[ENGLISH UNOFFICIAL TRANSLATION FOR INFORMATION PURPOSES ONLY]

Entire legislation for Tobacco and Non-Smoker Protection Act, version from 29 June 2018

Full title

Federal act on producing and placing on the market of tobacco products and related products as well as advertising tobacco products and related products and the protection of non-smokers (Tobacco and Non-Smoker Protection Act – TNRSG)
StF: Federal Law Gazette No. 431/1995 (NR: GP XIX RV 163 AB 202 p. 39. BR: AB 5024 p. 601.) (CELEX No.: 389L0622, 390L0239, 392L0041)

Amendment

Federal Law Gazette I No. 98/2001 (NR: GP XXI RV 621 AB 704 p. 75. BR: 6398 AB 6424 p. 679.)
Federal Law Gazette I No. 74/2003 (NR: GP XXII RV 52 AB 100 p. 29. BR: AB 6816 p. 700.) [CELEX No.: 32001L0037]
Federal Law Gazette I No. 167/2004 (NR: GP XXII RV 700 AB 717 p. 90. BR: AB 7178 p. 717.) [CELEX No.: 32003L0033]
Federal Law Gazette I No. 47/2006 (NR: GP XXII IA 777/A AB 1295 p. 139. BR: 7480 AB 7493 p. 732.)
Federal Law Gazette I No. 105/2007 (NR: GP XXII AB 392 p. 42. BR: AB 7863 p. 751.)
Federal Law Gazette I No. 120/2008 (NR: GP XXIII RV 610 AB 656 p. 67. BR: AB 7994 p. 759.)
Federal Law Gazette I No. 5/2015 (NR: GP XXV AB 433 p. 55. BR: AB 9295 p. 837.)
Federal Law Gazette I No. 101/2015 (NR: GP XXV RV 672 AB 734 p. 85. BR: AB 9428 p. 844.)
Federal Law Gazette I No. 22/2016 (NR: GP XXV RV 1056 AB 1088 p. 123. BR: 9556 AB 9569 p. 853.) [CELEX No.: 32014L0040]
Federal Law Gazette I No. 13/2018 (NR: GP XXVI IA 107/A AB 33 S. 17. BR: AB 9934 S. 878.)
Federal Law Gazette I No. 37/2018 (NR: GP XXVI RV 108 AB 139 S. 23. BR: 9967 AB 9970 S. 880.) [CELEX-Nr.: 32017L2399, 32017L1572]

Text

Definitions

§ 1. For the purposes of this Federal Act

1. “tobacco product” means every product that is intended for smoking, snuffing, sucking or chewing insofar as it consists completely or partially of tobacco, regardless of whether this is tobacco in a genetically modified or unmodified form,

1a. “novel tobacco product” means every tobacco product that does not fall into one of the categories of cigarettes, roll-your-own tobacco, pipe tobacco, waterpipe tobacco, cigars, cigarillos, chewing tobacco, nasal tobacco and tobacco for oral use and was first placed on the market after 19 May 2014,

1b. “electronic cigarette” means a product that can be used for consumption of a nicotine-containing or nicotine-free vapour (mist) via a mouthpiece, or any component of that product, including a cartridge, a tank, and the device without cartridge or tank. Electronic cigarettes can be disposable products or can be refillable by means of a refill container or tank or rechargeable with a single-use cartridge,

1c. “refill container” means a receptacle that contains a nicotine-containing or nicotine-free liquid which can be used to refill an electronic cigarette,

1d. “herbal product for smoking” means a product based on plants, herbs or fruits which contains no tobacco and that can be consumed via a combustion process,

1e. “related product” means every novel tobacco product, herbal product for smoking, the electronic cigarette and its liquids,

1f. “waterpipe tobacco” means a tobacco product that can be consumed via a waterpipe. If a product can be used both via waterpipes and as roll-your-own tobacco, it shall be deemed to be roll-your-own tobacco,

1g. “chewing tobacco” means a smokeless tobacco product exclusively intended for the purpose of chewing,

1h. “tobacco for oral use” means a tobacco product for oral use, except those intended to be inhaled or chewed, made wholly or partly of tobacco, in powder or in particulate form or in a combination of those forms, particularly those presented in sachet portions or porous sachets,

1i. “nasal tobacco” means a smokeless tobacco product that can be consumed via the nose,

1j. “tobacco product for smoking” means every tobacco product other than smokeless tobacco products,

1k. “smokeless tobacco product” means a tobacco product not involving a combustion process, including chewing tobacco, nasal tobacco and tobacco for oral use,

1l. “liquid” means every nicotine-containing or other nicotine-free fluid intended to be vaporised in electronic cigarettes, e-shishas or comparable products with the same function and operation,

2. “placing on the market” means to make products, irrespective of their place of manufacture, available to consumers, with or without payment,

3. “nicotine” means the main alkaloid of the group of tobacco alkaloids ingested upon consuming tobacco products,

4. “unit packet” means the smallest individual packaging of a tobacco or related product that is placed on the market,

4a. “outside packaging” means any packaging in which tobacco or related products are placed on the market and which includes a unit packet or an aggregation of unit packets. Transparent wrappers are not regarded as outside packaging,

4b. “pouch” means a unit packet of roll-your-own tobacco, either in the form of a rectangular pocket with a flap that covers the opening or in the form of a standing pouch,

5. condensate (tar) means the anhydrous (= dry) nicotine-free condensate of smoke,

6. “consumer” means any natural person who purchases the tobacco product for private consumption or to pass on to certain third parties for their private consumption,

7. “advertising” means any form of commercial communication with the objective or the direct or indirect effect of promoting the sale of a tobacco product,

7a. “sponsorship” means any form of public or private contribution to an event or activity or any form of support of individuals with the objective or the direct or indirect effect of promoting the sale of a tobacco product,

8. “roll-your-own tobacco” means tobacco which can be used for making cigarettes by consumers or retail outlets,

9. “ingredient” means tobacco, an additive, as well as any substance or element present in a finished tobacco product or related product, including paper, filter, ink, capsules and adhesives,

9a. “emissions” means substances that are released when a tobacco or related product is consumed as intended,

9b. “maximum level” or “maximum emission level” means the maximum content or emission, (including zero), of a substance in a tobacco product or related product measured in milligrams,

9c. “additive” means a substance, other than tobacco, that is added to a tobacco product or related product, a unit packet or to any outside packaging,

9d. “flavouring” means an additive that imparts smell and/or taste,

9e. “characterising flavour” means a clearly noticeable smell or taste other than one of tobacco, resulting from an additive or a combination of additives, including, but not limited to, fruit, spice, herbs, alcohol, candy, menthol or vanilla, which is noticeable before or during the consumption of the tobacco product or related product,

10. “ to market” means the dissemination of tobacco products by the manufacturer or the importer,

11. “public place” means any location that can be accessed by a circle of persons not restricted a priori, at any time or at certain times, including the non-stationary facilities of public and private bus, rail, air and ship traffic,

12. “mail-order business” (distance sales) means the shipment and delivery of tobacco products and related products in particular from manufacturers, importers, or dealers to consumers.

Prohibition of the placing on the market

§ 2. (1) The placing on the market of

1. tobacco products and related products that do not comply with the regulations adopted in §§ 4 through 10e or with the Ordinances according to this federal law or
2. tobacco for oral use or
3. chewing tobacco

is prohibited.

(2) A unit packet of cigarettes shall include at least 20 cigarettes.

(3) Prohibitions on the placing on the market of tobacco products based on other legal regulation remain unaffected.

(Note: para. 4 repealed by Federal Law Gazette I No. 22/2016)

Mail-order business with tobacco products and related products

§ 2a. Mail-order business with tobacco products according to § 1 line 1 as well as of related products according to § 1 line 1e is prohibited.

Limitation of the condensate (tar), nicotine and carbon monoxide content in cigarette smoke

§ 4. (1) In the smoke of a cigarette, the following values per cigarette may not be exceeded:

1. 10 mg condensate (tar) content,
2. 1.0 mg nicotine content and
3. 10 mg carbon monoxide content.

(2) Based on proven health risks or, if required by a legal act of the European Union adopted based on art. 3 para. 2 of Directive 2014/40/EU, the Federal Minister of Health shall specify a reduction of the maximum emission levels described in para. 1 by Ordinance with the approval of the Main Committee of the National Council.

(3) Based on proven health risks or, if required by a legal act of the European Union adopted based on art. 3 para. 4 of Directive 2014/40/EU, the Federal Minister of Health shall adopt maximum levels for emissions from cigarettes other than the emissions referred to in para. 1 and for emissions from tobacco products other than cigarettes by Ordinance with the approval of the Main Committee of the National Council.

