021 amendments to the NpSG can be found in (c).

1.1.4 Drug-related norms in other areas of the law

As drug policy affects many areas of life, drug-related norms can also be found in other areas of law. The following section concerns the following aspects:

³⁵ The project results have been published in abbreviated form at <https://www.bundesgesundheitsministerium.de/service/publikationen/drogen-und-sucht/details.html?bmg%5Bpubid%5D=3478> [accessed: 20 Mar. 2021].

³⁶ Schedule II to the BtMG contains narcotics eligible for trade but non-prescribable.

³⁷ Schedule III to the BtMG contains narcotics eligible for trade and prescribable.

- (a) Monitoring of trade in precursors,
- (b) Drugs in road traffic and
- (c) Framework conditions for addiction support

(a) Precursor monitoring

Another law closely related to the BtMG is the German Precursors Monitoring Act (Grundstoffüberwachungsgesetz, 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. Drug 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 for all EU Member States. Since then, the German GÜG now - unlike previously - has a merely supplementary role, providing additional detail in the area of administrative control and monitoring, namely in respect of the rules on national competence, modifications to take into account national administrative procedures and the design of certain monitoring measures³⁸. 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 trade³⁹ and the regulation on external trade⁴⁰ - are based in turn on international law, namely the UN Narcotic Drugs Convention of 1988⁴¹, 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 specifies 29 substances⁴² which have to be controlled. The EU regulations divide these into four categories, which are subject to control measures of varying degrees of strictness.

³⁸ The GÜG, Regulation 111/2005 (laying down rules for the monitoring of trade between the Community and third countries in drug precursors); 1277/2005 was repealed; https://www.gesetze-im-internet.de/g_g_2008/BJNR030610008.html [accessed: 20 Mar. 2021].

³⁹ Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors, OJ L 47 of 18 February 2004, <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32004R0273&from=DE> [accessed: 20 Mar. 2021].

⁴⁰ Council Regulation (EC) No. 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors, OJ L 22 of 26 January 2005, p.1, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:022:0001:0010:DE:PDF> [accessed: 31 May 2021].

⁴¹ United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, http://www.unodc.org/pdf/convention_1988_en.pdf [accessed: 20 Mar. 2021].

⁴² Version March 2021, 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__1599204920635 [accessed: 20 Mar. 2021].

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, monitoring also incorporates laboratory chemicals which are not covered by the UN Single Convention on Narcotic Drugs 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 closely based on the criminal provisions of the BtMG.

(b) Drugs in road traffic

Drugs in road traffic are a subject matter of the StGB, the StVG and the German Driving Licence Ordinance (Fahrerlaubnis-Verordnung, FeV)

German Criminal Code (StGB)

Anyone who is in charge of a vehicle despite not being able, as a result of consuming alcoholic drinks or other intoxicating substances, to drive that vehicle safely, is considered to have committed a crime under Sec. 316 StGB (driving while drunk). The punishment is imprisonment of up to one year or a fine. Unfitness to drive is deemed to exist if there are indications which demonstrate that the person concerned is incapable of driving an automobile. This incapability can follow from the presence of physical or cognitive deficiencies 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)

Whenever someone drives a vehicle in traffic while under the effects of an intoxicant mentioned in the Schedule to Sec. 24a StVG, this is deemed to be a regulatory offence within the meaning of Sec. 24a (2) StVG⁴³. 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)⁴⁴.

Although there is generally a 0.5 mg/ml rule for alcohol in the law on administrative offences (exception: for new drivers and drivers under 21 years old, there is an absolute ban on alcohol consumption under the provisions of Sec. 24c StGB), no express limit has been set for other intoxicants. Instead, the relevant factor is that a vehicle has been driven while under the influence of an intoxicating substance named in the Schedule to Sec. 24a StVG. Such an

⁴³ 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: 20 Mar. 2021].

⁴⁴ Körner/Patzak Kommentar zum BtMG, 9th edition, 2019, zu §§ 29 et seqq. BtMG marg. no. 423 (see III. Legal consequences)

influence is deemed to be present under Sec. 24a(2), second sentence StVG if a substance named in the Schedule is detected in the blood.

By way of a decision of 21 December 2004⁴⁵ The German Federal Constitutional Court (Bundesverfassungsgericht) declared that any detection of THC in the blood, regardless of amount, does not (any longer) suffice for a conviction under Sec. 24a(2) StVG. At the same time, however, the Court found that Sec. 24a(2), first sentence StVG, which is constitutional, in observing the analytical threshold of 1ng/ml tetrahydrocannabinol (THC) in blood serum. Currently, the Commission on Legal Limits set up by the German Federal Ministry of Transport and Digital Infrastructure (Bundesministerium für Verkehr und digitale Infrastruktur, BMVI), which advises the BMVI on issues concerning the use of drugs in road traffic and their effects on road safety, is looking at the limits for THC once more. The results of the working group are not yet available.

Case law has also set limits for the other intoxicating agents and substances listed in the Schedule to Sec. 24a StVG⁴⁶, with reference to corresponding decisions by the above-mentioned Commission on Legal Limits (amphetamine: 25ng/ml; benzoylecgonine: 75ng/ml; morphine: 10ng/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). Since the legislative basis for the prescription of cannabis as a medicine came into force in March 2017⁴⁷ this exception has applied generally also for cannabis patients.

Fitness to drive a vehicle is decided according to Sec. 2(4) StVG (see also Sec. 3(1) StVG: suspension of driving licence in the case of lack of fitness to drive a vehicle) and Sec. 3(1), Sec. 11(1) in connection with Annex 4 FeV. Section 8 of Annex 4 FeV governs fitness to drive in the case of alcohol problems while section 9 governs fitness to drive in the case of drug problems. A distinction is drawn as follows with regard to the use of medicinal drugs:

- Abuse of medicines: no fitness to drive under section 9.3 of Annex 4 FeV
- In addition, the long-term treatment with medicinal drugs is governed by section 9.6 of Annex 4 FeV. In this context, a person's driving licence is suspended in the event of poisonings or an impairment of the ability to drive a vehicle below the required level. Similarly, there must not be any underlying disease that impairs fitness to drive.

⁴⁵ BVerfG, decision of 21 Dec. 2004 – 1 BvR 2652/03, http://www.bverfg.de/e/rk20041221_1bvr265203.html [accessed: 20 Mar. 2021].

⁴⁶ Case law references at Körner/Patzak BtMG 9th edition, 2019, before §§ 29 et seqq., 409-415 see d, aa, bb, cc, dd, ee.

