



LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF
THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

AUSTRIA

Communicated by the Government of Austria

NOTE BY THE SECRETARY-GENERAL – In accordance with the relevant Articles of the International Treaties on Narcotic Drugs and Psychotropic Substances, the Secretary-General has the honour to communicate the following legislative texts.

Austria

E/NL.1979/26

Narcotic Drugs Act

Narcotic Drugs Act, 1951 ^{1/} (Bundesgesetzblatt No. 234), as amended by the Narcotic Drugs Amendment Act, 1971 ^{2/} (Bundesgesetzblatt No. 271), the Penal Code Adaptation Act (Bundesgesetzblatt No. 1974/422) and the Narcotic Drugs Amendment Act, 1977 (Bundesgesetzblatt No. 1978/532).

Section 1

- (1) Narcotic drugs within the meaning of this Federal Act are substances and preparations which are subject to restrictions on production (extraction and manufacture), possession, trade, import, export, conveyance in transit, handling or use under the Single Convention on Narcotic Drugs of 30 March 1961, done at New York (Bundesgesetzblatt No. 1978/531), as amended by the Geneva Protocol of 25 March 1972 (Bundesgesetzblatt No. 1978/534).
- (2) The substances and preparations to which this Federal Act applies as narcotic drugs within the meaning of paragraph (1), and new psychotropic substances within the meaning of paragraph (3), shall be listed in an Order.
- (3) The following substances, their salts and preparations are also narcotic drugs for the purposes of this Federal Act:

1/ Note by the Secretariat: E/NL.1960/11

2/ Note by the Secretariat: E/NL.1973/30

- (a) d-lysergic acid diethylamide [(+)-lysergide, LSD, LSD-25];
 - (b) 3,4,5-trimethoxyphenethylamine (mescaline);
 - (c) 2-amino-1-(2,5-dimethoxy-4-methyl) phenylpropane (STP,DOM);
 - (d) 3-(2-dimethylaminoethyl) indol-4-yl-dihydrogenphosphate (psilocybine);
 - (e) 3-(2-dimethylaminoethyl)-4-hydroxyindol (psilocine);
 - (f) N,N-diethyltryptamine (DET);
 - (g) N,N-dimethyltryptamine (DMT);
 - (h) 3-(1,2-dimethylheptyl)-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo [b,d] pyran (DMHP);
 - (i) 3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo [b,d] pyran (parahexyl);
 - (k) 1-hydroxy-3-pentyl-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo [b,d] pyran (tetrahydrocannabinols, all isomers);
 - (l) 3-methyl-2-phenylmorpholine (phenmetrazine);
 - (m) 2-phenyl-2-(2-piperidyl)acetic acid methyl ester (methylphenidate).
- (4) In accordance with the provisions of the Single Convention on Narcotic Drugs and this Federal Act, poppy straw and cannabis plants are likewise subject to the restrictions set forth in paragraph (1).

Section 1a

The production and preparation, acquisition, possession and distribution of narcotic drugs and their import, export and conveyance in transit shall be permitted only for medical, veterinary or scientific purposes and only in accordance with the provisions of this Federal Act.

Section 2

- (1) The production, processing, conversion, acquisition and possession of narcotic drugs shall not be permitted except:
- 1. Under a special permit issued by the Federal Ministry of Social Administration, and in the maximum quantities fixed by the said Ministry, to producers of chemical and pharmaceutical preparations who are in possession of a licence under section 15 (14) of the Trade Regulations and wholesale druggists who either do not carry on any retail trade whatever or carry on such a trade separately;

2. To scientific institutes or public educational, experimental, research or similar technical establishments in accordance with a certificate issued by the competent supervisory authority and stating that they require the narcotic drugs for the performance of their tasks.

(2) The cultivation of plants for the purpose of extracting a narcotic drug shall be forbidden, except for scientific purposes by the institutes and establishments referred to in paragraph (1), subparagraph 2.

(3) The federal supervisory bodies and the authorities responsible for executing this Act shall be allowed to acquire and possess narcotic drugs even without a permit in so far as they need them for educational or training purposes, or in so far as narcotic drugs come into their possession in execution of this Act.

(4) The preparation, acquisition and possession of narcotic drugs by medical units of the Federal armed forces shall be allowed even without a permit in so far as they need them for the medical treatment of members of the Federal armed forces.