(4) If any maximum emission levels of cigarettes other than the emissions referred to in para. 1 and for emissions from tobacco products other than cigarettes are adopted, the Federal Ministry of Health shall inform the European Commission thereof.

Measurement and control of the condensate (tar), nicotine and carbon monoxide content

§ 4b. (1) Based on proven health risks or, if required by a legal act of the European Union adopted based on art. 4 para. 3 of Directive 2014/40/EU, the Federal Minister of Health shall establish the measurement methods including the requirement of their accuracy for the tar, nicotine and carbon monoxide emissions of cigarettes by Ordinance.

(2) The measurements conducted according to para. 1 shall be monitored by a laboratory in a facility according to § 10 para. 2.

(3) The tar, nicotine and carbon monoxide emissions from cigarettes shall be measured on the basis of ISO standard 4387 for tar, ISO standard 10315 for nicotine, and ISO standard 8454 for carbon monoxide. The accuracy of the tar, nicotine and carbon monoxide measurements shall be determined in accordance with ISO standard 8243.

(4) The Federal Ministry of Health shall communicate to the European Commission a list of approved laboratories of a facility according to § 10 para. 2, specifying the criteria used for approval and the methods of monitoring applied; an shall update that list whenever any change is made.

§ 4c. (1) The Federal Ministry of Health shall notify the European Commission of any measurement method used for emissions not referred to in § 4b and for emissions from tobacco products other than cigarettes.

(2) Based on proven health risks or, if required by a piece of legislation of the European Union adopted based on art. 4 para. 5 of Directive 2014/40/EU, the Federal Minister of Health shall establish standards for measurement methods by Ordinance.

General warnings and information messages on tobacco products for smoking

§ 5. (1) Each unit packet and any outside packaging of tobacco products for smoking shall carry the following general warning:

"Rauchen ist tödlich - hören Sie jetzt auf." (Smoking kills - quit now.)

(2) Each unit packet and any outside packaging of tobacco products for smoking shall carry the following information message:

"Tabakrauch enthält über 70 Stoffe, die erwiesenermaßen krebserregend sind." (Tobacco smoke contains over 70 substances known to cause cancer.)

(3) For cigarette packets and roll-your-own tobacco in cuboid packets the general warning shall appear on the bottom part of one of the lateral surfaces of the unit packets, and the information message shall appear on the bottom part of the other lateral surface. These health warnings shall have a width of not less than 20 mm.

(4) For cigarette packets and roll-your-own tobacco packets in the form of a shoulder box with a lid that result in the lateral surfaces being split into two when the packet is open, the general warning and the information message shall appear in their entirety on the larger parts of those split surfaces. The general warning shall also appear on the inside of the top surface that is visible when the packet is open. The lateral surfaces of this type of packet shall have a height of not less than 16 mm.

(5) For roll-your-own tobacco marketed in pouches the general warning and the information message shall appear on the surfaces that ensure the full visibility of those health warnings. For roll-your-own tobacco in cylindrical packets the general warning shall appear on the outside surface of the lid and the information message on the inside surface of the lid.

(6) Both the general warning and the information message shall cover 50% of the surfaces on which they are printed.

(7) The general warning and information message referred to in para. 1 and 2 shall be

1. printed in black Helvetica bold type on a white background,
2. with the text occupying the greatest possible proportion of the surface reserved for these health warnings, and
3. at the centre of the surface reserved for them, and on cuboid packets and any outside packaging they shall be parallel to the lateral edge of the unit packet or of the outside packaging.

(8) If required by a piece of legislation of the European Union adopted based on art. 9 para. 6 of Directive 2014/40/EU, the Federal Minister of Health shall establish more detailed provisions for the positioning of the general warnings and the information message for roll-your-own tobacco packets by Ordinance in agreement with the Federal Minister of Finances.

Combined health warnings for tobacco products for smoking

§ 5a. (1) Each unit packet and any outside packaging of tobacco products for smoking shall carry combined health warnings. The combined health warnings shall

1. contain one of the text warnings listed in the **Annex** and a corresponding photograph from the picture library of the Ordinance to be adopted according to para. 4,
2. contain the following information on support programmes for smoking cessation:

   "Rauchfrei Telefon: 0800 810 013

   www.rauchfrei.at" (Smoke-free hotline)
3. cover 65% of both the external front and back surface of the unit packet and any outside packaging. Cylindrical packets shall display two combined health warnings, equidistant from each other, each covering 65% of their respective half of the curved surface,
4. show the same text warning and corresponding photograph on both sides of the unit packet and the outside packaging,

5. appear at the top edge of a unit packet and any outside packaging, and be positioned in the same direction as any other information appearing on that surface of the packaging,
6. in the case of unit packets of cigarettes, respect the following dimensions:
   a) height: not less than 44 mm and
   b) width: not less than 52 mm.

(2) The combined health warnings are grouped into three sets as set out in the documents of the Ordinance to be adopted according to para. 4 regarding technical specifications for the layout, design and shape of the combined health warnings. Each combined health warning shall be displayed in equal numbers on each brand of tobacco products.

(3) The combined health warnings are categorised in three sets. Photographs shall be selected annually from one of the three groups, beginning with 20 May 2016 to 19 May 2017 from group 1, 20 May 2017 to 19 May 2018 from group 2 and from 20 May 2018 to 19 May 2019 from group 3 - and then in continuous rhythm set 1, set 2, set 3 again beginning respectively with 20 May - that shall be printed in equal numbers on each brand of a tobacco product.

(4) If required by a piece of legislation of the European Union adopted based on art. 10 para. 4 of Directive 2014/40/EU, the Federal Minister of Health shall establish details regarding technical specifications for the layout, design and shape of the combined health warnings by Ordinance in agreement with the Federal Minister of Finances, whereby the different shapes of packets shall be taken into account.

(5) If required by a piece of legislation of the European Union adopted based on art. 10 para. 3 of Directive 2014/40/EU, the Federal Minister of Health shall establish changes to the Annex according to para. 1 by Ordinance in agreement with the Federal Minister of Finances.

Labelling of tobacco products for smoking other than cigarettes, roll-your-own tobacco and waterpipe tobacco

§ 5b. (1) Divergent to § 5a, each unit packet and any outside packaging of tobacco products for smoking other than cigarettes, roll-your-own tobacco and waterpipe tobacco shall carry, in addition to the general warning according to § 5 para. 1, one of the text warnings listed in the Annex. The general warning specified in § 5 para. 1 shall include a reference to the smoking cessation services referred to in § 5a para. 1 line 2.

(2) The general warning shall appear on the most visible surface of the unit packet and the outside packaging.

(3) The text warning shall be displayed in equal numbers on each brand of these tobacco products and shall appear on the next most visible surface of the unit packet and the outside packaging.

(4) For unit packets with a hinged lid, the next most visible surface is the one that becomes visible when the packet is open.

(5) The general warning shall cover 30 % of the relevant surface of the unit packet and the outside packaging.

(6) The text warning shall cover 40 % of the relevant surface of the unit packet and the outside packaging.

(7) Where the health warnings referred to in para. 1 are to appear on a surface exceeding 150 cm^2, the warnings shall cover an area of 45 cm^2.

(8) The health warning referred to in para. 1 shall comply with the requirements specified in § 5 para. 7. The text of the health warning shall be parallel to the main text on the surface reserved for this warning. It shall be surrounded by a black border of a width of not less than 3 mm and not more than 4 mm, which shall appear outside the surface reserved for the health warning.

Labelling of smokeless tobacco products

§ 5c. (1) Each unit packet and any outside packaging of a smokeless tobacco product shall carry the following health warning:

“Dieses Tabakerzeugnis schädigt Ihre Gesundheit und macht süchtig.” (This tobacco product damages your health and is addictive.)

(2) The health warning laid down in para. 1 shall comply with the requirements specified in § 5 para. 7. The text of the health warning shall be parallel to the main text on the surface reserved for this warning. In addition, it shall

1. appear on the two largest surfaces of the unit packet and the outside packaging
2. cover at least 30 % of the surfaces of the unit packet and the outside packaging.

Presentation

§ 5d. (1) The labelling of a unit packet and the outside packaging as well as the tobacco product itself shall not include any element or feature that

1. promotes a tobacco product or encourages its consumption by creating an erroneous impression about its characteristics, health effects, risks or emissions; labels shall not include any information about the nicotine, tar or carbon monoxide content of the tobacco product,
2. suggests that a particular tobacco product is less harmful than another or aims to reduce the effect of some harmful components of smoke or has vitalising, energetic, healing, rejuvenating, natural, organic properties or has other health or lifestyle benefits,
3. refers to taste, smell, any flavourings or other additives or the absence thereof,
4. resembles a food or a cosmetic product,
5. suggests that a certain tobacco product has improved biodegradability or other environmental advantages.