⁴⁷ 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: 20 Mar. 2021] and Lagodny, Münchner Kommentar zum StGB, Nebenstrafrecht I, BtMG before §§ 29 et seqq. marg. nos. 38-40.

What to do in cases of doubt regarding fitness to drive is set out in Sec. 11, Sec. 13, Sec. 14 FeV.

- Sec. 13 Doubts as to fitness to drive in the case of alcohol problems
- Sec. 14 Doubts as to fitness to drive in the case of drug problems
- Sec. 11(2) et seqq. other doubts as to fitness to drive

As far as someone taking psychoactive medicinal drugs is concerned, Sec. 14 FeV only applies where there are indications of abuse; otherwise, at most Sec. 11 FeV applies if, for example, indications are present that the medicine leads to a reduction in mental performance below the level needed to drive a vehicle, or where there are indications of an underlying disease that precludes fitness to drive. Currently, the section “Alcohol, narcotic drugs and medicines” in the guidelines on assessing fitness to drive, which form the basis of the assessment of fitness to drive under Annex 4a FeV, is being revised by a working group specially set up for this purpose at the German Federal Highway Research Institute (Bundesanstalt für Straßenwesen, BASt). The amendment to that section will probably also require a change to the fitness to drive provisions in Sec. 13, Sec. 14, Annex 4 FeV, but this is a case of wait and see⁴⁸.

(c) Framework conditions for 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, over the decades, created, together with service providers and self-help groups, a very varied range of addiction and drug support services. 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. Accordingly, the legal framework for this system is complex and almost impossible to understand.

The most important elements of the addiction support system are⁴⁹:

- the prevention of drug use and early intervention,
- addiction and drug counselling,
- psychosocial care,
- low-threshold support and measures for harm reduction,
- addiction treatment, in particular
 - detoxification and withdrawal,

⁴⁸ German Federal Ministry of Transport and Digital Infrastructure.

⁴⁹ Deutsche Hauptstelle für Suchtfragen (DHS) (2014): Suchthilfe und Versorgungssituation in Deutschland, https://www.dhs.de/fileadmin/user_upload/pdf/suchthilfe/Versorgungssystem/Die_Versorgung_Suchtkranker_in_Deutschland_Update_2019.pdf [accessed: 31 May 2021].

- pharmacotherapy (anti-convulsive- and anti-craving-therapy),
 - substitution treatment (only for opioid addiction),
 - outpatient/inpatient medical rehabilitation (only in connection with the complete recovery of freedom from addictive substances as a decisive marker of the success of rehabilitation),
 - aftercare (rehabilitation success),
- occupational and social rehabilitation as well as employment support rehabilitation success.

For these interventions, which in Germany are generally delivered by independent bodies and social institutions and only 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 Conventions on Narcotic Drugs⁵⁰ oblige 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"⁵¹. As far as the reintegration of drug addicted persons is concerned, the 2006 United Nations Convention on the Rights of Persons with Disabilities⁵² 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 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 (German Prevention Act, Präventionsgesetz - PräVG)⁵³ came into force. Its aim was to improve

⁵⁰ 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: 20 Mar. 2021].

⁵¹ Art. 38 of the Single Convention of 1961 and Art. 20 of the Convention on Psychotropic Substances of 1971.

⁵² 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: 20 Mar. 2021].

⁵³ 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_BGBI&start=//*/%255B@attr_id=%27bgbl11

the basis for cooperation between social insurance providers, *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 the use of addictive substance⁵⁴. 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 projects and pilot projects by the BMG enable the development, testing and evaluation of new approaches for selective and indicated measures⁵⁵.

Treatment

The legal framework for the funding of 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". Costs of detoxification treatment and substitution therapy are, according to the SGB, Volume 5 (SGB V)⁵⁶, borne by the statutory health insurance providers. The funding agencies for the costs of drug withdrawal treatment are, according to Volume 6 of the SGB, the pension insurance providers (SGB VI)⁵⁷.

In accordance with the statutory benefits catalogue, statutory health insurance also covers access to treatment for addiction disorders⁵⁸. However, this access is today impeded by the large number of different funding agencies and administrative hurdles - for example, in the transition of released rehabilitants to health insurance coverage, but above all through

5s1368.pdf%27%255D#__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl115s1368.pdf%27%5D__1572442905414 [accessed: 20 Mar. 2021].

⁵⁴ Federal framework recommendations from the Prevention Conference, 19 February 2016, pp. 14, 27: https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/P/Praevention/160219_Bundesrahmenempfehlungen_.pdf [accessed: 20 Mar. 2021].

⁵⁵ BMG - Prävention des Suchtmittelkonsums (Prevention of use of addictive substances): <https://www.bundesgesundheitsministerium.de/ministerium/ressortforschung/krankheitsvermeidung-und-bekaempfung/drogen-und-sucht/praevention-des-suchtmittelkonsums.html> [accessed: 20 Mar. 2021].

⁵⁶ 5th Volume, German Code of Social Law - Statutory health insurance (SGB V - Gesetzliche Krankenversicherung) of 20 December 1988 (German Federal Law Gazette. I pp. 2477, 2482), last amended by the Act of 22 February 2021 (German Federal Law Gazette I p. 3214): https://www.gesetze-im-internet.de/sgb_5/SGB_5.pdf [accessed: 20 Mar. 2021].

⁵⁷ 6th Volume, German Code of Social Law - Statutory pension insurance (SGB VI – 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: 20 Mar. 2021].

⁵⁸ Guidelines on the examination and treatment methods of SHI accredited medical professionals in the version of 18 June 2020, Federal Gazette, official section, 21 July 2020 B1, <https://www.g-ba.de/richtlinien/7/> [accessed: 20 Mar. 2021].

professionally medically demanding access hurdles, such as an abstinence (Schneider et al., 2021b).

Substitution

Substitution treatment in Germany is based 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 for statutory health insurance providers regarding the assumption of costs (Höke et al., 2021).

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).

Substitution treatment was legally approved by the BtMG in the 1990s. In 1998⁵⁹ and 2001⁶⁰, very detailed provisions regarding substitution were incorporated into the BtMVV (Sec. 5 BtMVV). These determine, among other things, the objectives the federal legal framework of substitution, the permissible substances and the indication or reasons for exclusion objectives of treatment. It requires proof of a special addiction medicine qualification in accordance with the curriculum of the German Medical Association. of the participating substituting physicians. Finally, a substitution register was set up at the BfArM. All substitution treatments must be reported, in anonymised form, to that register (Sec. 5b BtMVV).

