

Provisional Tobacco Act

LMG 1974

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Footnote

(+++ Text citation validity as of 1/1/1978 +++)

(+++ Stipulations based on EinigVtr no longer to be applied under Art. 109 No. 4
Letters d G of 12/8/2010 I 1864 mWv 12/15/2010 +++)

(+++ For non-application of § 46f see § 3 V of 8/7/2007 I 1939 (RZV) +++)

Heading: Official abbreviation introduced by Art. 1 No. 1 G of 11/24/1994 I 3538 mWv 12/7/1994

Heading: IdF of Art. 5 No. 1 G of 9/1/2005 I 2618 mWv 9/7/2005

The G was resolved as Article 1 G of 8/15/1974 I 1945 of the Bundestag with the approval of the Bundesrat.

In accordance with Art. 12 of this G entered into force on 1/1/1975 except §§ 11, 14 para. 1 No. 2, § 16 para. 1 clause 1 regarding the labeling of the content on additives, § 20 para. 1, § 23, to the extent it refers to § 14 para. 1 No. 2. § 25 para. 1 and the penal and administrative fine provisions referring to these provisions, which entered into force on 1/1/1978.

§ 1
(omitted)

§ 2
(omitted)

§ 3 Tobacco products

(1) For the purposes of this Act, tobacco products are products made of raw tobacco or products manufactured using raw tobacco, which are intended for smoking, chewing or other oral consumption or snuffing.

(2) The following shall be considered tobacco products:

1. Raw tobacco and tobacco product similar goods, which are intended for smoking, chewing or other oral consumption or snuffing;
2. Cigarette paper, artificial binder leaves and other components firmly attached to the tobacco product with the exception of cigar mouthpieces and all types of smoke filters;
3. Products as defined in number 2, to the extent they are intended to be used in the non-commercial manufacture of tobacco products.

(3) Products as defined in paragraph 1 and paragraph 2 no. 1 for relief of asthma symptoms are not considered tobacco products.

§ 4
(omitted)

§ 5 Contact materials

- (1) For the purposes of this Act, contact materials are packages, containers or other encasements, which are intended to come in contact with tobacco products.
- (2) (omitted)
- (3) The Federal Ministry for Food, Agriculture and Consumer Protection (German: Bundesministerium für Ernährung, Landwirtschaft und Verbraucherschutz (hereinafter referred to as the Bundesministerium) is authorized, in agreement with the German Federal Ministry for Economic Affairs and Technology by statutory order with the approval of the Bundesrat, and to the extent it is necessary in order to prevent any adverse effects to health, to equate other personal and household materials and means to contact materials, when they are used as intended or in a way that can be foreseen, due to their material composition, in particular due to toxicologically active substances or contamination, which could be hazardous to the health of the human body.

§ 6 Consumers

- (1) For the purposes of this Act, a consumer is someone to whom tobacco products are dispensed for personal use or for use in his own household.
- (2) A consumer can also refer to restaurants, catering businesses and business people, to the extent they purchase the products mentioned in paragraph 1 for use within their establishment.

§ 7 Other definitions

- (1) For the purposes of this Act:
 - manufacture:
the obtaining, manufacture, preparation, handling and processing;
 - putting on the market:
the offering, storing for sale or for other transfer, keeping for sale and any transfer to another;
 - handling:
the weighing, measuring, siphoning and filling, stamping, printing, packaging, cooling, stocking, storing, transporting and any other activity, which cannot be considered manufacture, putting on the market or consumption;
 - consumption:
the eating, chewing, drinking and any other supplying of material into the stomach.
- (2) For the purposes of this Act, the manufacture, handling and transfer to cooperatives or other association of individuals for their members and in establishments for communal feeding are equivalent to commercial manufacture, handling and putting on the market.

§§ 8 to 12 (omitted)

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§ 13 Prohibition on irradiation and approval authorization

- (1) It is forbidden
 1. to use a non-approved irradiation with ultraviolet or ionizing radiation to commercial tobacco products;
 2. to put on the market tobacco products which are irradiated contrary to the ban in number 1 or a statutory order issued under paragraph 2.
- (2) The Bundesministerium shall be authorized in agreement with the Federal Ministry of Education and Research (German: Bundesministerium für Bildung und Forschung) by statutory order with the approval of the Bundesrat,

1. to the extent it is consistent with consumer protection, such irradiation in general or for certain tobacco products or for certain uses is to be permitted;
2. to the extent it is necessary for consumer protection, certain technical procedures for approved irradiations are to be stipulated.

§ 14 Plant protection and other products

- (1) It is forbidden to commercially market tobacco products,
 1. if plant protection products within the meaning of the Plant Protection Act, fertilizers within the meaning of the Fertilizer Act, other plant or soil treatment products, preservatives within the meaning of preservatives or pesticides (plant protection or other products) or their degradation or reaction products are present in or on them in quantities that exceed the maximums specified in paragraph 2 (1) a;
 2. if plant protection products within the meaning of the Plant Protection Act, which are not approved or may not be applied to tobacco products or their raw materials, are present in or on them; this does not apply to the extent that maximums for these products are specified in accordance with paragraph 2 (1) a.
- (2) The Bundesministerium shall be authorized in agreement with the Federal Ministry of Economic Affairs and Technology (German: Bundesministerium für Wirtschaft und Technologie) by statutory order with the approval of the Bundesrat,
 1. to the extent it is necessary to protect consumers,
 - a) to specify maximums for plant protection or other products or their degradation or reaction products, which may not be exceeded in or on tobacco products that are sold commercially,
 - b) to prohibit the marketing of tobacco products on which or on the raw materials of which certain substances such as plant protection or other products have been applied,
 - c) to make measures for the disinsectization, decontamination or disinfection of rooms or equipment in which or with which tobacco products are manufactured, treated, or marketed contingent on the approval or notification and to stipulate, prohibit or limit the use of certain products, equipment or methods with such measures.
 2. to the extent it is consistent with the protection of the consumer, to allow exceptions to the prohibition in paragraph 1 (2).