(2) It is prohibited to use unit packets and any outside packaging that suggests economic advantages (e.g. with printed vouchers, discounts, two-for-one offers, free distributions).

(3) The elements and features that are prohibited pursuant to para. 1 and 2 may include, in particular, texts, symbols, names, trademarks, figurative or other signs.

Appearance and content of unit packets

§ 5e. (1) Unit packets of cigarettes shall have a cuboid shape. Unit packets of roll-your-own tobacco shall have a cuboid or cylindrical shape, or the form of a pouch.

(2) A unit packet of cigarettes shall comply with the provisions in § 2 para. 2. A unit packet of roll-your-own tobacco shall contain tobacco weighing not less than 30g.

(3) A unit packet of cigarettes may consist of carton or soft material and shall not have an opening that can be re-closed or re-sealed after it is first opened, other than unit packets with a flip-top lid and shoulder boxes with a hinged lid. For packets with a flip-top lid and hinged lid, the lid shall be hinged only at the back of the unit packet.

General provisions

§ 6. (1) Each unit packet of a tobacco product and any outside packaging shall carry the health warnings according to §§ 5 through 5c in German.

(2) The health warnings shall cover the entire surface of the unit packet or outside packaging that is reserved for them and they shall not be commented on, paraphrased or referred to in any form.

(3) The health warnings on a unit packet or an outside packaging shall be irremovably printed, indelible and fully visible. They may not be totally or partially hidden or interrupted by tax stamps, price marks, security features, wrappers, jackets, boxes, or other items.

(4) On unit packets of tobacco products other than cigarettes and roll-your-own tobacco in pouches, the health warnings may be affixed by means of stickers, provided that such stickers are irremovable. The health warnings shall remain intact when opening the unit packet other than packets with a flip-top lid, where the health warnings may be split when opening the packet, but only in a manner that ensures the graphical integrity and visibility of the text, photographs and smoking cessation information.

(5) The health warnings shall in no way hide or interrupt the tax stamps, price marks, tracking and tracing marks, or security features on unit packets.

(6) Health warnings shall be surrounded by a black border of a width of 1 mm inside the surface area that is reserved for these warnings, except for health warnings pursuant to § 5b para. 1.

(7) The dimensions of the health warnings according to §§ 5 through 5c shall be calculated in relation to the surface concerned when the packet is closed.

Traceability

§ 7. *(Note: paras. 1 through 11 enter into force on 20 May 2019.)*

(12) If required by a legal act of the European Union adopted based on art. 15 para. 11 or 12 of Directive 2014/40/EU, the Federal Minister of Finances shall determine by Ordinance

1. the technical standards for the establishment and the operation of the tracking and tracing systems including the marking with a unique identifier, the recording, transmitting, processing and storing of data and access to stored data,
2. the technical standards for ensuring that the systems used for the unique identifier and the related functions are compatible with each other across the entire European Union,
3. the key elements of the data storage such as in particular duration, renewability, expertise required or confidentiality, including the regular monitoring and evaluation of those contracts,
4. the qualification requirements of the independent third parties to be appointed according to para. 8 and the details regarding their nomination and appointment and
5. details regarding the qualification requirements of the external auditors to be authorised according to para. 9 as well as the verification of the existence of these qualification requirements

Security feature

§ 7a. *(Note: para. 1 enters into force on 20 May 2019.)*

(2) If required by a legal act of the European Union adopted based on art. 16 para. 2 of Directive 2014/40/EU, the Federal Minister of Health shall define the technical standards for the security feature and its possible rotation by Ordinance in agreement with the Federal Minister of Finances.

Survey of ingredients used and condensate (tar), nicotine and carbon monoxide content

§ 8. (1) Anyone who places tobacco products or related products on the market in the federal territory as a manufacturer or importer shall submit to the Federal Ministry of Health the following information by brand name and type of the tobacco product in an itemised list by the 15 March of each calendar year:

1. a list of all ingredients, and quantities thereof, used in the manufacture of the tobacco products and related products, in descending order of the weight of each ingredient included in the tobacco products or related products,
2. the emission levels according to § 4b para. 1 and § 4c,
3. as far as available, information on other emission levels.

(1a) If the composition of a tobacco product or related product is modified in a way that affects the information provided according to para. 1, the manufacturer or the importer shall inform the Federal Ministry of Health thereof. For new or modified tobacco products and related products, the information required according to para. 1 shall be submitted promptly and prior to the placing on the market of those products.

(2) If tobacco products or related products are manufactured in the federal territory under license or by order without the responsibility of the manufacturer for the specification regarding the

ingredients used, in this case the transmission of the list according to para. 1 may be carried out by the licensor or customer. In this case, the manufacturer is only released from his or her obligation according to para. 1 if a written take-over declaration from the licensor or customer is presented to the Federal Ministry of Health stating the assumption of this obligation.

(3) Para. 2 also applies to importers who were not involved in the manufacturing process or who were involved in the manufacturing process abroad under licence or by order without the responsibility of the manufacturer for the specification of the ingredients used.

(4) A declaration shall be attached to the list according to para. 1 in which the reasons for the use of each ingredient are explained. In this declaration, the function and category of the ingredients shall be specified. Moreover, this shall be accompanied by toxicological and other data available to the manufacturer or the importer regarding this ingredient - in burnt or unburnt form - referring in particular to their health effects and taking into account, inter alia, any addictive effects.

(4a) In addition to the data specified in para. 4, for cigarettes and roll-your-own tobacco, the manufacturer or importer shall submit a technical document setting out a general description of the additives used and their properties to the Federal Ministry of Health.

(4b) The manufacturer or importer shall indicate the methods of measurement used for the emissions not mentioned in §§ 4 and 4c to the Federal Ministry of Health.

(4c) Upon request of the Federal Ministry of Health, the manufacturer or importer shall carry out and present studies regarding the effects of ingredients on health, taking into account their addictiveness and toxicity.

(Note: para. 5 repealed by Federal Law Gazette I No. 22/2016)

(6) The Federal Minister of Health, Family and Youth shall, taking into account any possible trade secrets of the manufacturer or importer, determine by Ordinance the extent and form in which the data according to para. 1 through 5 is to be transmitted and published.

(7) With the data and studies transmitted according to para. 1 through 4c, the Federal Ministry of Health shall

1. forward these to the European Commission,
2. while protecting the trade secrets contained therein
   a) use these for the purposes of statistical evaluation and analysis,
   b) publish these.

(8) The manufacturers or importers shall submit to the Federal Ministry of Health internal and external studies available to them on market research and preferences of various consumer groups, including young people and current smokers, relating to ingredients and emissions, as well as executive summaries of any market surveys they carry out when launching new products.

(9) The manufacturer or importer shall report to the Federal Ministry of Health their sales volumes of the previous year per brand and type (reported in unit and kilograms or millilitres) on a yearly basis by the 31 May of the following year.

(10) The Federal Minister of Health can make use of a service provider for the establishment and maintenance of the database.

Priority list of additives and enhanced reporting obligations

§ 8a. (1) Based on proven health risks or, if required by a legal act of the European Union adopted based on art. 6 para. 1 of Directive 2014/40/EU, the Federal Minister of Health can determine, by Ordinance, enhanced reporting obligations for certain additives contained in cigarettes and roll-your-own tobacco.

(2) If a cigarette or roll-your-own tobacco contains an additive according to para. 1 of the adopted Ordinance, the manufacturer or the importer is obliged to carry out comprehensive studies that examine whether the additive

1. contributes to the toxicity or addictiveness of the products concerned, and whether this has the effect of increasing the toxicity or addictiveness of any of the products concerned to a significant or measurable degree,
2. results in a characterising flavour,
3. facilitates inhalation or nicotine uptake or
4. leads to the formation of substances that have CMR properties, the quantities thereof, and whether this has the effect of increasing the CMR properties in any of the products concerned to a significant or measurable degree.

These studies shall examine the relevant products when properly used and examine in particular the emissions resulting from the combustion process. Furthermore, the interaction of the respective additive with other ingredients contained in the products concerned shall also be examined. Manufacturers or importers using the same additive in their tobacco products may carry out a joint study when using that additive in a comparable product composition.

(3) Manufacturers or importers shall establish a report on the results of these studies according to para. 2. This report shall include an executive summary, and a comprehensive overview compiling the available scientific literature on that additive and summarising internal data on the effects of the additive. Manufacturers or importers shall submit these reports to the European Commission and a copy thereof to the Federal Ministry of Health at the latest 18 months after the additive concerned has been included in the priority list according to art. 6 para. 1 of Directive 2014/40/EU. The European Commission and the Federal Ministry of Health may also request supplementary information regarding the additive concerned, which must then form part of the report.