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 on 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 providers⁶¹, which opens up access to treatment - under specific conditions - for all insured persons.

The "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)⁶²

⁵⁹ 10th Amending Regulation on Narcotic Drugs (10th BtMÄndV) of 20 January 1998, Federal Law Gazette I p. 74 https://dejure.org/BGBl/1998/BGBl._I_S._74 [accessed: 20 Mar. 2021].

⁶⁰ 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: 20 Mar. 2021].

⁶¹ 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: 20 Mar. 2021].

⁶² For this section, see Bundesrat Printed Paper 222/17 (ordinance explanatory memorandum) and 696/20 (Federal Government report to the Bundesrat on the ordinance of 30 October 2020).

On 30 May 2017, the Third Amending Regulation of the German Regulation on the Prescription of Narcotic Drugs (Dritte Verordnung zur Änderung der Betäubungsmittel-Verschreibungsverordnung) came into force⁶³.

The main objective of the Ordinance was and is to adapt the narcotics law provisions on substitution therapy at the level of federal law to account for the progress of scientific knowledge and current practical needs.

Overall, the amendments are also targeted at increasing doctors' motivation to treat people who have become dependent particularly through the abuse of unlawfully acquired opioids and are thus seriously ill, using substitution therapy. For reasons of quality assurance, the amendments of the ordinance also aim to encourage as many doctors as possible who are qualified in addiction medicine, particularly in rural areas, to participate in this important provision of care. Furthermore, the objective is to make a contribution to improving the substitution patients' care in their homes or places of residence, as well as to promote participation in working life and society.

The new drugs law provisions for the substitution treatment of opioid dependent people, introduced by the ordinance, focus on establishing a federal legal framework for providing this treatment, including specifying treatment objectives. In addition, there are federal law requirements for the safety and control of the narcotics trade as regards the provision of substitution therapy.

In contrast, substitution-related matters which directly concern medical/treatment assessments are no longer directly governed by federal law but have been transferred to the guideline competence of the BÄK. This concerns, in particular, determinations regarding the general requirements for the initiation of substitution treatment, as well as regarding concomitant use, the prescription of substitution drugs for independent use and the decision as to the necessity of including psychosocial therapy measures.

With the objective of more flexible access to care for substitution patients, including in rural areas, the following steps were taken:

- the catalogue of facilities in which substitution patients can receive their substitution drug for immediate use was considerably expanded,
- the circle of those people allowed to administer substitution drugs to substitution patients for immediate use was expanded and
- the number of substitution patients who are allowed to be treated by a doctor without a specific addiction medicine qualification, through the colleague-consultation principle, was increased from three to ten.

⁶³ Federal Law Gazette I p. 1275. For the ordinance explanatory memorandum, see Bundesrat Printed Paper 222/17, https://www.bundesrat.de/SharedDocs/drucksachen/2017/0201-0300/222-17.pdf?__blob=publicationFile&v=9 [accessed: 11 Jun. 2021].

1.2 Implementation of the law (T1.2)

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

The main data sources for recording drug crime and the state handling of drug offences in Germany are the Police Crime Statistics (Polizeiliche Kriminalstatistik, PKS), the Federal Situation Report (Bundeslagebild) as well as the criminal prosecution statistics of the judicial authorities. However, there are differences in the methods of recording and classifying data in each case, and even in the manner of differentiation used at the detail level. For example, 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 PKS⁶⁴, which records all crimes which the police have become aware of and have registered following their own investigations or criminal complaints, shows that in 2020 a total of 365,753 drug offences were recorded. 287,592 of those were general violations of the BtMG, 52,645 were dealing/trafficking and smuggling offences under Sec. 29 BtMG, 1,703 were cases of importing “non-small quantities” under Sec. 30 BtMG and 23,095 were other violations of the BtMG. In addition, 718 criminal offences under Sec. 4 NpSG were reported in 2020.

Further prosecution data can be found in the Drug Market and Crime workbook (Schneider et al., 2021a).

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

In 2017, the PKS included crimes under Sec. 4 NpSG for the first time in the total figure for narcotics offences. 718 violations of the NpSG were recorded in the PKS in 2020. In 2019, the statistics included 391 violations of this type. This corresponds to an increase of 83.6% in 2020 compared to 2019.

In the case of these crimes, it is not possible to differentiate between trafficking and production. Otherwise, the statistics of the Federal Criminal Police Office or the Federal Statistical Office do not (yet) provide sufficient evidence for an assessment of law enforcement practice in connection with NPS. Reasons for the increase in NPS case numbers could be:

- Conduct of several large-scale proceedings in the field of NPS crime, from which separate follow-up investigation proceedings have resulted.
- Expansion of the substance groups of the NpSG and thus of the legal framework (this resulted in the possibility of generating additional investigative proceedings).
- Further sensitization of law enforcement authorities to the NPS phenomenon area.

⁶⁴ The police crime statistics (Polizeiliche Kriminalstatistik, 2020), Federal Criminal Police Office (Bundeskriminalamt, BKA), https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/PolizeilicheKriminalstatistik/PKS2020/pks2020_node.html [accessed: 31 May 2021].

Compared to crimes committed in the context of other types of narcotics, the number of cases recorded for NPS crime is still at a low level, so that the rate of increase in the number of preliminary proceedings (for reasons see above) now appears to be soaring.

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 available⁶⁵. There are selling platforms, especially on the darknet, on which drugs of all types are offered for sale and often then sent by post to the purchaser. In 2020, a total of 2,984 narcotics offences where the internet was the instrument used were recorded in the PKS, which represented a slight fall compared to the previous year (2019: 3,263). It is, however, assumed that there is a large number of unreported cases. The general increase in cultivation areas for heroin, cocaine and marijuana is also further proof of availability. The situation is similar for synthetic drugs. Previously, these were manufactured in small laboratories, whereas today manufacture takes place increasingly in professional facilities with extensive production capacity.

In 2020, a total of 277,904 people were recorded as suspected of a narcotics offence. Thus, the number has fallen slightly from the previous year (2019: 284,927 suspects). The number of adolescents suspected of a drug offence fell slightly to 33,206 people (2019: 34,495 suspects). 14 to under-18 year-olds were most frequently accused of cannabis consumption, possession, manufacture, or dealing (28,289 suspects). Recognising and recording hard drug users is difficult and the figures incomplete because one can assume that a suspect's drug addiction is often not recognised. The proportion of offences committed by users of hard drugs is therefore likely higher than that statistically recorded - especially for theft and robbery offences. The number of registered narcotics offences strongly depends also on the practices of customs authorities and the police as regards performing checks.