§ 15

(omitted)

§ 16 Labeling

- (1) The use of irradiation permitted in statutory orders in accordance with § 13 para. 2 (1) is to be indicated. The Bundesministerium shall be authorized in these statutory orders to regulate the time of labeling and to allow exceptions to the obligations to label as long as it is consistent with the protection of the consumer.
- (2) The Bundesministerium shall be authorized, in agreement with the Federal Ministry of Economic Affairs and Technology by statutory order with the approval of the Bundesrat, to the extent it is necessary for the protection of the consumer,
 1. to issue provisions regarding the identification of substances within the meaning of § 14;
 2. to stipulate that certain instructions, particularly regarding the use of substances, be included with tobacco products.

§ 17 Prohibitions to prevent fraud

It is forbidden,

1. to market tobacco products that are not suitable for the purposes of § 3 or tobacco products that have been produced or treated contrary to the provisions of § 31;

2. a) counterfeit tobacco products,
b) tobacco products, which deviate in terms of their quality from the accepted standards and thereby are not insignificantly negatively impacted in their value, particularly in their level of consumer enjoyment, or in their usability or
c) to give the impression that tobacco products that are only suitable are better than their actual quality, to commercially market without sufficient labeling;
3. and 4. (omitted)
5. to market tobacco products under misleading names, information or packaging or to advertise any particular tobacco product or tobacco products in general using misleading descriptions or other statements. Information is misleading in particular where:
 - a) it is implied that a tobacco product has effects which it does not, given the current state of scientific knowledge, or which are not supported by sufficient scientific evidence.
 - b) the name, information, packaging, descriptions or other statements about the origin of the tobacco products, or their quantity, weight, date of manufacture or packaging, shelf life or other considerations affecting their value are used that are likely to be misleading.
 - c) the tobacco products give the impression of being a pharmaceutical.

§§ 18 to 19a (omitted)

§ 20 Prohibition on use and approval authorization

(1) It is forbidden

1. to use substances that are not approved, in the commercial manufacture of tobacco products that are intended for sale;
2. to market tobacco products that are produced contrary to the prohibition in (1) or are not in accordance with a statutory order issued under paragraph 3 (1) or (2) a;
3. to market substances that may not be used in the commercial manufacture of tobacco products, for such a use or for use in the manufacture of tobacco products by the consumer.

(2) Paragraph 1 shall not apply to

1. raw tobacco, substances that are inherently proprietary to raw tobacco, to odorants and flavoring substance, which are naturally or chemically equivalent,
2. processing aids within the meaning of the Foodstuffs and Animal Feed Law.

(3) The Bundesministerium shall be authorized, in agreement with the Federal Ministry of Economic Affairs and Technology by statutory order with the approval of the Bundesrat,

1. to the extent it is consistent with the protection of the consumer, to allow substances in general or for particular tobacco products or for certain purposes;
2. to the extent it is necessary to protect the consumer,
 - a) to establish maximums for the content of permitted substances or substances that do not need approval according to paragraph 2 in tobacco products and purity standards for these substances;
 - b) to issue provisions regarding the labeling of the content of permitted substances.

§ 21 Authorizations

(1) The Bundesministerium shall be authorized, in agreement with the Federal Ministry for Economic Affairs and Technology by statutory order with the approval of the Bundesrat,

1. to the extent it is necessary to protect the consumer or in the case of third parties from damage to their health,
 - a) to prohibit or restrict the use of substances, which require no approval under § 20 para. 2, and the use of certain methods with the protection or treatment of tobacco products,
 - b) to issue regulations on the quality and effectiveness of goods or products in reducing the content of certain substances in certain tobacco products or in their smoke, as well as the use of such goods or products,
 - c) to establish maximums for the content of certain smoke constituents,
 - d) to stipulate that in the trade of certain tobacco products or in the marketing of certain tobacco products, information on the content of certain smoke constituents is to be used,
 - e) to stipulate under which conditions information may be used, which refers to the content of certain substances in certain tobacco products or in their smoke, in particular nicotine and tar,
 - f) to stipulate that, in trade with certain tobacco products or in the marketing for certain tobacco products, warnings or other warning labels on packaging, safety precautions or health advice are to be used,
 - g) to prohibit the marketing of tobacco products, which are intended for oral use other than smoking or chewing,
 - h) to stipulate that the manufacturer or importer must share certain information, particularly regarding the manufacture or the composition of tobacco products, the substances used therein, their function, the effects of these substances in burned or unburned form and measurements on which the health assessment is based,
 - i) to establish certain requirements and analytical methods, according to which the content of certain substances in tobacco products or in their smoke is to be specified,
 - j) to stipulate that the tests for certain content of substances in tobacco products or their smoke are only to be carried out by testing laboratories approved for that purpose and to establish the requirements for this testing laboratory, particularly with regard to suitability tests and ongoing training;
2. to the extent that it is necessary to protect the consumer from fraud, to stipulate for certain tobacco products
 - a) that date information, in particular the date of manufacture or date of packaging, or the shelf life, or information on the origin or preparation is to be included on the packages, containers or other enclosures in which they are marketed, or on the tobacco products themselves,
 - b) that tobacco products themselves, which do not meet the specified requirements regarding manufacture, composition and quality, or other tobacco products of a certain type or quality may only be marketed with sufficient labeling or under certain names, other information or packaging,
 - c) that they may not be marketed under certain names, information or packaging that are likely to be misleading and that they may not have been advertised with certain descriptions or other statements that are likely to be misleading.

(2) Tobacco products that do not comply with a statutory order issued under paragraph 1 (1) a to c, may not be marketed commercially.

§ 21a Advertising and sponsorship prohibitions for the implementation of Directive 2003/33/EG

(1) Within the meaning of this provision:

1. Advertising: Advertising within the meaning of Article 2 (b) of Directive 2003/33/EG of the European Parliament and of the Council of May 26, 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (ABl. EU no. L 152 p. 16, 2004 No. L 67 p. 34),
2. Sponsoring: Sponsoring within the meaning of Article 2 (c) of Directive 2003/33/EG,
3. Information society services: Information services society within the meaning of Article 2 (d) of Directive 2003/33/EG.

(2) Radio advertising for tobacco products is prohibited.