(4) The European Commission and the Federal Ministry of Health may require that, according to para. 3, these reports be subjected to a comparative analysis by an independent scientific body established by the Federal Minister of Health, in particular as regards their comprehensiveness, methodology and conclusions.

(5) If a report on an additive created by another manufacturer or another importer already exists, small and medium-sized enterprises as defined in Commission Recommendation 2003/361/EC shall be exempted from the obligations according to paras. 2 through 4 concerning the definition of micro, small and medium-sized enterprises, OJ No. L 124 of 20 May 2003 p. 36.

(6) All data and information required according to §§ 8 and 8a shall be made available in electronic form. The European Commission as well as every Member State has access to this data for the purpose of the application of Directive 2014/40/EU, whereby the trade secrets and confidential information shall be treated confidentially.

To be noted for the following provision

Applies to tobacco products with a characterising flavour in line with § 8b para. 1 whose Union-wide sales volumes represent 3% or more in a particular product category as of 20 May 2020 (see § 18 para. 10).

Ingredients

§ 8b. (1) The placing on the market of tobacco products with a characterising flavour is prohibited. This does not apply to the use of additives which are essential for the manufacture of tobacco products, for example sugar to replace sugar that is lost during the curing process, provided those additives do not result in a product with a characterising flavour and do not increase to a significant or measurable degree the addictiveness, toxicity or the CMR properties of the tobacco product. The Federal Ministry of Health shall notify the European Commission of all measures in this regard. The Federal Minister of Health shall receive reports of violations and determine the further measures to be taken.

(2) The placing on the market of tobacco products with the following additives is prohibited:

1. vitamins or other additives that create the impression that a tobacco product has a health benefit or presents reduced health risks,

2. caffeine or taurine or other additives and stimulant compounds that are associated with energy and vitality,
3. additives having colouring properties for emissions,
4. additives that facilitate inhalation or nicotine uptake for tobacco products for smoking,
5. additives that have CMR properties in unburnt form.

(3) The Federal Ministry of Health shall, on the basis of scientific evidence, prohibit the placing on the market of tobacco products containing additives in quantities that increase the toxic or addictive effect, or the CMR properties of a tobacco product at the stage of consumption to a significant or measurable degree.

(4) The placing on the market of tobacco products containing flavourings in any of their components or containing any technical features allowing modification of the smell or taste of the tobacco products concerned or their smoke intensity is prohibited. Filters, papers and capsules shall not contain nicotine or tobacco.

(5) The Federal Ministry of Health shall notify the European Commission of all measures in connection with para. 3.

(6) Tobacco products other than cigarettes and roll-your-own tobacco shall be exempted from paras. 1 and 4.

(7) If necessary in order to protect consumers from avoidable damages to health, the Federal Minister of Health can impose Ordinances on the maximum quantity

– of additives and excipients for the manufacture of tobacco products,
– of residues of plant protection products and preservatives in tobacco products and
– of aromas and flavourings

in accordance with the current state of science and technology.

(8) The Federal Minister of Health can determine, in an Ordinance, the measures based on the specifications in the legislation adopted in Directive 2014/40/EU according to Art. 7.

(9) The Federal Minister of Health can establish an advisory body for evaluating the admissibility of ingredients as a basis for providing scientific evidence for this purpose. The monitoring is carried out by the Federal Minister of Health, who may make use of the Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH (Austrian Agency for Health and Food Safety) or a comparable domestic or foreign institution according to § 10 para. 2 line 2.

Reporting of ingredients of herbal products for smoking

§ 8c. (1) The manufacturers or importers of herbal products for smoking shall submit to the Federal Ministry of Health a list of all ingredients, ordered by brand name and type of product, and quantities thereof that are used in the manufacture of such products.

(2) Manufacturers or importers shall inform the Federal Ministry of Health immediately if the composition of a product is modified in a way that affects the information submitted pursuant to para. 1.

(3) The information required under para. 1 shall be submitted prior to the placing on the market of a new or modified herbal product for smoking.

(4) The Federal Ministry of Health shall publish the data received according to paras. 1 and 2 on the homepage of the Federal Ministry of Health while protecting the trade secrets contained therein, which shall be indicated by the manufacturers or importers.

Control

§ 9. (1) The Federal Minister of Health shall monitor the observance of §§ 4 through 4c, 8 through 8c and 10 through 10f by specially trained bodies with pertinent knowledge of the merchandise and the pertinent legislation. Here, the Federal Minister of Health may make use of the collaboration of the Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH (Austrian Agency for Health and Food Safety) and in particular appoint controlling bodies from the circle of employees of the agency.

(2) Every manufacturer i.e. every natural or legal person that places the respective product on the market in Austria shall, upon request, send samples of each product to the Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH (Austrian Agency for Health and Food Safety) once a year for the purpose of the official inspection.

(3) Moreover, the controlling bodies are authorised to inspect the operations of manufacturers or importers of tobacco products and related products and other operations by means of which tobacco products and related products are placed on the market, to examine records serving production and distribution purposes as well as to take samples of tobacco products and related products to the extent necessary for inspection.

(4) Except in the case of imminent danger, these official acts shall be carried out during business hours. The controlling bodies shall take care that every disturbance or hindrance to the business that is not absolutely necessary is avoided.

(5) The proprietors shall grant the controlling bodies access to the business and allow them to carry out their inspection activities.

(6) A sample taken according to para. 3 shall, if possible according to its nature and if its proper assessment is not endangered thereby, be divided into two equal parts that shall be officially sealed. Part of the sample shall, if necessary for the implementation of proper investigation proceedings, be supplied for official examination; the second part remains with the proprietor for evidentiary purposes. A confirmation of the sampling shall be issued to the proprietor. This confirmation is free of charge.

(7) If the sample does not correspond to the information provided by the manufacturer or the distributor, the manufacturer or the importer bears the costs.

(8) For the official sample taken, upon request of the person holding the right of disposal, compensation from the federal government shall be paid if the value of the sample - pertaining to the cost of the goods - exceeds € 150. The compensation shall not be paid if this sample leads to a penalty or a sentence or if a revocation of the relevant goods is identified. Compensation for cross-check samples is excluded.

(9) The Federal Minister of Health shall, by Ordinance and in agreement with the Federal Minister of Finances, determine an appropriate cost-covering annual fee in line with the market, based on the sales figures of related products and tobacco products of the previous financial year under consideration of the actual financial expenditure for control activities from the previous year and the expected financial expenditure for control activities. Before adopting an Ordinance, the Austrian Economic Chamber is given the opportunity to make a statement. This fee covers the duties to be fulfilled according to this federal law and the Ordinances adopted based on this federal law, in particular regarding notification activities, control activities, data analysis and evaluation, laboratory inspections, risk evaluation and evaluation of studies. The annual fee does not cover the costs for the authorisation according to § 10a.

(10) The annual fee shall be published on the homepage of the Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH (Austrian Agency for Health and Food Safety). The evaluation serving as the basis for the adjustment will take place on 31 August 2018 for the first time and shall be carried out on an annually recurring basis under consideration of the actual financial expenditure from the previous year. The initial calculation of the annual fee shall be determined by the manufacturers or importers based on proven sales figures of the previous year and submitted to the Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH (Austrian Agency for Health and Food Safety).

Official investigation

§ 10. (1) Samples taken according to § 9 shall, as far as necessary for the implementation of proper investigation proceedings, be inspected in particular as to whether

1. they correspond to §§ 4 and 4a and the Ordinancess adopted on the basis thereof,
2. the Ordinance adopted according to § 4b was complied with during manufacturing,
3. the requirements of §§ 8a through 8c as well as 10a through 10f were complied with, and

4. the unit packets of the tobacco products and related products comply with the requirements of §§ 5 through 6.

(2) For the examination and evaluation of tobacco products and related products according to para. 1, the Federal Ministry of Health shall commission either

1. the Agentur für Gesundheit und Ernährungssicherheit GmbH (Austrian Agency for Health and Food Safety), or
2. comparable domestic or foreign institutions that fulfil the requirements pursuant to ISO 17025:2005.

(3) None of the institutions named in para. 2 may be in the possession of or under direct or indirect control of the tobacco industry.

Authorisation of novel tobacco products

§ 10a. (1) Anyone with the intention to place a novel tobacco product on the market in Austria shall apply for authorisation with the Federal Ministry of Health.