2 TRENDS (T2)

This section will examine the most important changes to the legal framework since 2000 by looking at not only criminal provisions but also legal provisions on the treatment of drug addicts and on harm reduction.

2.1 Changes in criminal provisions (T2.1)

The most recent fundamental change to the criminal provisions of the BtMG took place in the 1990s, when new criminal offences were introduced into the BtMG, as well as an extension to the range of sentencing and high minimum penalties for cases of serious drug dealing/trafficking, through the Act to Combat Organised Crime (Gesetz zur Bekämpfung der

⁶⁵ Die Polizei - Das Präventionsportal: Zahlen zu Drogendelikten, <https://www.polizei-dein-partner.de/themen/sucht/drogen/detailansicht-drogen/artikel/zahlen-zu-drogendelikten.html> [accessed: 20 Mar. 2021].

Organisierten Kriminalität, OrgKG) of 1992⁶⁶ and the Act to Combat Crime (Verbrechensbekämpfungsgesetz) of 1994⁶⁷. In 1992, Sec. 31a BtMG was created, which provided for the possibility of refraining from prosecution⁶⁸. Since then, the central criminal provisions of the BtMG have remained largely unchanged⁶⁹.

The German New Psychoactive Substances Act (NpSG), which came into force on 26 November 2016, 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 (still T2.1)

While the BtMG of 1981⁷⁰ 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 concerned 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 "repression/reduction of supply", 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"⁷¹ but this did not produce any new legal trends.

The provision on needle exchange was introduced into the BtMG back in 1994 (Sec. 29(1), second sentence BtMG), with the aim of minimising harm. In 2000, the provision on drug consumption rooms followed, with Sec. 10a BtMG, which had the same legislative intention.

The provisions on substitution treatment, which were trialled in the 1980s in pilot projects, initially without express legal foundation and not enshrined in the BtMG until the end of the

⁶⁶ Art. 2 of the German Act Combatting Illegal Narcotic Drugs Dealing/Trafficking and Other Forms of Organised Crime (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__1572446077295 [accessed: 20 Mar. 2021].

⁶⁷ Art. 9 of the German Act to Combat Crime 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__1572446164717 [accessed: 20 Mar. 2021].

⁶⁸ On these changes in detail: Harald H. Körner, Die Strafrechtspraxis im Labyrinth neuer Betäubungsmittelrechtsbestimmungen, NJW 1993, pp. 233-239.

⁶⁹ Overview of all amendments to the BtMG in Lagodny, Münchner Kommentar zum StGB, Nebenstrafrecht I, BtMG before §§ 1 et seqq. BtMG, marg. no. 50.

⁷⁰ BtMG of 28 July 1981, Federal Law Gazette I p. 681, 1187, which came into force on 1 January 1982 https://www.gesetze-im-internet.de/btmg_1981/BJNR106810981.html [accessed: 20 Mar. 2021].

⁷¹ The Federal Government Commissioner on Narcotic Drugs: <https://www.drogenbeauftragte.de/themen/drogenpolitik/nationale-strategie/> [accessed: 31 May 2021].

1990s, to 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 its extensions, as well as the "Cannabis as Medicine" Act, introduced in 2017, are also important legislative amendments of recent years (see section (c)).

2.3 Changes in implementation (T2.2)

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 in practice (refraining from prosecution in cases of personal use of small amounts) has already been reported on above (see section 1.1.2).

Of note is the trend in traffic accidents involving people under the influence of drugs or intoxicants (excluding alcohol). While the overall number of road traffic accidents with personal injury has significantly fallen since 2000 (2000: 382,949 accidents with 7,503 deaths; 2019: 300,143 accidents with 3,046 deaths; 2020: 264,499 accidents with 2,724 deaths), the number of accidents involving persons under the influence of drugs has more than doubled (1999: 880 accidents; 2020: 2,393 accidents)⁷².

The "Cannabis as Medicine" Act of 2017 has affected case law practice in different ways:

- (a) Before the Act came into force, an exemption was required under Sec. 3 BtMG in order to obtain or cultivate cannabis for therapeutic purposes, which was issued by the BfArM. According to the case law of the German Federal Administrative Court (Bundesverwaltungsgericht, BVerwG) prior to the law change⁷³ there was a "public interest" in supplying individual severely ill patients with cannabis, if this enabled symptoms to be cured or alleviated and the person affected had no equally effective, affordable therapy alternative available 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 any such actions are now rejected by the administrative courts.
- (b) The question of the fitness of cannabis patients to drive is increasingly occupying the courts, whereby a distinction must be made between the case law on cannabis in general and the case law on cannabis as a medicine. On the grounds of the submission of a medical certificate confirming participation in a therapy with cannabis, the revocation of an applicant's driving license on the grounds of lack of fitness to drive was declared unlawful⁷⁴. In October 2019, the Administrative Court of Düsseldorf also

⁷² Statistisches Bundesamt, Time series, 2020 No. 6.

⁷³ BVerwG judgment of 19 May 2005 - 3 C 17.04.

⁷⁴ OVG des Saarlandes, Beschluss vom 03.09.2018 - 1 B 221/18. <https://openjur.de/u/2177704.html> [accessed: 23 Sep. 2021].

ruled that if a doctor prescribes medical cannabis, the question of whether cannabis consumption and driving a vehicle should be separated does not apply. Instead, the relevant question is whether the person concerned can

- reliably takes cannabis only in accordance with the doctor's prescription,
- no permanent effects on performance can be ascertained
- and the underlying disease or the present symptomatology does not have any traffic-medically relevant manifestation that impairs safe road use;
- in addition, it must not be expected that the person concerned will participate in road traffic in situations in which his driving safety is impaired by effects of the disease or medication.

In April 2019, the Federal Administrative Court made the decision that a one-time violation of the separation requirement when driving under the effect of cannabis with established occasional use of cannabis regardless of medication cannot lead to the revocation of the driver's license, but only to the ordering of a medical-psychological examination (MPU). In the case of a single violation of the separation requirement, the driving license is not usually revoked, but the MPU is ordered.⁷⁵

- (c) The German Act for More Safety in the Supply of Medicinal Products (Gesetz für mehr Sicherheit in der Arzneimittelversorgung, 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(6) first sentence SGB V is prescribed by an 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 filing.