(3) Advertising for tobacco products in the press and other printed publications is prohibited. In derogation of clause 1, tobacco products may be advertised in a publication, in accordance with clause 1,

1. which is intended exclusively for those employed in the tobacco industry,
2. which printed and distributed in a country that is not a member state of the European Union,
3. which

- a) the vast majority of its editorial content has to do with tobacco products or products used with tobacco products and
- b) is only intended for a publication from a) and is released to it.

(4) Paragraph 3 accordingly applies to the advertising of tobacco products in information society services.

(5) It is prohibited for a company whose principal activity is the manufacture or sale of tobacco products to sponsor a radio program.

(6) It is forbidden to sponsor an event or activity

1. in which multiple member states are involved.
2. which takes place in several Member States, or
3. which otherwise has cross-border effects.

(7) It is forbidden to distribute free tobacco products in connection with an event, for which sponsoring is forbidden in accordance with paragraph 6 having the purpose or the direct or indirect effect of promoting the sale of tobacco products.

§ 21b Certain prohibitions for the implementation of the directive on audiovisual media services

(1) For the purposes of this provision, the following definitions shall apply:

1. Sponsoring: Sponsoring within the meaning of Article 1 k of the Directive 89/552/EEG of the European Parliament and of the Council of October 3, 1989 for the coordination of certain legal and administrative provisions of the Member States on the provision of media services (Directive on audiovisual media services) (ABl. L 298 of 10/17/1989, p. 23), which was last amended by Directive 2007/65/EG (ABl. L 332 of 12/18/2007, p. 27).

2. Product placement: Product placement within the meaning of Article 1 m of Directive 89/552/EEG,

3. audiovisual commercial communication: audiovisual commercial communication within the meaning of Article 1 h of Directive 89/552/EEG.

(2) A company whose principal activity is the manufacture or sale of tobacco products may not sponsor any audiovisual media services or programs.

(3) product placements in programs produced after December 19, 2009 for the benefit of tobacco products or for the benefit of an company whose principal activity is the manufacture or sale of tobacco products are prohibited.

(4) Any other form of audiovisual commercial communication for tobacco products is forbidden.

§ 22 Advertising bans

(1) (omitted)

(2) It is forbidden, in the marketing of tobacco products or in the advertising for tobacco products in general or a particular tobacco product

1. to use names, information, packaging, descriptions or other statements,

a) which will give the impression that the enjoyment or the intended use of tobacco products does not present any health risks or likely is to have a positive impact on the functioning of the body, the performance or well-being,

b) which, by their nature, are particularly likely to encourage adolescents or young adults to smoke,

c) which allow the inhalation of tobacco to appear worthy of imitation;

2. to use names or other information that imply that tobacco products are natural or free of additives.

The Bundesministerium shall be authorized to allow, by statutory order with the approval of the Bundesrat, exceptions to the ban in 2 to the extent it is consistent with the protection of the consumer.

(3) The Bundesministerium shall be authorized, in agreement with the Federal Ministry for Economic Affairs and Technology by statutory order and with the approval of the Bundesrat, as long as it is consistent with the protection of the consumer, to issue provisions for the implementation of the ban in paragraph 2, in particular

1. to regulate the time, the scope or the design of the advertisement through certain advertising media or at certain locations,

2. to prohibit or restrict the use of descriptions or statement by members of certain groups.

§ 22a Areas not covered by certain advertising bans

The ban in § 21a paragraph 2 and 3 clause 1, also in connection with paragraph 4, and in § 21b paragraph 2 to 4 do not cover editorial reporting on tobacco products. The ban in §21a para. 3 clause 1, also in connection with para. 4, also does not cover a reprint made after December 29, 2006 of a publication mentioned there, which complies with the provisions of this Act in the version in force until December 29, 2009.

§ 23

(omitted)

§ 24

(omitted)

§ 25

(omitted)

§§ 26 to 29 (omitted)

§ 30 Bans for the purposes of health protection

It is forbidden,

1. to manufacture or to handle consumer goods in a manner that, when they are used as intended or in a way that can be foreseen, means the goods are likely to be detrimental to human health due to their material composition, in particular due to toxicologically active substances or contamination.
2. to market as consumer goods any objects or products, which when they are used as intended or in a way that can be foreseen, means the goods are likely to be detrimental to human health due to their material composition, in particular due to toxicologically active substances or contamination.

§ 31 Transfer of substances to tobacco products

(1) It is forbidden to use objects as consumer goods, which are intended to be used in the manufacture, handling or marketing of tobacco products and thereby come in contact with the tobacco products or affect them, or market them for such purposes that substances go from them onto tobacco products or their surfaces, except for small amounts that do not impact health, odor or taste, which are technically unavoidable.

(2) For certain substances, the Bundesministerium shall be authorized, by statutory order with the approval of the Bundesrat, as long as it is consistent with the protection of the consumer, to establish the portions that are to be considered harmless and unavoidable within the meaning of paragraph 1. The Bundesministerium can transfer the authorization by statutory order with the approval of the Bundesrat to the Federal Office of Consumer Protection and Food Safety (German: Bundesamt für Verbraucherschutz und Lebensmittelsicherheit); the Federal Office of Consumer Protection and Food Safety does not need the approval of the Bundesrat to issue such statutory orders.

§ 32 Authorizations

(1) The Bundesministerium shall be authorized, by statutory order with the approval of the Bundesrat, to the extent it is necessary to prevent any adverse effects on health due to consumer goods, in the cases of 9b for the consumer's information,

1. to forbid or restrict the use of certain substances, substance categories and substance mixtures in the manufacture or handling of certain consumer goods;
2. to stipulate that for the manufacture of certain consumer goods or individual parts of them only certain substances may be used;
3. to forbid or restrict the use of certain methods in the manufacture of certain consumer goods;
4. to establish maximums for substances, which from certain consumer goods can affect or go on the consumer or which may be present on them during the manufacture, handling or marketing of certain consumer goods;
5. to establish purity standards for certain substances, which will be used during the manufacture of certain consumer goods;
6. (omitted)
7. to stipulate that certain consumer goods may only be marketed in packages or containers;
8. to stipulate warnings, other warning labels on packaging, safety precautions or instructions for how to behave in the event of an accident, when dealing with certain consumer goods;
9. to stipulate that
 - a) the content of certain substances in certain consumer goods,
 - b) a restriction of use for certain consumer goods,
 - c) (omitted)is to be labeled, and to regulate the type of labeling;

- 9a. to make the use of certain consumer goods dependent on approval and to regulate the approval process;
- 9b. to regulate the type and scope of labeling of consumer goods, particularly providing the name and information about the manufacturer or to stipulate the party responsible for marketing within the area of the application of this Act;
- 10. and 11. (omitted)
- 12. to stipulate that certain consumer goods may only be marketed with an accompanying document and to specify the details regarding content, form and design of the accompanying document.