(2) The solicitor of the authorisation shall make all necessary documents and records available to the Federal Ministry of Health, and supply it with all necessary information. The manufacturers and importers shall provide the following in electronic form:

1. a detailed description of the pertinent novel tobacco product as well as its instructions for use;
2. information on ingredients and emissions according to §§ 8, 8c and 10b;
3. available scientific studies on toxicity, addiction potential and attractiveness of the novel tobacco product, in particular concerning its ingredients and emissions;
4. available studies, summaries thereof and market research on the preferences of various consumer groups, including young people and current smokers;
5. other available and relevant information, including a risk-benefit analysis of the product, its expected effects on quitting and starting tobacco consumption as well as expected consumer perceptions.

(3) The manufacturers and importers shall immediately submit new or updated information according to para. 2 line 3 through 5 to the Federal Ministry of Health. The Federal Ministry of Health may require additional tests and the provision of additional information from the manufacturers and importers.

(4) The authorisation shall be issued by the Federal Minister of Health if the respectively applicable provisions of this federal law for the pertinent novel tobacco product are met.

(5) If the requirements stipulated in paras. 2, 3 and 8 are not met, the authorisation shall not be granted or shall be revoked.

(6) The Federal Ministry of Health shall provide the European Commission with all information received according to paras. 2 and 3 in electronic form.

(7) The costs of the authorisation shall be borne by the solicitor of the authorisation. The Federal Minister of Health shall, by Ordinance and in agreement with the Federal Minister of Finances, adopt more detailed provisions concerning:

1. cost-covering fees for the authorisation procedure, and
2. the requirements of the authorisation and the authorisation procedure.

(8) Novel tobacco products that are placed on the market shall meet the requirements of this law. Which of the provisions of this law are applicable to novel tobacco products depends on whether these products fall within the definition of smokeless tobacco products or tobacco products for smoking.

Placing electronic cigarettes on the market

§ 10b. (1) The provisions for electronic cigarettes and their refill containers in line with this federal law do not refer to products that are subject to official approval according to

Directive 2001/83/EC on the community code relating to medicinal products for human use, OJ No. L 311 of 28 November 2001 p. 67 or the requirements of Directive 93/42/EEC concerning medicinal devices, OJ No. L 169 of 12 July 1993 p. 1, last amended by Directive 2007/47/EC, OJ No. L 247 of 21 September 2007 p. 21.

(2) The manufacturers and importers of electronic cigarettes and refill containers shall notify the Federal Ministry of Health of any such products that they intend on placing on the market. This notification shall occur in electronic form at least six months before the intended placing on the market. For electronic cigarettes and refill containers already placed on the market when this provision enters into force, the notification shall be submitted within six months of this date. A new notification shall be submitted for each substantial modification of the product before it is placed on the market. The product may be placed on the market no earlier than six months after this notification.

(3) The notification shall, depending on whether the product is an electronic cigarette or a refill container, contain the following information:

1. the name and contact details of the manufacturer, a responsible legal or natural person within the European Union, and, if applicable, the importer importing the product into the European Union, to enable the competent authorities to carry out their supervisory and control tasks,
2. a list of all ingredients contained in, and emissions resulting from the use of the product, by brand name and type, including quantities thereof,
3. toxicological data regarding the product's ingredients and emissions, including when heated, referring in particular to their effects on the health of consumers when inhaled and taking into account, inter alia, any addictive effect,
4. for nicotine-containing products, information on the nicotine doses and uptake when consumed under normal or reasonably foreseeable conditions,
5. a description of the components of the product; including, where applicable, the opening and refill mechanism of the electronic cigarette or refill containers,
6. a description of the production process, including whether it involves series production, and a declaration that the production process ensures conformity with the requirements of §§ 10b through 10d,
7. a declaration that the manufacturer and importer bear full responsibility for the quality and safety of the product, when placed on the market and used under normal or reasonably foreseeable conditions.

(4) Where the Federal Ministry of Health considers that the information submitted is incomplete, it shall be entitled to request the completion of the information concerned.

(5) For transparency purposes the Federal Ministry of Health shall publish the information received according to paras. 2 through 4 on its website in such a way that trade secrets are protected.

(6) Upon request of the European Commission as well as other Member States of the European Union, the Federal Ministry of Health shall provide these with all information received, while protecting the business and trade secrets.

(7) The following applies to electronic cigarettes:

1. nicotine-containing liquid is only allowed to be placed on the market in dedicated refill containers not exceeding a volume of 10 ml, in disposable electronic cigarettes or in single use cartridges, providing that the cartridges or tanks do not exceed a volume of 2 ml,
2. the nicotine-containing liquid does not contain nicotine in excess of 20 mg/ml,
3. the nicotine-containing liquid does not contain any of the additives listed in § 8b para. 2 or 3,
4. only ingredients of high purity are used in the manufacture of the nicotine-containing and nicotine-free liquid. Substances other than the ingredients referred to in the list according to para. 3 line 2 are only present in the liquid in trace levels, if such traces are technically unavoidable during manufacture,

5. except for nicotine, only ingredients are used in the nicotine-containing liquid that do not pose a risk to human health in heated or unheated form,
6. the electronic cigarettes deliver the nicotine doses at consistent levels under normal conditions of use,
7. the electronic cigarettes and refill containers are child- and tamper-proof, are protected against breakage and leakage and have a mechanism that ensures refilling without leakage.

Details on the packaging of electronic cigarettes

§ 10c. (1) Unit packets of electronic cigarettes and refill containers shall include a leaflet with information on:

1. instructions for use and storage of the product, including a reference that the product is not recommended for use by children, young people and non-smokers,
2. contra-indications,
3. warnings for specific risk groups,
4. possible adverse effects,
5. addictiveness and toxicity and
6. contact details of the manufacturer or importer and a legal or natural contact person within the Union.

(2) Each unit packet and any outside packaging of electronic cigarettes and refill containers shall

1. include a list of all ingredients contained in the product in descending order of the weight, and an indication of the nicotine content of the product and the delivery per dose, the batch number and a recommendation to keep the product out of reach of children,
2. without prejudice to line 1 of this point, not include elements or features referred to in § 5d, with the exception of § 5d para. 1 line 1 and 3 concerning information on the nicotine content and on flavourings,
3. carry the following health warning for nicotine-containing products:
   "Dieses Produkt enthält Nikotin: einen Stoff, der sehr stark abhängig macht. Es wird nicht für den Gebrauch durch Nichtraucher empfohlen." (This product contains nicotine which is a highly addictive substance. It is not recommended for use by non-smokers.) and
4. carry the following health warning for nicotine-free products:
   "Der Gebrauch dieses Produktes kann gesundheitliche Schäden verursachen." (The use of this product can cause damages to health.)

(3) The health warning shall be printed on the front and back outside surface of the unit packet and on any outside packaging.

(4) The health warning shall comply with the requirements specified in § 5c para. 2. It shall cover 30% of the relevant surface of the unit packet and any outside packaging.

(5) It is prohibited to use unit packets and any outside packaging that suggests economic advantages (e.g. with printed vouchers, discounts, two-for-one offers, free distributions).

Controls and measures for electronic cigarettes

§ 10d. (1) Manufacturers and importers of electronic cigarettes and refill containers shall submit, annually by 31 May at the latest, to the Federal Ministry of Health, the following information:

1. comprehensive data on sales volumes, itemised by brand name and type of the product,
2. information on the preferences of various consumer groups, including young people, non-smokers and the most important types of current users,
3. information on the mode of sale of the product,
4. executive summaries of any market surveys carried out in respect of the above, including an English translation thereof.

(2) Where the Federal Minister of Health ascertains that specific electronic cigarettes or refill containers could present a serious risk to human health, the Federal Minister of Health may take appropriate provisional measures. Appropriate provisional measures are temporary prohibitions of the placing on the market or confiscation. If the protection of human health cannot be ensured with more lenient measures, the revocation of the product may be pronounced. In the case of nicotine-containing products, the European Commission and the other Member States of the European Union shall immediately be informed of the measures taken by the Federal Ministry of Health. Once the European Commission informs the Federal Ministry of Health of its conclusions, appropriate follow-up measures shall be taken.

(3) The manufacturers, importers and distributors of electronic cigarettes and refill containers shall establish and maintain a system for the collection of information about all of the suspected adverse effects on human health of these products. Access to this system shall be granted to the Federal Ministry of Health and the Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH (Austrian Agency for Health and Food Safety).