3 NEW DEVELOPMENTS (T3)

3.1 Amended provisions and laws as a result of COVID-19 (T3.1)

On 22 April 2020, the German SARS-CoV-2-Ordinance on the Supply of Medicinal Products (SARS-CoV-2-Arzneimittelversorgungsordnung) came into force⁷⁶. It serves to ensure the treatment of patients with the necessary medicines and medicinal products during the COVID-19 pandemic and contains, among other things, exemptions from the BtMG and the BtMVV, in order to guarantee opioid-dependent patients' care during the pandemic. From a narcotics law

⁷⁵ VG Düsseldorf, Urteil vom 24.10.2019 - 6 K 4574/18. <https://openjur.de/u/2186588.html> [accessed: 23 Sep. 2021].

⁷⁶ <https://www.gesetze-im-internet.de/sarscov2amvv/SARSCoV2AMVV.pdf> [accessed: 5 Jul. 2021].

perspective, the SARS-CoV-2-Ordinance on the Supply of Medicinal Products provides for the following:

- (a) Pharmacies without a licence under Sec 3 BtMG may supply narcotics to another pharmacy in order to increase the availability of narcotics in relation to the local needs in each case (Sec. 5).
- (b) Substitution doctors are given the option of deviating from certain provisions in the BtMVV when treating opioid dependent people, provided this is medically justifiable (Sec. 6). For example, substitution drugs may be prescribed for a longer time period under certain conditions, and even a doctor who is not qualified in addiction medicine may provide more than ten patients with substitution drugs.
- (c) The SARS-CoV-2-Ordinance on the Supply of Medicinal Products will cease to be in force at the latest one year after the determination of the national epidemic situation has been rescinded, according to the provisions within the German Protection Against Infection Act (Infektionsschutzgesetz, IfSG)⁷⁷. On 11 June 2021, the Bundestag officially declared the ongoing existence of the national epidemic for a further three months⁷⁸. The SARS-CoV-2-Ordinance on the Supply of Medicinal Products will cease to be in force on 31 May 2022, however, as this time limit is stipulated in the ordinance itself⁷⁹.

3.2 Changed laws in 2021 (currently T3.1)

The annexes to the BtMG were also extended in 2021, through narcotics law amendment ordinances, in line with scientific knowledge and developments on the drug market. The objective is to protect the health of individuals and the population by reducing the distribution and abuse of NPS, as well as to simplify prosecutions.

Twenty First Amending Ordinance on the Annexes to the BtMG

On 21 January 2021, the Twenty First Amending Ordinance on the Annexes to the BtMG⁸⁰ came into force. The Ordinance added the following NPS to Annex II of the BtMG⁸¹:

- Cathinone derivatives, n-ethylhexedrone and alpha-PHP,
- the benzodiazepine flualprazolam,

⁷⁷ see Sec. 5(4) No. 2 in connection with (2) No. 4 IfSG ; <https://www.gesetze-im-internet.de/ifsg/ifsg.pdf> [accessed: 5 Jul. 2021].

⁷⁸ <https://www.bundestag.de/dokumente/textarchiv/2021/kw23-de-epidemische-lage-845692> [accessed: 5 Jul. 2021]

⁷⁹ See Sec. 9(1) SARS-CoV-2-Ordinance on the Supply of Medicinal Products, <https://www.gesetze-im-internet.de/sarscov2amvv/SARSCoV2AMVV.pdf> [accessed: 6 Jul. 2021].

⁸⁰ Federal Law Gazette I p. 70.

⁸¹ Annex II to the BtMG lists narcotics that are marketable but non-prescribable.

- the synthetic cannabinoid 4F-MDMB-BINACA,
- and the opioids crotonylfentanyl and valeryl fentanyl

Thirty Second Ordinance Amending the Provisions of the Narcotics Act

On 22 May 2021, the Thirty Second Ordinance Amending the Provisions of the Narcotic Act⁸² came into force. It added three additional NPS to Annex II to the BtMG:

- the synthetic opioids isotonitazene and 2-methyl-AP-237, and
- the synthetic cannabinoid MDMB-4en-PINACA.

In addition, the medication remimazolam was included in Annex III to the BtMG⁸³, including the necessary exemption.

Sec. 5 BtMVV was also amended with regard to the provisions on the substitution treatment of opioid-dependent patients. Prior to the ordinance being issued, doctors or medical personnel were already permitted to give substitution patients the substitution drug for immediate consumption. The ordinance also created the additional option of doctors or medical personnel administering the substitution drug or for it to be used in accordance with the procedure set out in the medical marketing authorisation. This extension is intended to take the progress of drug development into account.

Second Ordinance Amending the Schedule to the NpSG

On 2 July 2021, the Second Ordinance Amending the Schedule to the NpSG⁸⁴ came into force. With this ordinance, the previous substance groups in the NpSG were adjusted in line with the current state of knowledge and updated to include additional NPS. Two new substance groups were also incorporated into the schedule: compounds derived from arylcyclohexylamine and compounds derived from benzimidazole. The schedule to the NpSG thus now covers seven substance groups.

Drug trafficking has also become more digital in recent years, accelerated once again by the pandemic. To counter the challenges associated with this, the German government has taken the following measures, among others:

Since March 2021, postal service providers have been obliged to hand over damaged or undeliverable parcels suspected of being drug consignments to the police (Section 39 IVa of the Postal Act).

⁸² Federal Law Gazette I p. 1096. For the ordinance explanatory memorandum, see Bundesrat Printed Paper 190/21, [https://www.bundesrat.de/SharedDocs/drucksachen/2021/0101-0200/190-21\(B\).pdf;jsessionid=CD29AAF7690810C5E4FEDA9FEED1A5E5.2_cid349?__blob=publicationFile&v=1](https://www.bundesrat.de/SharedDocs/drucksachen/2021/0101-0200/190-21(B).pdf;jsessionid=CD29AAF7690810C5E4FEDA9FEED1A5E5.2_cid349?__blob=publicationFile&v=1) [accessed: 31 May 2021].

⁸³ Annex III of the BtMG lists narcotics that are marketable and prescribable.

⁸⁴ Federal Law Gazette I p. 2231. No. 38 from 2 Jul. 2021.

Changes in the Strafgesetzbuch

On the subject of money laundering, the criminal asset seizure system was already reformed in 2017 with the aim of securing incriminated funds even more effectively. In March 2021, the Money Laundering Act was tightened once again: in the future, any smuggling of illegally acquired assets, such as drug money, into the economic cycle can be punished as money laundering ("all crimes" approach, Section 261 of the Criminal Code).