(5) The persons or establishments authorized under paragraph (1), subparagraph 1, may not issue narcotic drugs except to persons and establishments authorized under paragraphs (1), (3) and (4), pharmacies and institution dispensaries.

Section 3

(1) In accordance with the regulations governing pharmacies and subject to the restrictions set forth in the executive regulations made for applying this Act, pharmacies may issue medicaments containing narcotic drugs to one another and against prescriptions to hospitals, doctors, veterinary surgeons and dentists for the requirements of their practice and also to persons for whom such medicaments have been prescribed.

(2) The provisions of section 2, paragraph (1) shall not apply to the acquisition and possession of medicaments containing narcotic drugs by persons to whom they have been issued under paragraph (1).

Section 4

Medicaments containing narcotic drugs may be prescribed only if their use is based on the principles of medical or veterinary science, and if other medicaments do not suffice.

Section 4a

The stocks of narcotic drugs held by persons entitled to possess such drugs under section 2, paragraphs (1) to (4), as well as in public and institution pharmacies, the medicine chests of doctors and veterinary surgeons, and also in hospitals, must be secured against theft by suitable arrangements, according to the circumstances, such as separate storage in securely lockable cupboards, the burglar-proof locking of the doors and windows of the storage rooms, and the installation of alarm systems. The district administrative authorities may issue detailed instructions for the provision of theft-proof storage, according to the type and quantity of the narcotic drugs held.

Section 5

So far as may be necessary to prevent risk to human life or health through the abuse of narcotic drugs, and for the purpose of controlling the regular trade in and handling of narcotic drugs more detailed provisions regarding the following shall be issued by Order:

1. The import, export and conveyance in transit of narcotic drugs and poppy straw;
2. The production and processing, limitation of production to prescribed quantities and sources of supply and other trade in and handling of narcotic drugs;
3. The issue of supply permits and requirement certificates in respect of narcotic drugs;
4. The keeping of registers and submission of continuous information on manufacture and processing, import, export and conveyance in transit of narcotic drugs, other trade operations, existing stocks of narcotic drugs and deliveries of such drugs;
5. The prescription and issue of medicaments containing narcotic drugs.

Section 6

(1) Persons who wittingly and in violation of these provisions produce, import, export or trade in narcotic drugs in such quantities as to constitute a general danger to human life or health shall be guilty of an offence against the public health and shall be liable to terms of imprisonment of from one to five years, or, in the case of aggravating circumstances, and in particular when the offender is a member of a ring, to terms of imprisonment not exceeding 10 years. Fines not exceeding 225,000 schillings may be imposed in addition to such imprisonment.

(2) The amount of the fine shall be so assessed as to exceed the profit which was derived or was intended to be derived from the punishable act. If the maximum fine imposable by law does not suffice, it may be exceeded, but shall not exceed twice the amount of the profit. A term of imprisonment imposed in default of payment of a fine may not exceed one year.

(3) The objects used in the punishable act or the proceeds therefrom shall be declared confiscated if they are owned by the offender or an accomplice or accessory to the offence or if they were owned by such persons at the time of the seizure. In other cases, they may be declared confiscated. Similarly, materials and apparatus used for manufacture or processing may be declared confiscated, and also vehicles used for transport other than vehicles owned by a public transport undertaking if the owner of the vehicle was aware that it was to be misused for unlawful purposes.

(4) If the objects or their proceeds cannot be seized or are not declared confiscated, a fine equal to the value of such objects or their proceeds shall be imposed. The fine shall be imposed in the judgement, but if it only subsequently transpires that the confiscation cannot be executed, the fine shall be imposed without argument in court. The parties shall be informed of the decision, and appeal may be lodged within three days.

(5) The term of imprisonment imposed (in addition to the sentence for the offence) in default of payment of a fine, and the term of imprisonment imposed in default of payment of a fine imposed in lieu of confiscation, shall not in the aggregate exceed a total of 18 months.

Section 7

If no specific person can be prosecuted or convicted, the objects used in the punishable act or the proceeds from such objects may be declared confiscated, provided that grounds for such action exist.