(4) Should a manufacturer or the importer consider or have reason to believe that electronic cigarettes or refill containers, which are in their possession and are intended to be placed on the market or are placed on the market, are not safe or are not of good quality or are otherwise not in conformity with this law or an Ordinance adopted on the basis thereof, this economic operator shall immediately take the corrective action necessary to bring the product concerned into conformity with the relevant legal provisions or to withdraw it from the market or to recall it from the consumers, where appropriate, by applying the relevant provisions of the Product Safety Act 2004 (PSG 2004), Federal Law Gazette I No. 1/2005, and the Regulation (EC) No. 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93, OJ L No. 218 of 13 August 2008 p. 30. In the latter case, the economic operator shall immediately inform the responsible authorities of the Member States in which the product is placed on the market or is intended to be placed on the market, giving details of the risk to human health and safety and of any corrective action taken, and of the results of such corrective action.

(5) The controlling body of the Federal Ministry of Health shall issue the person hitherto holding the right of disposal a confirmation of the confiscation, in which the storage location as well as type and amount of the confiscated goods shall be specified.

(6) The controlling body shall immediately inform the Federal Ministry of Health in the case of confiscation.

(7) The Federal Ministry of Health is granted the right of disposal of the confiscated goods.

(8) The confiscated goods shall be left in the business. They shall be sealed or labelled in such a way that transformation is not possible without damage to the containers, the packaging or the labelling. The person hitherto holding the right of disposal shall be informed in writing by the Federal Ministry of Health of the criminal consequences of the displacement or transformation of the confiscated goods as well as damage to the official seal.

(9) The person hitherto holding the right of disposal is responsible for protecting the goods left in the business from damages. If special measures are required to this end, she or he shall notify the Federal Ministry of Health in advance. The Federal Ministry of Health shall, if necessary, make arrangements regarding the displacement, storage, sealing or labelling at the expense of the party concerned.

(10) During the confiscation, samples of the goods may only be taken by order of the Federal Ministry of Health.

Revocation and reimbursement of costs

§ 10e. (1) As a safety measure, the Federal Ministry of Health shall declare the confiscated goods to be revoked if the product poses a serious and significant hazard to humans or animals and if the person holding the right of disposal does not ensure that the goods are not placed on the market after their release.

(2) Before the utilisation of the goods declared to be revoked, the Federal Ministry of Health shall provide the person accused and the person affected by the revocation with the opportunity to make a statement.

(3) The revoked goods shall be utilised in a profitable way or destroyed at the expense of the person accused or the person affected by the revocation if profitable use is not possible or if through the utilisation of the goods, it cannot be expected that the recoverable amount will exceed the costs of utilisation. The destruction of the revoked goods shall be carried out by the person accused or the person affected by the revocation at their expense under the supervision of the Federal Ministry of Health.

(4) After deduction of the expenses incurred as a result and of potential irrecoverable costs of the criminal proceedings as well as any public liabilities related to this matter, the proceeds from the utilisation are to be paid to the Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH (Austrian Agency for Health and Food Safety).

(5) For the official sample taken, upon request of the person holding the right of disposal, compensation from the federal government shall be paid if the value of the sample - pertaining to the cost of the goods - exceeds € 150. The compensation shall not be paid if this sample leads to a penalty or a sentence or if the goods concerned are declared to be revoked. Compensation for cross-check samples is excluded.

Herbal products for smoking

§ 10f. (1) Each unit packet and any outside packaging of herbal products for smoking shall carry the following health warning:

"Das Rauchen dieses Produkts schädigt Ihre Gesundheit." (Smoking this product damages your health.)

(2) The health warning shall be printed on the front and back outside surface of the unit packet and on any outside packaging.

(3) The health warning shall comply with the requirements specified in § 5 para. 7. It shall cover 30 % of the relevant surface of the unit packet and any outside packaging.

(4) Unit packets and any outside packaging of herbal products for smoking shall not include any of the elements or features according to § 5d para. 1 line 1, 2 and 4 and shall not state that the product is free of additives or flavourings.

(5) It is prohibited to use unit packets and any outside packaging that suggests economic advantages (e.g. with printed vouchers, discounts, two-for-one offers, free distributions).

Fees

§ 10g. Fees pursuant to §§ 9 paras. 9 and 10a para. 7 line 1 go to the Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH (Austrian Agency for Health and Food Safety).

Advertising and sponsoring

§ 11. (1) Advertising and sponsoring for tobacco products and related products is prohibited.

(2) The advertising ban includes, in particular, advertising in the service of the information society, in the press or other printed publications with the aim of direct or indirect sales promotion; this does not include general business dealings.

(3) The advertising ban also includes advertising on public and private radio with the aim or the direct or indirect effect of promoting sales as well as any advertising falling within the scope of application of Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), OJ No. L 95 of 15 April 2010 p. 1, in the version of the amendment OJ No. L 263 of 6 October 2010 p. 15.

(4) Excluded from the prohibition in paras. 1 and 2 are

1. communications that are exclusively intended for and exclusively available to persons active in the tobacco trade or in a field of trade with related products such as, for example, electronic cigarettes and/or refill containers;

2. press and other printed publications which are printed and published in third countries, where these publications are not principally intended for the European Union market;
3. the presentation of tobacco products and related products up for sale as well as price information for these tobacco products and related products at all sites authorised to sell tobacco products or related products;
4. Advertising by tobacconists for tobacco products according to § 39 para. 1 of the Tobacco Monopoly Act, Federal Law Gazette No. 830/1995, as well as advertising for related products according to § 1 line 1e in tobacconists' and in specialist shops.

(5) Advertising for tobacco products according to para. 4 line 4 shall be labelled with a clearly legible text warning according to § 5 para. 1 or 2 in black writing and on a white background with a total size of 10 % of the respective advertising material, which shall contain the health-damaging effects of tobacco consumption.

(6) The exemption according to para. 4 line 4 does not apply with regard to the advertising for:

1. unfiltered cigarettes;
2. tobacco products using statements, packaging or presentations that create the impression that the enjoyment of tobacco products does not present any health hazard;
3. tobacco products using statements or presentations that are oriented specially towards the target group of young people;
4. tobacco products using the depiction of people smoking or encouraging smoking whose age is under 30 or who could be considered to be under 30 by the consumer, as well as using the depiction of performance athletes and with the depiction or naming of celebrities, also depicted as a drawing or caricature, as well as using reproduction of their statements on smoking;
5. tobacco products using comics;
6. tobacco products by distribution of advertising materials connected with tobacco products to children and young people or with advertising materials that are usually intended for children or young people.

(7) Any discounted sale, free distribution and mailing of tobacco products and related products with the aim of direct or indirect sales promotion is forbidden.

(8) Exempted from the prohibition of para. 7 is the piecemeal free provision of tobacco products to smokers over the age of 18, in tobacconists' on the occasion of the new introduction of a brand within a time frame of six months after the initial placing on the market of this brand.

Comprehensive non-smoker protection

§ 12. (1) A smoking ban applies in rooms for

1. teaching and educational purposes,
2. negotiation purposes
3. school sports activities, educational or such facilities in which children or adolescents are supervised, accomodated or housed, including the associated open spaces, and
4. the manufacture, processing, provision or consumption of food or drinks, as well as all areas available to guests in hospitality establishments, excluding open spaces and except in those cases where smoking is permitted under § 13a.

(2) A smoking ban also applies in multi-purpose halls or multi-purpose rooms. Also included are non-stationary facilities, in particular marquees.

(3) A smoking ban also applies in rooms in which club activities are carried out in the presence of children and adolescents, as well as in rooms in which clubs hold events, even without the intention to make a profit. It is irrelevant whether the access is restricted to a group of persons determined in advance. In addition, a smoking ban applies to clubs if the club activities circumvent the provisions of para. 1 or 2.

(4) A smoking ban also applies to closed public and private means of transport for the paid or commercial passenger transport. This also applies in means of transport for non-paid or non-commercial passenger transport, if in the vehicle is a person who has not yet completed the age of 18.

(5) The regulations of the smoking ban in line with this provision also apply to the use of related products and water pipes.

(6) Paras. 1 through 5 do not apply to rooms exclusively serving private purposes.

Non-smoker protection in other rooms of public places

§ 13. (1) Unless labor regulations provide for a ban on smoking or rooms are covered by a smoking ban of § 12, a smoking ban also applies in other rooms of public places, but a side room can be set up as a smoking room in the publicly accessible areas, provided it is ensured that tobacco smoke from this side room does not penetrate areas where the smoking ban applies or the setting up of a smoking room would constitute a circumvention.

(2) In hotels and comparable accommodation smoking is prohibited. Unless § 12 paras. 1 to 3 applies, a side room can be set up as a smoking room in the common areas, provided it is ensured that tobacco smoke from this side room does not penetrate areas where the smoking ban applies or the setting up of a smoking room would constitute a circumvention and that in the smoking room no food and drinks are manufactured, processed, provided or consumed.