(2) Consumer goods, which do not comply with a statutory order issued under paragraph 1 no. 1 to 3 or 5, may not be marketed.

(3) Statutory orders in accordance with paragraph 1 require agreement with the Federal Ministries for Economic Affairs and Technology, for the Environment, Nature Conservation and Nuclear Safety.

§§ 33 and 34 (omitted)

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§ 35 Official Collection of Analytical Methods

The Federal Office of Consumer Protection and Food Safety publishes an official collection of methods for sampling and analyzing tobacco products and consumer goods (products within the meaning of this Act). The methods shall be defined in cooperation with experts from the areas of monitoring, science and industry stakeholders. The collection is to be constantly updated.

§ 36 Exception authorizations for periods of crisis

(1) The Bundesministerium shall be authorized, in agreement with the Federal Ministry for Economic Affairs and Technology by statutory order, which does not require the approval of the Bundesrat, to allow exceptions to the provisions of the Act and the statutory orders issued based on this Act, if the vital care of the public would otherwise not be seriously endangered by products within the meaning of this Act. clause 1 does not apply for the bans in §§ 21a, 21b and 22. Exceptions to the ban in § 13 also require the approval of the Federal Ministry for Education and Research.

(2) the period of validity of statutory orders is to be limited in accordance with paragraph 1.

§ 37 Authorizing derogations

(1) Derogations from the provisions of this Act and the statutory orders issued based on this Act can be authorized on a case-by-case basis upon application in accordance with paragraphs 2 and 3. clause 1 does not apply for the bans in §§ 21a, 21b and 22.

(2) Exceptions may be only be granted for the manufacture, handling and marketing of tobacco products under official supervision, as long as results are to be expected, which could be of significance for an amendment or addition to the provisions on tobacco; the interests of the individual parties deserving protection and all of the factors that could influence the general competitive positions of the sector of the industry should be adequately taken into consideration.

(3) Exceptions may only be granted if the facts justify the assumption that a risk to human health is not expected. Exceptions may not be granted in the cases in paragraph 2 of the provisions on sufficient labeling.

(4) The Federal Office of Consumer Protection and Food Safety, in agreement with the Federal Office of Economics and Export Control (German: Bundesamt für Wirtschaft und Ausfuhrkontrolle), is responsible for authorizing exceptions in accordance with paragraph 2.

- (5) The authorization of an exception in accordance with paragraph 2 is to be limited to three years at most. It can be extended by three years maximum three times as long as the requirement for the authorization continues.
- (6) The authorization of an exception can be revoked at any time. This should be noted at the time of the authorization.
- (7) The Bundesministerium shall be authorized, by statutory order with the approval of the Bundesrat, in the cases of paragraph 2 provisions on the procedure for granting exceptions, particularly regarding the type and scope of supporting documents produced by the applicant and other documents as well as regarding the publication of applications or exceptions granted.
- (8) (omitted)

§ 38 Statutory orders in urgent cases

- (1) Statutory orders according to this Act can be issued without the approval of the Bundesrat, in case of imminent danger or, if a rapid entry into force for the implementation of legal acts of the bodies of the European Community or European Union is necessary.
- (2) Furthermore, the Bundesministerium can amend statutory orders without the approval of the Bundesrat in accordance with § 13 para. 2 and § 14 para. 2, if unforeseen health considerations require an immediate amendment of the statutory order.
- (3) Statutory orders in accordance with paragraphs 1 and 2 do not require the agreement with the federal ministries involved. The statutory orders shall cease to be in force at latest six months after they enter into force.
- (4) Statutory orders in the cases of paragraphs 1 and 2 can be announced in the Federal Gazette, in derogation of § 2 paragraph 1 of the Official Announcements and Notices Act (German: Verkündungs- und Bekanntmachungsgesetz, VkBkmg).

§ 38a Statutory orders for alignment with European Community law or European Union law

- (1) Statutory orders in accordance with this Act can also be issued for the purposes of alignment with the legal and administrative provisions of the Member States of the European Union, to the extent it is necessary for the implementation of legal acts of the bodies of the European Community or the European Union, which concern the areas of this Act.
- (2) Furthermore, the Bundesministerium can issue statutory orders, in accordance with this Act, solely for the purpose of implementing of binding technical provisions from legal acts of the bodies of the European Community or the European Union, without the approval of the Bundesrat.

§ 38b Transfer of authorizations

In the statutory orders based on this Act, the respective authorization can be transferred in full or in part to the state governments. To the extent a statutory order granted in accordance with clause 1 authorizes the state governments to issue statutory orders, they are authorized to transfer the authorization by statutory order in full or in part to other authorities.

§ 39 Hearing of experts

Prior to the issuing of orders in accordance with this Act, a group of experts to be selected from scientists, consumers and the industry stakeholders is to be heard. This does not apply to orders in accordance with §§ 38, 44 and 48.

§ 40 Responsibility for monitoring

- (1) Responsibility for the monitoring measures designated in this Act is determined by state law. § 48 remains unchanged.

(2) The responsible bodies and experts of the Federal Armed Forces (German: Bundeswehr) are responsible for the execution of this Act, in terms of the monitoring of the sale of products within the meaning of this Act, particularly in dining halls and cafeterias in the Federal Armed Forces.

(3) The federal and state authorities and bodies responsible for the implementation of the Act must

1. inform the bodies and experts responsible for the execution of the Act and
2. immediately inform each other in the event of administrative offense and suspicion of administrative offense of provisions of the food law for the respective jurisdiction and to support each other in the investigation.

(4) The competent authorities

1. provide the competent authority of another Member State information in response to a duly justified request and transmit the necessary certificates and documents to allow it to monitor compliance with the provisions applicable to the product.
2. verify all of the facts shared by the authority of another Member State and inform it of the result of the verification.