Section 8

(1) Any person who associates with another for the purpose of committing the offence referred to in section 6, or who enters into an agreement with another for the purpose of committing the said offence, is by that act alone guilty of a crime and shall be liable to a term of imprisonment of not more than one year and, if the association or agreement was for the purpose of committing the offence referred to in section 6 in the course of business, to a term of imprisonment of not less than one nor more than five years.

(2) Any person who withdraws from such association or agreement of his own free will before an offence under section 6 is committed or attempted shall not be punishable under this provision.

Section 8a

Any person who wilfully encourages the abuse of narcotic drugs in print, in a moving picture or in any other public manner, or who approves such abuse in a manner likely to lead thereto, shall be guilty of an offence punishable by a term of imprisonment of not more than six months, or by a fine not exceeding a certain percentage of 360 days' earnings.

Section 9

(1) The following shall be deemed to have committed a punishable act:

1. Any person who delivers narcotic drugs to another person who is not authorized to acquire such drugs;
2. Any person who, without being authorized thereto, manufactures, processes, acquires or possesses a narcotic drug (Bundesgesetzblatt No. 1949/31, Art.1, paragraph 3);
3. Any person who in the practice of medicine prescribes a narcotic drug for, or issues such a drug to, another person, except in accordance with the principles of medical or veterinary science as the case may be;
4. Any person who delivers to a person for whom the certificate is not intended a certificate authorizing the supply of a narcotic drug;
5. Any person who forges or falsifies a certificate authorizing the supply of a narcotic drug;
6. Any person who delivers to another person a forged or falsified certificate authorizing the supply of a narcotic drug.

(2) Unless a heavier penalty is prescribed for the offence, the court shall sentence the offender to imprisonment for a term not exceeding six months or to a fine not exceeding a certain percentage of 360 days' earnings; but an offender who has committed the offence in the course of business or, being over 21 years of age, has wittingly, by his offence, enabled a person under 21 years to use a narcotic drug shall be sentenced to a term of imprisonment

not exceeding one year. Should the offence result in serious bodily harm or the death of a person, the offender shall be liable to the penalties provided for in section 88, paragraph 4, or section 81 of the Penal Code. In cases where a term of imprisonment for more than six months is impossible, a fine not exceeding a certain percentage of 360 days' earnings may be imposed in addition to the term of imprisonment (Bundesgesetzblatt No. 1947/243, Art. V).

(3) The stock of narcotic drugs discovered shall be declared confiscated.

Section 9a

(1) Where a person is charged only with unlawfully acquiring or possessing a quantity of a narcotic drug (section 9, paragraph (1), subparagraph 2, third and fourth cases) not exceeding his prescribed weekly dose, and the district administrative authority finds either that he does not need, or that he is undergoing, medical treatment or supervision for drug addiction (section 9b, paragraph (2)), the State Counsel shall defer action on the information. Where a motion has already been made for proceedings to be instituted against the person named in the information, the proceedings shall be suspended on the same grounds.

(2) The person named in the information shall be notified of the said deferment of action or suspension of proceedings. Such notice shall interrupt the period of prescription.

(3) Penal proceedings shall be started or resumed if within one year after the person named has been notified of the deferment of action or suspension of proceedings the district administrative authority ascertains that he is persistently evading the medical treatment or supervision made necessary by his addiction, or that within the said year proceedings under this Federal Act have been started against him for a further offence; but where such proceedings are ended otherwise than by conviction the earlier proceedings shall be suspended.

(4) Where a person has already been convicted of an offence against this Federal Act punishable by law and has not completed his sentence, or where action has already been deferred or proceedings suspended under paragraph 1 hereof within the preceding three years, action may not again be deferred or proceedings suspended unless the district administrative authority ascertains that the person is undergoing the medical treatment necessary for his misuse of narcotic drugs.

Section 9b

(1) Where a person is charged only with unlawfully obtaining or possessing a quantity of narcotic drug (section 9, paragraph (1), subparagraph 2, third and fourth cases) not exceeding his prescribed weekly dose, the district administrative authority shall be notified accordingly.

(2) The district administrative authority shall cause the person named in the information to be medically examined and shall ascertain from the result of such examination whether and how far he needs medical treatment or supervision of his state of health in consequence of his misuse of narcotic drugs. The authority shall require him to undergo the necessary treatment or supervision and warn him of the consequences of refusal.