(3) The smoking ban does not apply in tobacconists', provided it is ensured that tobacco smoke does not penetrate areas where the smoking ban applies. Excluded from the possibility to allow smoking are those tobacconists' that are postal service partners.

(4) The regulations of the smoking ban in line with this provision also apply to the use of related products and water pipes.

To be noted for the following provision

According to § 8 ABGB (Austrian Civil Code), para. 2 will be authentically construed in such a manner that a brief crossing of the smoking room is acceptable for the guests on the way to the main room or to other smoke-free areas of the establishment such as sanitary or toilet facilities (see art. 1, Federal Law Gazette I No. 12/2014).

Non-smoker protection in rooms dedicated to gastronomy

§ 13a. (1) Without prejudice to the labour law provisions and §§ 12 and 13, a smoking ban applies in the rooms designated for the provision of food or drinks to guests

1. of the hospitality industry according to § 111 para. 1 line 2 of the Gewerbeordnung (GewO) (Trade Regulation Act) 1994, Federal Law Gazette No. 194/1994, in the valid version,
2. of the hospitality industry with the right to accommodate guests according to § 111 para. 1 line 1 or para. 2 line 2 or 4 of the GewO,
3. of the businesses according to § 2 para. 9 or § 111 para. 2 line 3 or 5 of the GewO.

(2) As an exception to the prohibition in para. 1, in businesses that have more than one room suitable for the provision of food or drinks to guests, rooms can be designated in which smoking is permitted as long as it is ensured that the tobacco smoke does not penetrate the rooms allocated as smoke-free, and that the smoking ban is not circumvented by this. However, the main room designated for the provision of food or drinks must be included in the smoking ban, and not more than half of the spaces intended for the provision of food or drinks may be located in rooms in which smoking is permitted.

(3) Furthermore, the smoking ban according to para. 1 does not apply if only one room suitable for the provision of food or drinks to guests is available, and

1. if the room has a floor area of less than 50 m^2, or,
2. if the room has a floor space of between 50 m^2 and 80 m^2 that is ineligible for a division of the room to create a separate room for the construction measures for the purpose mentioned in para. 2 based on a final decision according to the authorities responsible for construction, fire prevention or monument protection provisions.

(4) However, smoking may also only be permitted in rooms in which the smoking ban according to para. 1 does not apply if the establishment is subject to a collective agreement, according to which

1. an employee not subject to the Corporate Employee and Self-Employed Pension Act (BMSVG), Federal Law Gazette I No. 100/2002, in the respectively valid version, is entitled to dismissal pay to the extent allowed by the law if he or she terminates his or her employment relationship due to the burden of exposure to the second-hand tobacco smoke, and
2. the time required to undergo diagnostic measures and examinations in connection with second-hand tobacco smoking in the workplace is to be granted, and
3. health-promoting measures in connection with second-hand tobacco smoking in the workplace in agreement between employee and employer shall be determined, and,
4. in the case that the establishment has rooms in which a smoking ban applies or smoking is not permitted by the proprietor, the training and employment of young people shall predominantly take place in the rooms in which smoking is not permitted.

(5) Expectant mothers may not work in rooms in which they are exposed to tobacco smoke.

Labelling obligation

§ 13b. (1) Smoking bans according to §§ 12 and 13 shall be indicated in the rooms and establishments subject to the smoking ban by the smoking ban reference “Rauchen verboten.” (Smoking prohibited).

(2) Instead of the smoking ban reference according to para. 1, the smoking bans may also be indicated using smoking ban symbols clearly showing the smoking ban.

(3) The smoking ban references according to para. 1 or the smoking ban symbols according to para. 2 shall be mounted in sufficient number and size, such that they are easily visible from everywhere in the room or the establishment.

(4) In businesses according to § 13a para. 1, it shall be indicated whether a smoking ban applies to the rooms designated for the provision of food or drink to guests or not, or, if a smoking ban does not apply, whether the proprietor permits smoking or not. In rooms in which smoking is permitted, moreover, the labelling shall contain the warning “Rauchen gefährdet Ihre Gesundheit und die Gesundheit Ihrer Mitmenschen” (Smoking endangers your health and the health of those around you) and the labelling shall be mounted in sufficient number and size, such that it is easily visible from everywhere in the room and the warning is easily legible.

(5) The Federal Minister of Health, Family and Youth is authorised to determine more detailed specifications regarding content, type and shape of the labelling by Ordinance.

Obligations regarding the non-smoker protection

§ 13c. (1) The proprietors of rooms and facilities according to § 12 and of rooms of public places according to § 13 must ensure compliance with the provisions of §§ 12 through 13b.

(2) Each proprietor according to para. 1 shall ensure in particular that

1. smoking does not take place in rooms or establishments according to § 12 paras. 1 through 3;
2. smoking does not take place in rooms of public places according to § 13, if a smoking ban applies;
3. the labelling obligation according to § 13b is complied with.

§ 13d. The regulations associated with smoking bans in §§ 12, 13, 13a, 13c and 14 also apply to the use of related products and waterpipes.

Penal provisions

§ 14. (1) Whoever

1. places tobacco products or related products on the market contrary to § 2,
2. violates the ban on mail-order business according to § 2a,
3. violates the reporting obligation according to §§ 8, 8a, 8c, 10a and 10b,
4. engages in advertising or sponsoring contrary to § 11,
5. violates the provisions concerning the product presentation according to §§ 5 through 6, 10c and 10f,
6. violates the provisions with regard to confiscation, revocation and product recall as specified in §§ 10d or 10e,
7. violates the prohibition on selling to young people according to § 2a,

commits an administrative offence, if the act is not subject to a stricter penalty under other administrative provisions, and shall be penalised with a fine of up to 7,500 euros, and in the case of recurrence of up to 15,000 euros.

(2) Tobacco products and related products that are the subject of a criminal offence according to para. 1 shall be seized and destroyed. The regulations of §§ 10d and 10e shall be applied.

(3) If, in the course of an administrative penalty procedure, it is legally established that the manufacturer or the importer of tobacco products and related products has not complied with the

provisions of §§ 2, 2a 4 through 10f or the Ordinances adopted on the basis thereof, she or he shall also bear the costs of the implemented supervision and investigative measures in the specific case.

(4) Whoever, as a proprietor according to § 13c para. 1, violates one of the obligations laid down in § 13c, commits an administrative offence and shall be penalised with a fine of up to 2,000 euros, and in the case of recurrence of up to 10,000 euros, if the act does not form the subject of one of the criminal offences subject to the jurisdiction of the courts or is not subject to a stricter penalty under other administrative provisions.

(5) Whoever smokes in a place where smoking is prohibited according to §§ 12 or 13 or in which smoking is not permitted by the proprietor, commits an administrative offence, if the place is labelled according to § 13b paras. 1 through 3 and the act does not form the subject of one of the criminal offences subject to the jurisdiction of the courts or is not subject to a stricter penalty under other administrative provisions, and shall be penalised with a fine of up to 100 euros, and in the case of recurrence of up to 1,000 euros.

Involvement of the bodies of the public security services

§ 14b. Upon its request, the bodies of the public security services shall provide assistance to the Federal Ministry of Health and the controlling bodies commissioned by it in order to ensure the exercising of the powers according to §§ 10d, 10e and 14 para. 2 in the scope of their statutory area of responsibility. Furthermore, the bodies of the public security service carry out on behalf of the competent Federal Ministers controls of the observance of the prohibition in § 12 para. 4, second sentence.

Transitional and final provisions

§ 15. Exempted from the scope of application of this federal law are medicinal products in the sense of the Medicinal Products Act, Federal Law Gazette No. 185/1983.

§ 16. Insofar as this federal law makes reference to other federal laws or legal acts of the European Union, their provisions shall be applied in their respectively valid version.

§ 17. (1) The provisions of § 1 line 11, § 2 paras. 2 and 3, § 13 and § 13a enter into force on 1 January 2005.

(2) The provisions of § 1 line 7 and 7a as well as § 11 enter into force on 31 July 2005.

(3) The provision of § 14a enters into force on 1 January 2007.

(4) The provisions of § 11 para. 4 lines 5 and 6 lapse at the end of 31 December 2006.

(5) § 5 para. 2 line 10 of this federal law in the version Federal Law Gazette I No. 105/2007 enters into force on 1 July 2008.

(6) § 7a and § 14 para. 1 line 1a of this federal law in the version Federal Law Gazette I No. 105/2007 enter into force on 1 January 2008 and lapse at the end of 31 December 2010.

(7) §§ 13 paras. 1 and 4, 13a, 13b, 13c as well as 14 paras. 4 and 5 of this federal law in the version of Federal Law Gazette I No. 120/2008 enter into force on 1 January 2009. §§ 13a and 14a of this federal law in the version as amended by the Federal Law Gazette I No. 120/2008 lapse at the end of 31 December 2008.