(5) The competent authorities inform the competent authorities of another Member State of all of the facts, which are necessary to monitor compliance with the provisions applicable to the product in this Member State, in particular in the event of administrative offenses and suspicion of administrative offenses of food law provisions.

(6) The competent authorities can, to the extent it is necessary to comply with the requirements according to this Act or the statutory orders issued based on this Act or is stipulated by legal act of the bodies of the European Community or European Union, share data that they have obtained in the context of monitoring with the competent authorities of other states, the federal government or other Member States or the European Commission.

(7) Information, messages and certificates and documents related to inspections in accordance with paragraphs 4 to 6 are sent to the European Commission if they relate to other countries that are parties to the Agreement on the European Economic Area.

(8) (omitted)

§ 41 Implementation of monitoring

(1) Compliance with the provisions related to marketing with products for the purposes of this Act is to be monitored by the competent authorities. They must be convinced through regular checks and samplings that the monitoring has complied with provisions.

(2) The monitoring is to be performed by specially trained people. The Bundesministerium shall be authorized, by statutory order and with the approval of the Bundesrat,

1. to stipulate that certain monitoring measures are the responsibility of a scientifically trained person and other appropriate trained people can be used, with instruction from the competent authority and under the technical supervision of a scientifically trained person.

2. to stipulate that, in derogation of clause 1 certain monitoring measures can be carried about by experts,

3. to issue provisions regarding the

a) expertise requirements, which are to be required of the scientifically trained person mentioned in number 1 and the experts mentioned in number 2,

b) technical requirements, which are to be required of the persons mentioned in clause 1, and to regulate the procedure for providing evidence of expert knowledge and meeting technical requirements.

The state governments shall be authorized to issue statutory orders according to clause 2 (3), to the extent the Bundesministerium does not use its authority. The state governments are authorized to transfer the authorization by statutory order to other authorities.

(3) To the extent it is necessary for the execution of the provisions regarding the marketing of products within the meaning of this Act, the persons charged with monitoring, in cases of imminent danger also all police authorities, are authorized,

1. to enter property and manufacture areas, in or on which products within the meaning of this Act are manufactured, handled or marketed, as well as the associated business areas during the usual business hours;
2. for the prevention of urgent risks to public safety and order, to enter
 - a) the property and areas described in number 1 also outside of the times mentioned there,
 - b) living areas of those required to disclose information in accordance with number 4;in this respect, the fundamental right of inviolability of the home (Article 13 of the German Constitution) is limited;
3. to view all business reference documents and data carriers, in particular records, bills of lading, manufacturing descriptions and documents on the substances used in the manufacture and from them to produce copies and abstracts and to view facilities and equipment for the promotion of products within the meaning of this Act;
4. to require of natural and legal persons and associations of individuals with no legal capacity, all necessary information, in particular, information on the manufacture, the substances reaching processing and their origin.

(3a) (omitted)

(4) The person obliged to give information has the right of refusal to disclose things if an answer would put him or another relative described in § 383 para. 1 No. 1 to 3 of the Code of Civil Procedure at risk of criminal prosecution or proceedings under the Administrative Offenses Act (Gesetz über Ordnungswidrigkeiten).

(5) (omitted)

§ 42 Sampling

(1) Where necessary for the execution of the provisions on the movement of products for the purposes of this Act, the persons charged with monitoring and the police authorities are authorized to demand or take samples according to their selection for testing purposes. Part of the sample, or if the sample cannot be divided into parts of equal quality or only at the risk of endangering the test purpose, a second item of the same type and from the same manufacturer taken as a sample shall be left behind. The manufacturer can waive the leaving behind of a sample.

(2) Samples that have been left behind shall be officially closed or sealed. They shall be labeled with the date the sample was taken and the date after which the closure or seal are considered broken.

(3) For samples taken in the context of the official monitoring according to this Act, as a rule no compensation will be provided. In individual cases, compensation up to the amount of the sales price is provided if otherwise an undue hardship were to arise.

(4) The authorization to take samples also extends to products for the purposes of this Act, which are marketed at markets, on streets or in public places or in the travel industry or are in transit before delivery to the consumer.

§ 43 Obligations to tolerate and cooperate

The holder of the land, rooms, facilities and equipment described in § 41 and the representatives ordered by him and those who market the products in accordance with § 42 para. 4 are

obliged to tolerate the measures in accordance with §§ 41 and 42 and to support the people involved in monitoring in carrying out their duties, in particular to describe to them upon request the rooms, facilities and equipment, to open rooms and containers and to allow samples to be taken.

§ 43a Interaction with foreign authorities

Interaction with the competent authorities of other Member States and the European Commission is the responsibility of the Bundesministerium. This power of authority can be transferred by statutory order without the approval of the Bundesrat to the Federal Office for Consumer Protection and Food Safety or with the approval of the Bundesrat to the responsible highest level state authority. Furthermore, in individual cases and in consultation with the responsible highest level state authority the authorization can be transferred to it. The highest level state authority can transfer the authorizations to other authorities in accordance with clauses 2 and 3.

§ 44 Authorizations

In order to promote a uniform execution of the monitoring, by statutory order with the approval of the Bundesrat, the Bundesministerium shall be authorized

1. to issue provisions related to

a) the minimum personnel and technical resources required by research institutes,

b) the requirements for the authorization of private experts, who are authorized to test samples officially left behind;

2. to issue provisions related to procedures for sampling and analysis of products for the purposes of this Act and to make the marketability of a similar lot of certain consumer goods independent of the result of the random sample analysis of that lot.

§ 45

(omitted)

§ 46 State law provisions

The states can issue additional provisions for the execution of the monitoring.

§ 46a Fees

(1) For official acts to be undertaken according to this Act and statutory orders issued based on this Act, which

1. fall under the responsibility of the states,

2. extend beyond the general monitoring measures and

3. are required for the execution of legal acts of the bodies of the European Community or the European Union,

cost-covering fees and expenses are levied.

(2) Facts subject to fees in accordance with paragraph 1 shall be determined by state law. The fees are to be measured in accordance with the legal acts issued by the bodies of the European Community or the European Union. For official acts, which are executed outside normal business hours upon specific request, a fee can be required.

