

Translation

Weapons law in the Federal Republic of Germany

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1. Introduction

The new Weapons Act (Waffengesetz, WaffG) entered into force on 1 April 2003, followed by the General Ordinance on the Weapons Act (Allgemeine Waffengesetz-Verordnung, AWaffV) on 1 December 2003. The fundamental reform of weapons law that thus came into effect was primarily intended to restructure the law in this field to achieve greater transparency and user-friendliness and to get rid of unnecessary red tape. In addition, substantive amendments were made, some of which tightened the rules, in order to bring the Weapons Act into line with changes in the private possession of weapons (particularly by marksmen).

2. Sources of law

1. The Weapons Act¹, as amended by the Act to Reform German Weapons Law of 11 October 2002², which came into effect on 1 April 2003
2. The General Ordinance on the Weapons Act of 27 October 2003³, which came into effect on 1 December 2003

A new Cost Ordinance on the Weapons Act⁴ is due to be issued sometime in 2004. General Administrative Provisions⁵ on the Weapons Act and on the General Ordinance have not yet been drawn up. The Federal Ministry of the Interior has informed us that these will not be issued until autumn 2004 at the earliest.

The Act to Reform German Weapons Law also introduced a separate Proof Testing Act⁶, which likewise came into effect on 1 April 2003. This Act contains provisions for testing and licensing weapons and ammunition under product and consumer safety aspects. Parts of this Act also affect the cross-border movement of weapons and ammunition. The Proof Testing

¹ Waffengesetz, WaffG.

² Gesetz zur Neuregelung des Waffenrechts (WaffRNeuRegG), Federal Law Gazette 2002, part I, p. 3970, 4592; 2003, part I, p. 1957.

³ Allgemeine Waffengesetz-Verordnung (AWaffV), Federal Law Gazette 2003, part I, p. 2123.

⁴ Kostenverordnung zum Waffengesetz (WaffKostV).

⁵ Allgemeine Verwaltungsvorschriften.

⁶ Beschussgesetz (BeschG), Federal Law Gazette 2002, part I, p. 3970, 4003, most recently amended by Article 116 of the Ordinance of 25 November 2003, Federal Law Gazette 2003, part I, p. 2304, 2317.

Act will be supplemented by an Ordinance⁷ on implementation and a Cost Ordinance⁸ in the course of 2004.

3. The most important amendments

Most of the amendments concern the situation in Germany and do not affect issues of cross-border relevance. The most important amendments that should nevertheless be mentioned are as follows:

- the minimum age for the acquisition and possession of weapons has been raised from 16 to 18 for hunters, and, as a rule, from 18 to 21 for marksmen;
- all persons under 25 must now obtain a certificate of medical and psychological fitness prior to acquiring their first firearm for which authorization is required (hunters and marksmen are exempted from this requirement under certain conditions), and the authorities' right to demand a certificate if they doubt the mental fitness of a person, even if over 25 years of age, has been transformed into a duty;
- certain relaxations have been introduced for hunters, marksmen and members of traditional rifle associations, especially with regard to (temporarily) bringing firearms and ammunition into Germany;
- a minor firearms certificate has been introduced for carrying arms used as warning devices or alarms or to fire non-lethal incapacitants; and
- particularly lethal striking, slashing and thrusting weapons, throwing stars, converted war weapons and unlicensed spray gas devices and stun guns have been banned since 1 April 2003 (pump guns have been prohibited since 17 October 2002).

4. Types of authorization

The Act distinguishes between (a) the acquisition and possession of weapons and ammunition, (b) carrying arms and (c) firing arms. Specific requirements must be met for each of these and separate authorizations obtained.

4.1 To acquire and possess a weapon one must obtain a licence for the possession of firearms (Waffenbesitzkarte) or ensure that a new weapon is added to those listed in an

⁷ Beschussgesetz-Verordnung (BeschV).

⁸ Kostenverordnung zum Beschussgesetz (BeschKostV).

existing licence. This licence allows you to carry the weapon within your own home, business premises or fenced-in property.

- 4.2 Authorization to acquire and possess ammunition for a given weapon is as a rule granted by being noted in the Waffenbesitzkarte. Only in exceptional cases (e.g. for ammunition collectors and experts) is a separate ammunition acquisition licence (Munitionserwerbsschein) for a specific type of ammunition required.
- 4.3 If you want to carry a legally acquired and held weapon outside your home, business premises or other fenced-in property, you additionally need a firearms certificate (Waffenschein). Carrying arms at public events is prohibited. For exceptions see section 8 below.
- 4.4 All persons over the age of 18 were previously allowed to acquire, possess and carry arms used as warning devices or alarms or to fire non-lethal incapacitants without obtaining any type of permit. Under the new rules, such firearms can still be acquired and possessed without authorization, but since 1 April 2003 a "minor firearms certificate" (Kleiner Waffenschein) has been required to carry such arms in public. This certificate is issued to persons who are at least 18 years old and have demonstrated their integrity and personal fitness. In contrast, it is still possible to acquire, possess and carry licensed spray gas devices without any authorization. Indeed, the new Weapons Act now permits persons from the age of 14 to have such weapons.
- 4.5 A further licence (Erlaubnisschein) is required to fire a firearm. Please refer to section 9 below.

Special authorizations are often required to transfer weapons and ammunition to, through or out of Germany and to travel with weapons to, through or out of Germany. Details are to be found in sections 5 and 6 below.