By eliminating the list of predicate offenses for money laundering, the legislature has made it easier to confiscate illegally acquired assets independently: the court can confiscate illegally acquired assets even if a conviction is not possible for practical reasons (Section 76a of the Criminal Code).

With the "Act on the Criminal Liability of Operating Criminal Trading Platforms on the Internet and Providing Corresponding Server Infrastructures," the legislature has enabled law enforcement authorities to take action not only against those directly trading in illegal drugs. All those who make online platforms and server infrastructures available for this purpose are now also criminally liable (Section 127 StGB).

3.3 Evaluation (T3.3)

Evaluation of the Third Ordinance Amending the BtMVV⁸⁵

On 30 May 2017, the Third Ordinance Amending the German Ordinance on the Prescription of Narcotic Drugs came into force⁸⁶ (on the main contents and objectives of the regulation, see section 1.1.4 above).

On 12 May 2017, in addition to its decision on the approval of the regulation, the Bundesrat issued a resolution that the German Federal Government is called upon, three years after the regulation has come into force, to report on whether making it easier for doctors to carrying out substitution treatment has been successful, in particular with regard to the goal of motivating more doctors to carry out such treatment⁸⁷. The German Federal Government has met this reporting request⁸⁸.

⁸⁵ See German Federal Government report on the decision of the Bundesrat of 30 October 2020 on the Third Ordinance Amending the German Ordinance on the Prescription of Narcotic Drugs, see Bundesrat Printed paper 696-20, https://www.bundesrat.de/SharedDocs/drucksachen/2020/0601-0700/696-20.pdf;jsessionid=9C1B0032DC17E26A055E52722EB2E8AD.1_cid391?__blob=publicationFile&v=1 [accessed: 11 Jun. 2021].

⁸⁶ Federal Law Gazette I p. 1275. For the ordinance explanatory memorandum, see Bundesrat Printed Paper 222/17, https://www.bundesrat.de/SharedDocs/drucksachen/2017/0201-0300/222-17.pdf?__blob=publicationFile&v=9 [accessed: 11 Jun. 2021].

⁸⁷ Bundesrat Printed Paper 222/17 (decision), https://www.bundesrat.de/SharedDocs/drucksachen/2017/0201-0300/222-17.pdf?__blob=publicationFile&v=9, [accessed: 11 Jun. 2021].

⁸⁸ Bundesrat Printed Paper 696/20, https://www.bundesrat.de/SharedDocs/drucksachen/2020/0601-0700/696-20.pdf;jsessionid=116CF95FC1C313B7416AB3101E231C4F.1_cid391?__blob=publicationFile&v=1, [accessed: 11 Jun. 2021].

The 91st Conference of Health Ministers of the *Länder* on 20 and 21 June 2018 requested, by way of resolution, that the German Federal Ministry of Health involve the *Land* ministries responsible for developing and monitoring the evaluation of the ordinance at an early stage and on an ongoing basis. In addition, an extensive catalogue of questions was drawn up, which is intended to be addressed during the evaluation. The survey would also include, in addition to data from the substitution register of the German Federal Opium Agency (Bundesopiumstelle, BOPST) within the BfArM, data from the associations of SHI-accredited doctors and medical associations. The evaluation was also intended to include surveys from substituting doctors.

For such an evaluation of the ordinance, the German Federal Ministry of Health (Bundesministerium Gesundheit, BMG) commissioned the project “Evaluation of the 3rd Ordinance Amending the German Regulation on the Prescription of Narcotic Drugs” (EVASUNO). Since March 2019, EVASUNO has been carried out by the Centre for Interdisciplinary Addiction Research (Zentrum für Interdisziplinäre Suchtforschung, ZIS) at the University of Hamburg, and plans comprehensive surveys until February 2022.

3.4 Political discussions (T3.4)

Debate on the legalisation of cannabis

The topic of legalising cannabis for intoxication purposes has once more been discussed by the German Bundestag.

In a minor interpellation of 5 August 2020 entitled “Developments in the use of cannabis as a stimulant, as well as medical and commercial use”⁸⁹, the parliamentary group BÜNDNIS 90/DIE GRÜNEN once again advocated steps towards the legalisation of cannabis for intoxication purposes. In its reply⁹⁰, the German Federal Government rejected this on the grounds of protecting the health of the population and of individuals.

The minor interpellation from the parliamentary group DIE LINKE of 15 August 2020 on the subject of the “Legalisation of cannabis”⁹¹ also received a negative response from the German Federal Government, which stated that the health risks from cannabis abuse, in particular among adolescents and young adults, have been medically proven⁹².

⁸⁹ BT Printed paper 19/21484 of 5 Aug. 2020, <https://dip21.bundestag.de/dip21/btd/19/214/1921484.pdf> [accessed: 31 May 2021].

⁹⁰ BT Printed Paper 19/22651 of 17 Sep. 2020, <https://dipbt.bundestag.de/dip21/btd/19/226/1922651.pdf> [accessed: 31 May 2021].

⁹¹ BT Printed Paper 19/22440 of 15 Sep. 2020, <https://dip21.bundestag.de/dip21/btd/19/224/1922440.pdf> [accessed: 31 May 2021].

⁹² BT Printed Paper 19/23736 of 27 Oct. 2020, <https://dip21.bundestag.de/dip21/btd/19/237/1923736.pdf> [accessed: 31 May 2021].

A draft bill for a “Cannabis Control Act” of the parliamentary group BÜNDNIS 90/DIE GRÜNEN⁹³ was re-introduced into parliamentary proceedings in 2018, according to which cannabis would be exempted from the criminal provisions of the BtMG and instead a strictly controlled legal market for cannabis should be created⁹⁴. This was rejected in accordance with the resolution recommendation of the Committee on Health⁹⁵ in the second reading in the German Bundestag⁹⁶ in October 2020. The parliamentary group BÜNDNIS 90/DIE GRÜNEN had already introduced a draft bill for a Cannabis Control Act back in 2015⁹⁷, which has been rejected.

Following a request from the parliamentary group the FDP on 23 March 2021, a public hearing was held by the Bundestag Committee on Health on 21 June 2021 entitled “The controlled supply of cannabis to adults for recreational purposes - strengthening health and youth protection”⁹⁸. A summary of the findings of the hearing, as well as statements from the experts, have been published on the Bundestag’s website⁹⁹. The request was rejected by the Bundestag on 24 June 2021¹⁰⁰.