§ 46b Directly applicable European Community or European Union law

§§ 40 to § 46a are also applicable to the monitoring of products for the purposes of this Act, to the extent that they are subject to provisions in directly applicable legal acts of the European Community or European Union, which concern area regulated by this Act.

§ 47 Transfer bans

(1) Products within the meaning of this Act, which comply with the food law provisions applicable in the Federal Republic of Germany, may not be transported into Germany. This ban is not contrary to the customs clearance to the extent there is nothing to the contrary in the legal provision, based on § 49, regarding the import or transport of the products mentioned in clause 1.

(2) § 30 notwithstanding paragraph 1 clause 1 does not apply for

1. the transport of goods under customs control and the storage of goods in customs warehouses, free warehouses or warehouses in free zones,
2. the finishing and conversion of goods as long as the goods are under customs control,
3. goods that are transported for the leader of a foreign country or his entourage and are intended for use or consumption during his stay in the jurisdiction of this Act,
4. goods that are intended for diplomatic or consular missions,
5. goods that are intended for scientific purposes, for trade fairs, exhibits or similar events and the need for which is recognized by the respective state authority,
6. goods that are transported as travel necessities, to the extent they are in quantities for which import duties will not be levied,
7. goods that are carried in means of transportation and only intended for consumption by the people transported by this means of transportation,
8. goods in private gift parcels, to the extent they are intended for use or consumption by the recipient, and goods as gifts in the public interest,
9. samples of goods in small quantities,
10. goods as personal effects or dowries in quantities typically appropriate to normal family requirements,
11. goods that were intended for consumption on seagoing vessels at sea and will be consumed on board the ship.

(3) Goods within the meaning of paragraph 2 no. 2 are subject to the provisions of § 50 para. 3. For these goods, regulations of § 49 can be included.

§ 47a Products from other Member States or other countries that are parties to the Agreement on the European Economic Area

(1) In derogation of § 47 para. 1 clause 1, products within the meaning of this Act, which may be legally manufactured and legally marketed in another Member State of the European Union or another country that is party to the Agreement on the European Economic Area or which originated from a third country and are legally marketed in a Member State of the European Union or another country that is party to the Agreement on the European Economic Area, transported into the country and marketed here, even if they do not comply with the applicable food law provisions in the Federal Republic of Germany. clause 1 does not apply for products which

1. do not comply with the ban in § 30 or
2. do not comply with other legal provisions for the protection of health, unless the marketability of the products in the Federal Republic of Germany has been announced in the Federal Gazette by a general ruling of the Federal Office for Consumer Protection and Food Safety in accordance with paragraph 2.

(2) General rulings in accordance with paragraph 1 clause 2 no. 2 shall be issued by the Federal Office for Consumer Protection and Food Safety in agreement with the Federal Office for Economics and Export Control as long as no compelling public health reasons warrant otherwise. They are to be applied for by those who intentionally transport the products into the country. If a product is found to pose a health threat, the findings of the international research and the dietary habits in the Federal Republic of Germany must be considered. General rulings in accordance with clause 1 benefit all importers of the product in question from

Member States of the European Union or other countries that are parties to the Agreement on the European Economic Area.

(3) A precise description of the product and the available documents necessary are to be enclosed with the application. A decision on the application shall be made in a timely manner. If a final decision about the application is not possible within 90 days, the applicant must be informed for the reasons.

(4) (omitted)

§ 47b Temporary transfer bans

The competent authorities may temporarily prohibit or restrict the import or other transport of products within the meaning of this Act into the country in individual cases if

1. the Member States of the Commission have been authorized to do so and the Bundesministerium has announced it in the Federal Gazette or
2. there is evidence that supports the conclusion that the products are likely to put human health at risk.

§ 48 Cooperation of customs authorities

(1) The Federal Ministry of Finance (German: Bundesministerium der Finanzen) and the customs authorities specified by it cooperate in the monitoring of the transport of products within the meaning of this Act into or out of the jurisdiction of this Act or the transit. The said authorities can

1. can stop shipments of the type mentioned in clause 1 and their means of transport, containers, loading equipment and packaging material during the transport into or out of the jurisdiction of this Act or the transit to monitoring;
2. inform the responsible administrative authorities of the suspicion of violations of the bans and restrictions of this Act or the statutory orders issued under this Act, which arises at the time of the customs clearance;
3. in the cases of number 2, order that the shipments of the type mentioned in clause 2 be shown to one of the authorities responsible for food control, at the expense and risk of the designated party,

(2) The Federal Ministry of Finance regulates the details of the procedure according to paragraph 1 in agreement with the Bundesministerium by statutory order without the approval of the Bundesrat. In particular, it can issue regulations regarding obligation to notify, registration, information and support as well as tolerating the inspection of commercial documents and other documents and tolerating visits and the taking of free samples.

§ 49 Authorizations

(1) The Bundesministerium shall be authorized, in agreement with the Federal Ministry of Finance by statutory order with the approval of the Bundesrat, to the extent that it is necessary for consumer protection,

1. to prohibit or to restrict the import or otherwise bringing products within the meaning of this Act into the country, also in the cases of § 47 para. 2,
2. to make it independent from
 - a) the registration, permission or approval of companies in which the products are manufactured or handled and to specify the details for it,
 - b) the registration or presentation at the competent authority and to specify the details for it, in particular regarding the destination of the products,
 - c) a document or identity check and a goods inspection and specify their details, in particular their frequency,
 - d) the procurement of an official inspection certificate or the template of a comparable certificate,

- e) the carrying and use of an official certificate stating the type, scope or result of the tests and inspection performed and described in c,
- f) the specification of certain storage times and obligations to notify about their compliance and the whereabouts of the products;

it can then be stipulated that the document and identity check, the goods inspection and the registration or presentation in or at a border inspection post or border entry post are to be carried out in cooperation with a customs office. In the cases of clause 1 no. 2 (e) and (f), the details about type, form and content of the supporting documents, about the distribution procedure or the duration of their validity and retention can be regulated.