(3) Where the district administrative authority ascertains that the person named in an information needs no treatment or control, it shall inform the State Counsel accordingly. Where treatment or supervision is needed, it shall ascertain whether the person named is undergoing these. The State Counsel shall be informed whether the person named is undergoing or persistently evading medical treatment or supervision.

Section 10

(1) Any person who contravenes the provisions of this Federal Act, or of an order made pursuant to section 5 thereof, shall, if the offence is not punishable by the courts, be liable to a fine not exceeding 30,000 schillings or, in default of payment thereof, to a term of imprisonment for not more than three months, to be imposed by the district administrative authority or, in places within the local jurisdiction of a Federal Police Authority, by that Police Authority.

(2) If the offender is convicted, the objects used in the punishable act (section 6, paragraph (3)) may be declared confiscated. In appropriate cases, the proceeds of the objects declared confiscated may be handed to the owner.

Section 11

(1) The Federal Ministry of Health and the Environment, which is the competent authority for supervising the trade in and handling of narcotic drugs, shall also be the special administration under article 17 of the Single Convention on Narcotic Drugs.

(2) The reports and information needed for implementation of the Single Convention on Narcotic Drugs and this Federal Act shall be submitted to the Federal Ministry of Health and the Environment, in particular:

- (a) From the courts, the findings (convictions and suspensions of proceedings) relating to proceedings instituted in respect of offences under this Federal Act, and decisions and orders relating to stocks of narcotic drugs seized or declared confiscated;
- (b) From the district administrative authorities (Federal police authorities), the sentences imposed under section 10 of this Federal Act;
- (c) From the competent authorities and bodies, all information laid before the Office of the State Counsel under sections 6 to 9 of this Federal Act;
- (d) From the Office of the State Counsel, notifications of the deferment of action on information laid under sections 6 to 9 of this Federal Act;
- (e) From public and private hospitals and from the district administrative authorities, information concerning the addicts entered on the registration form issued by the Federal Ministry of Health and the Environment.

(3) The reports and information submitted to the Federal Ministry of Health and the Environment in accordance with paragraph (2) may be used only for the preparation of the reports to the United Nations required under the Single Convention on Narcotic Drugs and for purposes of health statistics. Personal reports and details are to be destroyed, after processing, by the Federal Ministry of Health and the Environment.

Section 12

(1) This Federal Act came into force, in its original version, simultaneously with the Executive Order ^{3/} made pursuant thereto (Bundesgesetzblatt No. 19/1947), i.e. on 30 January 1947. At the same time, all the regulations relating to drugs previously in force were repealed.

3/ Note by the Secretariat: E/NL.1979/36

(2) The provisions of this Federal Act amended by the Federal Act of 24 November 1948 (Bundesgesetzblatt No. 31/1949) (First Narcotic Drugs Amendment Act), came into force on 4 February 1949.

(3) Section 361 of the Penal Code of 1945 was repealed on the date mentioned in paragraph 1.

Section 13

The authorities responsible for the execution of this Federal Act are: the Federal Minister of Justice in respect of sections 6 to 9a, in collaboration with the Federal Minister for Health and the Environment in respect of section 9a; and, so far as the rest of the Act is concerned, the Federal Minister for Health and the Environment -

In collaboration with the Federal Minister of Agriculture and Forestry in respect of section 1, paragraph (4), and section 2, paragraph (2);

In collaboration with the Federal Minister of Trade, Commerce and Industry in respect of section 2, paragraph (2), subparagraph 1, and section 5, subparagraphs 2, 3 and 4;

In collaboration with the Federal Minister who is the supervisory authority at the time in respect of section 2, paragraph (1), subparagraph 2;

In collaboration with the Federal Minister of the Interior in respect of section 2, paragraph (3), section 10 and section 11, paragraphs (2)(b) and (c), and also, in respect of section 2, paragraph (3) and section 11, paragraph (2)(c), in collaboration with the Federal Minister of Finance;

In collaboration with the Federal Minister of Defence in respect of section 2, paragraph (4);

In collaboration with the Federal Minister of Finance and the Federal Minister of Agriculture and Forestry in respect of section 5, paragraph 1;

In collaboration with the Federal Minister of Justice in respect of section 9b and section 11, paragraphs (2)(a) and (d).