Judgment of the German Federal Court of Justice (Bundesgerichtshof, BGH) of 24 March 2021 on the sale of so-called “hemp tea” being considered a criminal offence

In a judgment of 24 March 2021 on criminal liability for the sale of hemp tea¹⁰¹, the BGH stated that a “commercial purpose” within the meaning of exemption b) on the item “cannabis” in Annex I to the BtMG¹⁰² does not, in principle, prohibit the sale of cannabis products to end

⁹³ BT Printed Paper 19/819 of 20 Feb. 2018, <http://dipbt.bundestag.de/dip21/btd/19/008/1900819.pdf> [accessed: 31 May 2021].

⁹⁴ BT Printed paper 19/819 of 20 Feb. 2018, p. 2. <http://dipbt.bundestag.de/dip21/btd/19/008/1900819.pdf> [accessed: 31 May 2021].

⁹⁵ BT Printed paper 19/23606 of 22 Oct. 2020, <http://dip21.bundestag.de/dip21/btd/19/236/1923606.pdf> [accessed: 31 May 2021].

⁹⁶ BT Plenary Minutes 19/186 of 29 Oct. 2020, p. 23408D – 23424D, <https://dipbt.bundestag.de/dip21/btp/19/19186.pdf> [accessed: 31 May 2021].

⁹⁷ BT Printed Paper 18/4204 of 4 Mar. 2015, <https://dip21.bundestag.de/dip21/btd/18/042/1804204.pdf> [accessed: 31 May 2021].

⁹⁸ BT Printed Paper 19/27807 of 23 Mar. 2021, <https://dip21.bundestag.de/dip21/btd/19/278/1927807.pdf> [accessed: 31 May 2021].

⁹⁹ See <https://www.bundestag.de/dokumente/textarchiv/2021/kw25-pa-gesundheit-847506> [accessed: 5 Jul. 2021]

¹⁰⁰ BT Plenary Minutes 19/236, pp. 30604D-30604D.

¹⁰¹ Case number: 6 StR 240/20.

¹⁰² According to the current version of Annex I to Sec. 1(1) BtMG, plants and parts of plants belonging to the genus cannabis are excluded from the provisions of narcotics law if they were either originally cultivated in EU Member States with certified seeds, or if their THC content does not exceed 0.2% and (as an additional requirement for both of these alternatives) only serves commercial or scientific purposes (excluding their cultivation) that exclude the possibility of abuse for intoxication purposes. This exemption in the BtMG also applies to preparations (e.g. extracts, oils etc.) made from the plants and plant parts, where they meet the above conditions.

consumers for consumption purposes. However, the possibility of abuse of the cannabis product for intoxication purposes must be excluded¹⁰³.

Administrative court decisions on so-called “CBD products”

Cannabidiol (CBD) is found in hemp plants and can contain, when extracted from the hemp plant, the psychoactive substance tetrahydrocannabinol (THC). Administrative courts have declared prohibition orders that prohibit the placing on the market of CBD oils to be lawful¹⁰⁴. The so-called “CBD products” in dispute were classified by the courts as novel foods within the meaning of the EU Novel Food Regulation¹⁰⁵, which lacked the necessary authorisation under EU law for being lawfully placed on the market in accordance with the relevant Novel Food Regulation.

Drug Checking

“Drug checking” refers to the possibility for drug users to have illegal psychoactive substances, that have been acquired on the black market for their own use, tested anonymously for their qualitative and quantitative composition and to have the test results sent back to them. Drug checking is intended to be an additional preventive, advisory and harm-reducing measure to enhance existing addiction support services. At the same time, the test results are intended to enable the provide up-to-date information on drugs in circulation to users and thereby warn them of dangerous substances. To date, drug checking projects have not yet been approved in Germany, based on the provisions of narcotics law.

On 20 April 2021, the parliamentary group DIE LINKE submitted a request¹⁰⁶, in which they called upon the German Federal Government to amend the BtMG to enable drug checking to

¹⁰³ See also BGH press release no. 066/2021 of 24 Mar. 2021 on the judgment, <https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/DE/2021/2021066.html> [accessed: 1 Jun. 2021].

¹⁰⁴ See Press release of the Higher Administrative Court of Hamburg (Oberverwaltungsgericht Hamburg) of 27 January 2021 on the decision of the Administrative Court of Hamburg of 26 January 2021 (case number: 7 E 4846/20), <https://justiz.hamburg.de/contentblob/14861538/0f99d5f5b30d6330d0aa9ad507014f33/data/7-e-4846-20-beschluss-vom-26-01-2021.pdf>, [accessed: 1 Jun. 2021], and press release of the Administrative Court of Berlin No. 13/2021 of 15 March 2021, <https://www.berlin.de/gerichte/verwaltungsgericht/presse/pressemitteilungen/2021/pressemitteilung.1064355.php>, [accessed: 1 Jun. 2021]) on its decision of 4 March 2021 (case number: 14 L 37/21), <https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=VG%20Berlin&Datum=04.03.2021&AktENZEICHEN=14%20L%2037.21>, [accessed: 1 Jun. 2021].

¹⁰⁵ Regulation (EU) 2015/2283, <https://eur-lex.europa.eu/legal-content/DE/ALL/?uri=CELEX%3A32015R2283>, [accessed: 1 Jun. 2021] of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011, <https://eur-lex.europa.eu/legal-content/DE/ALL/?uri=celex%3A32011R1169>, [accessed: 1 Jun 2021], of the European Parliament and of the Council and repealing Regulation (EC) No 258/97, <https://eur-lex.europa.eu/legal-content/DE/ALL/?uri=CELEX%3A31997R0258>, [accessed: 1 Jun. 2021], of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001 <https://eur-lex.europa.eu/legal-content/DE/ALL/?uri=CELEX%3A32001R1852>, [accessed: 1 Jun. 2021].

¹⁰⁶ BT Printed Paper 19/28774 of 20 Apr. 2021, <https://dserver.bundestag.de/btd/19/287/1928774.pdf> [accessed: 1 Jun. 2021].

be carried out. A public hearing on the request took place on 17 May 2021 in the Committee on Health. A summary of the findings of the hearing, as well as statements from the individual experts, have been published on the Bundestag's website¹⁰⁷. The Committee on Health of the German Bundestag issued a resolution recommendation on 26 May 2021 that the request be rejected¹⁰⁸. Drug commissioner shows openness to integrated drug checking. The German Federal Government is looking at the topic of drug checking. Its deliberations are ongoing¹⁰⁹.