(2) In the statutory order according to clause 1, it can be ordered that certain tobacco products may only be imported or brought into the country through certain customs offices, border inspection posts, border entry posts or border exit posts or other official sites. The Federal Office for Consumer Protection and Food Safety announces the sites named in clause 1 in the Federal Gazette, in the event the customs offices in agreement with the Federal Ministry of Finance, unless a notice is posted by the European Commission in the legal acts of the European Union. The Federal Ministry of Finance can transfer the granting of the agreement to intermediate authorities in its business area, according to clause 2.

(3) The Bundesministerium shall furthermore be authorized, in agreement with the Federal Ministry of Finance by statutory order with the approval of the Bundesrat, to the extent it is necessary for consumer protection,

1. to make the transit of products within the meaning of this Act and their storage in customs warehouses, free warehouses or in warehouses in free zones independent of
 - a) a permit from the competent authority,
 - b) requirements for the transport and storage in the country,
 - c) the export, also within certain periods, through certain border inspection sites and to specify the details for it,
 - d) an export control in cooperation with a customs office,
 - e) approval of the customs warehouse, free warehouse or warehouse in free zones by the competent authority;in the cases of (a) and (b), the details about type, form and content of the supporting documents, about the distribution procedure or the duration of their validity and retention can be regulated.
2. to issue provisions for the transit in accordance with paragraph 1.

§ 50 Export

(1) The provisions of this Act and the statutory orders issued based on this Act apply to the products within the meaning of this Act, which are intended for delivery abroad, unless different requirements apply for the products in the country of destination and the products meet these requirements. Upon the request of the competent authority, the manufacturer or marketer of products of the type mentioned in clause 1, which are intended for delivery abroad and do not comply with the provisions of this Act or the statutory orders issued based on this Act, must provide credible proof through suitable means that the products comply with the regulations applicable in the country of destination.

(2) If products within the meaning of this Act brought into the country on the basis of this Act or the statutory orders issued on the basis of this Act are objected to, then they can, in derogation of paragraph 1, be transported out of the country for return to the supplier. International agreements, which the legislative bodies have approved in the form of a federal law and the legal acts of the bodies of the European Community or the European Union. clause 1 does not apply to products that do not comply with the bans in § 30.

(3) Products within the meaning of this Act, which do not comply with the food law provisions in force in the Federal Republic of Germany in accordance with paragraph 1, must be identified and kept separate from products that are intended for marketing in the Federal Republic of Germany.

(4) The provisions of this Act and the statutory orders issued on the basis of this Act do not apply to products within the meaning of this Act, which are intended for equipping seagoing vessels.

(5) The Bundesministerium shall be authorized, by statutory order with the approval of the Bundesrat

1. to declare additional provisions of this Act and statutory orders issued on the basis of this Act on products that are intended for equipping seagoing vessels applicable to the extent it is necessary for consumer protection.

2. to issue different or additional provisions for product that are intended for equipping seagoing vessels, to the extent it is consistent with consumer protection,

3. to stipulate the registration of companies that equip seagoing vessels to the extent it is necessary for consumer protection;

§ 49 para. 3 applies accordingly.

(6) The Bundesministerium shall be authorized, by statutory order with the approval of the Bundesrat, to the extent it is necessary for the execution of legal acts of the European Community or the European Union within the scope of this Act, the transport of products within the meaning of this Act into other Member States or other countries that are parties to the Agreement on the European Economic Area or to prohibit or restrict them in third countries.

§ 51 Criminal offenses

(1) A prison sentence of up to three years or a fine shall be imposed on anyone who

1. to 4. (omitted)

5. contrary to § 30 no. 1 manufactures or handles consumer goods or contrary to § 30 no. 2 markets goods or products as consumer goods or

6. violates a statutory order issued under § 32 para. 1 no. 1 to 3 for consumer goods to protect public health, to the extent it refers to this penal provision for a certain fact of the case, or contrary to § 32 para. 2, markets consumer goods, which do not comply with a statutory order issued under § 32 para. 1 no. 1 to 3.

(1a) (omitted)

(2) Even an attempt is punishable.

(3) In particularly serious cases, the prison sentence is from six months to up to five years. As a general rule, a case is particularly serious if the offender, through one of the actions described in paragraph 1,

1. puts the health of a large number of people at risk,

2. another at risk of death or a serious damage to the body or health or

3. achieves great pecuniary gain out of interest for oneself or another

(4) Anyone who is negligent, in the cases of paragraph 1, shall be punishable by a prison sentence of up to one year or a fine.

§ 52 Criminal offenses

(1) A prison sentence of up to three years or a fine shall be imposed on anyone who

1. to 4. (omitted)

5. contrary to § 13 para. 1 no. 1, uses irradiation that is not allowed, contrary to § 13 para. 1 no. 2 markets tobacco products or violates a statutory order according to § 13 para. 2, to the extent it refers to this penal provision for a certain fact of the case,

6. contrary to § 14 para. 1 markets tobacco products, in which on which plant protection or other products or their degradation or reaction products are present, or violates a statutory order issued under § 14 para. 2 no. 1 (b) or no. 2, to the extent they make reference to this penal provision for a particular event.
7. (omitted)
8. contrary to § 16 para. 1 clause 1, does not identify the use of irradiation or violates a statutory order issued under § 16 para. 1 clause 2 or para. 2 no. 1, to the extent they make reference to this penal provision for a particular event.
9. contrary to § 17 no. 1, markets tobacco products or contrary to § 17 no. 2 markets food without sufficient labeling.
10. contrary to § 17 no. 5, markets tobacco products under a misleading name, information or packaging, or advertises with a misleading description or statement, or
11. (omitted)
12. (omitted)
13. violates a statutory order issued under § 50 para. 6 to the extent that they make reference to this penal provision for a particular event.

(2) A sentence or a fine shall also be imposed on anyone who

1. contrary to § 20 para. 1 no. 1 uses substances that are not permitted in the manufacture of tobacco products, violates a statutory order issued under § 20 para. 3 or under § 21 para. 1 no. 1 (a) to (c) or (g) or under § 21 para. 1 no. 2 (b) or (c), to the extent they make reference to this penal provision for a particular event, or markets tobacco products contrary to § 20 para. 1 no. 2 or § 21 para. 2 or substances contrary to § 20 para. 1 no. 3 or
2. to 9. (omitted)
10. violates a statutory order issued under § 32 para. 1 no. 4 or 5 to the extent that they make reference to this penal provision for a particular event, or contrary to § 32 para. 2, markets consumer goods that do not comply with a statutory order issued under § 32 para. 1 no. 5.