(8) § 12 including the heading, § 13 including the heading, § 13c, § 14 paras. 4 and 5 as well as § 14a in the version of Federal Law Gazette I No. 101/2015 enter into force on 1 May 2018. § 13d in the version Federal Law Gazette I No. 101/2015 enters into force on 20 May 2016 and lapses at the end of 30 April 2018.

(9) § 2 paras. 2 and § 2a, §§ 4 through 6, § 7 para. 12, § 7a para. 2, § 8 paras. 1, 1a, 2, 4 through 4c, 7 through 10, §§ 8a through 11, § 14 paras. 1 through 3, § 14b, § 19 as well as the Annex of this federal law in the version Federal Law Gazette I No. 22/2016 enter into force on 20 May 2016. § 2 para. 4, § 3, § 4a and § 8 para. 5 in the version as amended by the Federal Law Gazette I No. 22/206 lapse at the end of 19 May 2016. § 2 para. 1 in the version of Federal Law Gazette I No. 22/2016 enters into force on 20 May 2017. This federal law is to be applied to matters that form the subject of an administrative offence only as of the day following its announcement.

(10) Ordinances based on the provisions of this federal law in the version of Federal Law Gazette I No. 22/2016 may be adopted immediately as of the day following the announcement of this law. However, they may only enter into force on 20 May 2016 at the earliest.

(11) § 7 paras. 1 through 11 and § 7a para. 1 of this federal law in the version Federal Law Gazette I No. 22/2016 apply to cigarettes and roll-your-own tobacco from 20 May 2019 and to tobacco products other than cigarettes and roll-your-own tobacco from 20 May 2024

(12) § 2a including the heading in the version of Federal Law Gazette I No. 13/2018 enters into force on 1 January 2019. § 12 para. 1 line 4, § 12 para. 4, § 14 Para 1 line 7 in the version of Federal Law Gazette I No. 13/2018 enter into force on 1 May 2018. In § 17 para. 8 the second sentence is deleted, so that § 13a (including the authentic interpretation of § 13a para. 2 in Federal Law Gazette I No. 12/2014) as well as § 13b para. 4, each time in the version of 30 April 2018, do not lapse at the end of 30 April 2018.

(13) § 7 paras. 2, 4, 5, 6, 8 and 11 in the version of Federal Law Gazette I No. 37/2018 enters into force on 20 May 2019. § 10b para. 3 line 1 and para. 5 in the version of Federal Law Gazette I No. 37/2018 enters info force on 25 May 2018.

§ 18. (1) Tobacco products that do not comply with the provisions of §§ 4a through 8 and the Ordinances adopted on the basis thereof may be marketed until 30 September 2003.

(2) By way of derogation from para. 1, various tobacco products from cigarettes that do not comply with the provisions of §§ 4a through 8 and the Ordinances adopted on the basis thereof may be marketed until 30 September 2004.

(3) Tobacco products that do not comply with § 5 para. 2 line 10 in connection with § 5 para. 3 of this federal law in the version Federal Law Gazette I No. 105/2007 and that have been marketed before the end of 30 June 2008 may be placed on the market until the end of 31 December 2008.

(4) Tobacco products that form the subject of a criminal offence according to § 14 para. 1 line 1a in the period between 1 January 2008 and 31 December 2010 shall be seized.

(5) Tobacco products that do not comply with § 5 para. 2 line 10 in connection with § 5 para. 3 of this federal law in the version Federal Law Gazette I No. 120/2008 may be marketed until the end of 31 December 2008 and placed on the market until the end of 30 June 2009.

(6) For

1. businesses of the hospitality industry according to § 111 para. 1 line 2 of the GewO,
2. businesses of the hospitality industry with the right to accommodate guests according to § 111 para. 1 line 1 or para. 2 line 2 or 4 of the GewO as well as
3. businesses according to § 2 para. 9 or § 111 para. 2 line 3 or 5 of the GewO,

§§ 13a, 13b, 13c as well as 14 paras. 4 and 5 of this Federal Law Gazette I No. 120/2008 as well as the provisions of an Ordinance adopted according to § 13b para. 5 of this federal law in the version Federal Law Gazette I No. 120/2008 shall be applied only as of 1 July 2010 if the requirements according to para. 7 are satisfied.

(7) The requirements according to para. 6 are:

1. at the point in time at which this federal law in the version of Federal Law Gazette I No. 120/2008 enters into force, the business only has one room for the provision of food or drinks to guests,
2. the floor area of the room is at least 50 m^2,
3. the construction measures intended by the proprietor to create a separate room for the purpose named in § 13a para. 2 were initiated immediately after the end of the day on which this federal law in the version Federal Law Gazette I No. 120/2008 was announced, including any necessary clarification regarding construction, fire prevention or monument protection issues (§ 13a para. 3 line 2).

(8) § 2 para. 2 in the version Federal Law Gazette I No. 5/2015 enters into force as of 1 January 2016

(Note: para. 9 was not assigned)

(10) For tobacco products with a characterising flavour in line with § 8b para. 1 whose Union-wide sales volumes represent 3% or more in a particular product category, § 8b applies as of 20 May 2020.

(11) For products for which reports did not yet have to be issued in line with § 8 para. 1 in the version Federal Law Gazette I No. 101/2015, the manufacturers or importers shall submit the data and documents required in § 8 para. 1 at the latest three months after Federal Law Gazette I No. 22/2016 enters into force. For products already placed on the market, the report must be issued by 20 November 2016 at the latest.

(12) Tobacco products that were manufactured or placed on the market and labelled before 20 May 2016 according to the Tobacco Act in the version Federal Law Gazette I No. 120/2008 may:

1. be dispensed to tobacconists by wholesalers until 31 August 2016.
2. be sold by the tobacconists until 20 May 2017.

(14) For novel tobacco products, the registration for authorisation according to § 10a shall take place at the latest six months before the intended placing on the market.

(15) The Federal Minister of Labor, Social Affairs, Health and Consumer Protection may by Ordinance according to § 23 para. 2 of the Child and Youth Employment Act 1987, Federal Law Gazette No. 599/1987, adopt the necessary regulations going beyond the provisions of § 13a para. 4 line 4 for the special health protection of persons, who have not completed the age of 18 years and who work or are trained in companies with smoking rooms according to § 13a. In particular, this Ordinance may contain other employment restrictions or prohibitions of employment, take into account collective agreements and provide for transitional provisions for persons already employed or in training.

§ 19. The Federal Minister of Health is entrusted with the enforcement of this federal law, and regarding §§ 5 para. 8, 5a paras. 4 and 5 and 7a in agreement with the Federal Minister of Finances. The Federal Minister of Finances is entrusted with the enforcement of §§ 2a and 7. Regarding the provisions of § 4 paras. 2 and 3, the Federal Minister of Health shall obtain the approval of the Main Committee of the National Council. The Federal Minister of Labor, Social Affairs, Health and Consumer Protection is entrusted with the enforcement of § 12 para. 4 in agreement with the Federal Minister of Transport, Innovation and Technology.

List of the text warnings on § 5a para. 1

1. Rauchen verursacht 9 von 10 Lungenkarzinomen (Smoking causes 9 out of 10 lung cancers)
2. Rauchen verursacht Mund-, Rachen- und Kehlkopfkrebs (Smoking causes mouth and throat cancer)
3. Rauchen schädigt Ihre Lunge (Smoking damages your lungs)
4. Rauchen verursacht Herzanfälle (Smoking causes heart attacks)
5. Rauchen verursacht Schlaganfälle und Behinderungen (Smoking causes strokes and disability)
6. Rauchen verstopft Ihre Arterien (Smoking clogs your arteries)
7. Rauchen erhöht das Risiko zu erblinden (Smoking increases the risk of blindness)
8. Rauchen schädigt Zähne und Zahnfleisch (Smoking damages your teeth and gums)
9. Rauchen kann Ihr ungeborenes Kind töten (Smoking can kill your unborn child)
10. Wenn Sie rauchen, schaden Sie Ihren Kindern, Ihrer Familie, Ihren Freunden (Your smoke harms your children, family and friends)
11. Kinder von Rauchern werden oft selbst zu Rauchern (Smokers' children are more likely to start smoking)
12. Das Rauchen aufgeben – für Ihre Lieben weiterleben (Quit smoking - stay alive for those close to you)
13. Rauchen vermindert Ihre Fruchtbarkeit (Smoking reduces fertility)
14. Rauchen bedroht Ihre Potenz (Smoking increases the risk of impotence)