4 ADDITIONAL INFORMATION (T4)

5 SOURCES AND METHODOLOGY (T5)

5.1 Sources (T5.1)

5.1.1 Relevant legislation

International Conventions

- Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol. Available at: https://www.unodc.org/pdf/convention_1961_en.pdf [accessed: 20 Mar. 2021].
- Convention on Psychotropic Substances of 1971. Available at: https://www.unodc.org/pdf/convention_1971_en.pdf [accessed: 20 Mar. 2021].
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. Available at: https://www.unodc.org/pdf/convention_1988_en.pdf [accessed: 20 Mar. 2021].
- 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. Available at: <http://www.un.org/Depts/german/uebereinkommen/ar61106-dbgbl.pdf> [accessed: 20 Mar. 2021].

¹⁰⁷ Deutscher Bundestag: Experts promote new strategy in anti-drug policy. <https://www.bundestag.de/ausschuesse/a14/anhoerungen?url=L2F1c3NjaHVlc3NIL2ExNC9hbmhvZXJ1bmdlb i84MzI1OTYtODMyNTk2&mod=mod795762> [accessed: 1 Jun. 2021].

¹⁰⁸ BT Printed Paper 19/30042.

¹⁰⁹ BT Printed Paper 19/28190 of 31 Mar. 2021, <https://dserver.bundestag.de/btd/19/281/1928190.pdf> [accessed: 1 Jun. 2021].

European legislation

Drug precursors:

- Regulation (EC) No. 111/2005 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. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:022:0001:0010:DE:PDF> [accessed: 20 Mar. 2021].
- Regulation (EC) No. 273/2004 of 11 February 2004 on drug precursors, OJ L 47/1. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/customs_controls/drugs_precursors/drug_precursors/consolidated_version_273_de.pdf [accessed: 7 Aug. 2020].
- 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. Available at: <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=OJ:L:2013:330:FULL&from=DE> [accessed: 20 Mar. 2021].
- 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. Available at: <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=OJ:L:2013:330:FULL&from=DE> [accessed: 20 Mar. 2021].

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. Available at: <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32004F0757&from=DE> [accessed: 20 Mar. 2021].

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. Available at: <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32017L2103&from=EN> [accessed: 20 Mar. 2021].
- 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. Available at: <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32017R2101&from=EN> [accessed: 20 Mar. 2021].

National legislation

Narcotics law:

- German Act on the Trade in Narcotic Drugs (BtMG) of 28 July 1981, which came into force on 1 January 1982, current version 1 Mar. 1994 (Federal Law Gazette I pp. 681, 1187). Available at: http://www.gesetze-im-internet.de/btmg_1981/ [accessed: 20 Mar. 2021].
- German Ordinance on the Prescription of Narcotic Drugs (BtMVV) of 20 January 1998 (German Federal Law Gazette I pp. 74, 80), last amended by the Ordinance of 2 July 2018 (German Federal Law Gazette I p. 1078). Available at: http://www.gesetze-im-internet.de/btmvv_1998/BJNR008000998.html [accessed: 20 Mar. 2021].
- German Ordinance on the Prescription of Narcotic Drugs (BtMVV) of 16 December 1981 (German Federal Law Gazette I p. 1425), last amended by the Ordinance of 17 August 2011 (German Federal Law Gazette I p. 1754). Available at: <https://www.gesetze-im-internet.de/btmbinhv/BJNR014250981.html> [accessed: 20 Mar. 2021].
- German 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). Available at: <https://www.gesetze-im-internet.de/btmahv/BJNR014200981.html> [accessed: 20 Mar. 2021].
- German 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). Available at: https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl1117s0403.pdf%27%5D_1572526832028 [accessed: 20 Mar. 2021].
- German 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). Available at: http://www.gesetze-im-internet.de/g_g_2008/G%C3%9CG.pdf [accessed: 20 Mar. 2021].
- German New Psychoactive Substances Act (NpSG) of 21 November 2016 (German Federal Law Gazette I p. 2615), last amended by the Act of 13 April 2017 (German Federal Law Gazette I p. 872). Available at: https://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F%5B%40attr_id%3D%27bgbl116s2615.pdf%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl116s2615.pdf%27%5D_1572526995119 [accessed: 20 Mar. 2021].
- German 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 19 June 2020 (German Federal Law Gazette I p. 872). Available at: http://www.gesetze-im-internet.de/g_g_2008/G%C3%9CG.pdf [accessed: 20 Mar. 2021].

Social law/health law:

- German Act to Strengthen Health Promotion and Prevention (Prevention Act, Präventionsgesetz - PräVG) of 17 July 2015 (German Federal Law Gazette I p. 1368). Available at: https://www.bgb1.de/xaver/bgb1/start.xav?startbk=Bundesanzeiger_BGBI&start=//%255B@attr_id=%27bgb1115s1368.pdf%27%255D#_bgb1_%2F%2F%5B%40attr_id%3D%27bgb1115s1368.pdf%27%5D_1572527272405 [accessed: 20 Mar. 2021].
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- 6th Volume, German Code of Social Law - Statutory pension insurance (SGB VI) in the version of 19 December 2002 (German Federal Law Gazette. I pp. 754, 1404, 3384), last amended by the Act of 22 February 2021 (German Federal Law Gazette I p. 2575). Available at: https://dejure.org/BGBI/2002/BGBI._I_S._754 [accessed: 20 Mar. 2021].
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- 9th Volume, German Code of Social Law (SGB IX) of 23 December 2016 (Federal Law Gazette I p. 3234), last amended by the Act of 9 October 2020 (German Federal Law Gazette I p. 2541): https://www.gesetze-im-internet.de/sgb_9_2018/BJNR323410016.html [accessed: 20 Mar. 2021].
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- German Act for More Safety in the Provision of Medicinal Products (GSAV) of 16 August 2019 (German Federal Law Gazette 2019 I No. 30, p. 1202). Available at: https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/Gesetze_und_Verordnungen/GuV/G/GSAV_bgb1119_S.1202_150819.pdf [accessed: 20 Mar. 2021].

Criminal law:

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- German Road Traffic Act (StVG) in the version of 5 March 2003 (German Federal Law Gazette I pp. 310, 919), last amended by the Act of 26 November 2020 (German Federal Law Gazette I p. 3202). Available at: <https://www.gesetze-im-internet.de/stvg/StVG.pdf> [accessed: 20 Mar. 2021].
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