11. (omitted)

§ 53 Administrative offenses

(1) An administrative offense shall be deemed to have been committed by anyone who commits an act of negligence described in § 52 para. 1 no. 5 to 10 or para. 2.

(2) An administrative offense shall also be deemed to have been committed by anyone who intentionally or negligently

1. a provision of § 21a para. 2, 3 clause 1, also in connection with para. 4, para. 5, 6 or 7, or of § 22 paragraph 2 clause 1 or a statutory order under § 21 para. 1 no. 1 (d) to (f), (i) or (j) or § 22 para. 3, to the extent they make reference to this provision on administrative fines for a particular event,

1a. contrary to § 21b paragraph 2, 3 or 4, sponsors an audio-visual media service or an audiovisual program, puts a product placement in an audio-visual program or operates other audio-visual commercial communication,

2. violates a statutory order issued under § 32 para. 1 no. 7, 8, 9 (a) or (b) or no. 9a to the extent they make reference to this provision on administrative fines for a particular event, or

3. violates a statutory order issued under § 50 para. 5 clause 1 no. 3 to the extent they make reference to this provision on administrative fines for a particular event.

(3) The administrative offense may result in a fine of up to twenty-five thousand euros.

§ 54 Administrative offenses

(1) An administrative offense shall also be deemed to have been committed by anyone who intentionally or negligently

1., 2., 2a. (omitted)

3. violates a statutory order issued under § 32 para. 1 no. 9b or 12, to the extent that they make reference to this provision on administrative fines for a particular event,
4. violates the transport ban of § 47 para. 1 clause 1,
5. violates an order under § 47b or § 48 para. 1 no. 3.

(2) An administrative offense shall also be deemed to have been committed by anyone who intentionally or negligently

1. violates a statutory order issued under § 16 para. 2 no. 2 or under § 21 para. 1 no. 1 (h) if they make reference to a provision for administrative fines for a particular event,
2. contrary to § 43 does not allow a control measure under § 41 para. 3 no. 1, 2 or 3 or a sampling in accordance with § 42 para. 1 or 4, a report conforming to § 41 para. 3 no. 4, does not support not, not fully or not properly granted or a person not supported in the monitoring,
- 2a. (omitted)
3. violates a statutory order issued under § 41b or under § 48 para. 2 or under § 49 para. 1 or para. 2 clause 1 or para. 3, to the extent that they make a reference to this provision for administrative fines for a particular event,
4. contrary to § 50 para. 3 does not keep separate or identify products.

(3) An administrative offense can result in a fine of up to fifteen thousand euros in the cases of paragraph 1; in a fine of up to five thousand euros in the cases of paragraph 2.

§ 55 Collection

Objects to which a criminal offense under § 52 or an administrative offense under § 53 or 54 refer, can be collected. § 74a of the Criminal Code and § 23 of the Administrative Offenses Act shall apply.

§ 56 Criminal offenses

(1) A prison sentence of up to three years or a fine shall be imposed on anyone who violates a directly applicable provision in legal acts of the European Community or European Union, which comply in content refer to a regulation to which the provisions mentioned in § para. 1 no. 6 authorize, or comply with a ban mentioned in §51 para. 1 no. 5 or 6 to the extent that a statutory order under § 50 no. 1 makes reference to this penal provision for a particular event.

(2) § 51 para. 2 and 3 shall apply accordingly.

(3) Anyone who in the cases of paragraph 1 behaves negligently shall be punishable with a prison sentence of up to one year or a fine.

§ 57 Criminal offenses

A prison sentence of up to one year or a fine shall be imposed on anyone who violates a directly applicable provision in legal acts of the European Community or the European Union, which

1. contains a regulation, which authorizes the provisions in
 - a) (omitted)
 - b) § 52 para. 1 no. 5 or 8 or para. 2 no. 1 or 10 or 2, 6, 7 or 10,
 - c) § 52 para. 1 no. 6
 - d) (omitted)
- or
2. complies with a requirement or ban mentioned in
 - a) § 52 para. 1 no. 5 or 8 or para. 2 no. 1 or 10 or
 - b) § 52 para. 1 no. 6

to the extent a statutory order under § 60 makes reference to this penal provision.

§ 58 Administrative offenses

(1) An administrative offense shall be deemed to have been committed by anyone who commits an act of negligence described in § 57.

(2) An administrative offense shall be deemed to have been committed by anyone who

1. intentionally or negligently violates an immediately applicable provision of the European Community or the European Union, which in content

a) complies with a regulation, which authorizes the provisions mentioned in § 53 para. 2 no. 1 (c) or (d),
or

b) complies with a requirement or ban mentioned in § 53 para. 2 no. 1 (c)

to the extent a statutory order under § 60 makes reference to this provision on administrative fines, or
2. (omitted)

§ 59 Administrative offenses

(1) An administrative offense shall be deemed to have been committed by anyone who intentionally or negligently violates an immediately applicable provision of the European Community or the European Union, which in content

1. complies with a regulation, which authorizes the provisions mentioned in § 54 para. 1 no. 3, or

2. a) complies with a regulation, which authorizes the provisions mentioned in § 54 para. 2 no. 1 or 3, or

b) complies with a requirement or ban mentioned in § 54 para. 2 no. 2

to the extent a statutory order under § 60 makes reference to this provision on administrative fines.

(2) an administrative offense can result in a fine of up to fifteen thousand euros in the cases of paragraph 1 no. 1, in a fine of up to five thousand euros in the cases of paragraph 1 no. 2.

§ 60 Authorizations

The Bundesministerium shall be authorized, to the extent it is necessary for the execution of legal acts of the European Community or the European Union, by statutory order without the approval of the Bundesrat, to designate the events, which

1. are to be punished as a criminal offense under § 56 para. 1 or § 57 or

2. could be punished as an administrative offense under § 58 para. 2 or § 59 para. 1.

§ 61 Collection

Objects to which a criminal offense under § 56 or § 57 or an administrative offense under § 58 or 59 refer, can be collected. § 74a of the Criminal Code and § 23 of the Administrative Offenses Act shall apply.