5. Transfer of weapons and ammunition

"Transferring" weapons or ammunition means moving them from one state to another where they are destined to remain in the long term or change ownership. Various conditions have to be fulfilled, depending on whether the weapon or ammunition is being transferred from an EU

or non-EU state, whether it is being transferred to, from or merely through Germany and whether it is being transferred to an EU or non-EU state. The conditions are set out below:

5.1 From an EU member state

5.1.1 To Germany (section 29 (1) and (2) of the Weapons Act)

A German transfer licence (Verbringenserlaubnis) is required. The application for this licence should include proof that one has obtained a licence from the EU state of origin to transfer the weapon or ammunition out of that state (required in all cases). The German licence will then simply approve the state of origin's licence. One must also prove that the recipient in Germany is entitled to acquire and possess the item(s) being transferred. The person effecting the transfer – if the item(s) are being transferred by a person other than the recipient – does not require a German licence for the possession of the weapon or ammunition transported. See below for the "safe transport" requirement.

5.1.2 Through Germany to a non-EU country (section 30 (1), 2nd sentence of the Weapons Act) and

5.1.3 Through Germany to an EU member state (section 30 (1) 2nd sentence of the Weapons Act)

As in 5.1.1 above, except that there is no need to prove that a recipient in Germany is entitled to acquire and possess the item(s) being transferred. When item(s) are being transferred to a non-EU country, any further requirements found in the laws and regulations of that third country must be fulfilled.

5.2 From a non-EU country

5.2.1 Through Germany to another non-EU country (section 30 (1) first sentence of the Weapons Act)

German transfer licence required. The application for this licence should include proof that the person effecting the transfer has a German licence for possession. See below for the "safe transport" requirement. The laws and regulations of the third states must be observed.

5.2.2 Through Germany to an EU member state (section 30 (2) of the Weapons Act)

As in 5.2.1 above, with the additional requirement that the German transfer licence may only be issued upon presentation of the destination state's licence allowing the transfer of the weapon/ammunition into its territory. If the destination state does not issue such

licences, official confirmation of this must be provided. The laws and regulations of the third state must be observed.

5.2.3 To Germany (section 29 (1) of the Weapons Act)

As in 5.2.1 above, with the additional requirement that one must also prove that the final recipient in Germany is entitled to acquire and possess the item(s) being transferred, should the transfer be effected by someone other than this recipient. The laws and regulations of the third state must be observed.

5.3 From Germany

5.3.1 To a non-EU country (section 31 (1) of the Weapons Act)

No German transfer licence required. The person effecting the transfer must have a German licence for possession or be statutorily exempt (section 12 (1) (2) of the Weapons Act – e.g. as a commercial deliverer of weapons and ammunition). See below for the "safe transport" requirement. The laws and regulations of the third country must be observed.

5.3.2 To an EU member state (section 31 (1) of the Weapons Act)

German transfer licence required. The application for this licence should include proof that the person effecting the transfer is entitled to acquire and possess the item(s), i.e. has a German licence for possession or is statutorily exempt (see 5.3.1 above) and that the safe transport of the items is ensured (see below). The German transfer licence may only be issued upon presentation of the destination state's licence allowing the transfer of the weapon/ammunition into its territory. If the destination state does not issue such licences, official confirmation of this must be provided.

German transfer licences are only issued for specific, individual transfers – no blanket licences can be granted.

"Safe transport" means the transport of weapons or ammunition in a securely locked container, ensuring that they are not readily accessible or ready to fire. If the weapon is readily accessible during the journey (e.g. in the glove compartment of a car) or is ready to fire, then the weapon is not being merely transferred – it is being carried. Carrying firearms requires an additional licence. Carrying them without such a licence is a criminal offence.

The requirements for obtaining licences to carry and fire weapons, e.g. those brought into Germany from abroad for one's own private use, are set out in sections 8 and 9 below.

Supplementary note on purchasing weapons or ammunition in Germany

In line with section 5.3 above, persons resident abroad who want to buy a weapon or ammunition in Germany may only take possession of it in Germany and personally effect its transfer to their home country if they have a German licence for possession (Waffenbesitzkarte). Such a licence may in principle be issued to non-residents for the sole purpose of transferring a weapon from Germany to a third country, but it is no doubt simpler to commission a dealer in Germany to send the weapon or ammunition directly to the home address of the purchaser in the third country. The German transfer licence required for deliveries to other EU countries would then have to be applied for by the dealer.

The laws and regulations of the country into which the weapon is being transferred must be observed in all cases.

6. Travelling with weapons to, through or out of Germany

Travelling with weapons in this context means temporarily bringing a weapon or ammunition from one state into another without any change of ownership, after which time the weapon or ammunition will be taken back to the country of origin. As seen above for the transfer of weapons and ammunition, there are various possible permutations for such travel. Different conditions have to be fulfilled depending on whether a person is travelling with the weapon or ammunition from an EU or non-EU state, whether it is being taken from, to or merely through Germany and, if it is being taken out of Germany, whether it is being taken to an EU or non-EU state. The requirements for these various permutations are set out below:

6.1 From an EU member state

6.1.1 To Germany, or

6.1.2 Through Germany to a non-EU country, or

6.1.3 Through Germany to an EU member state

A German travel licence (Mitnahmeerlaubnis) is required. The European firearms pass issued by the state of origin must be presented when applying for this licence. If travelling through Germany to a non-EU country, check that country's laws and regulations for further requirements.

6.2 From a non-EU country

6.2.1 To Germany, or

6.2.2 Through Germany to another non-EU country

A German travel licence is required. The laws and regulations of the third state(s) must be observed.

6.2.3 Through Germany to an EU member state

A German travel licence is required. This may only be granted upon presentation of the destination state's licence, should it require one, allowing the weapon or ammunition to be taken into its territory. If the destination state does not issue such licences, official confirmation of this must be provided. The laws and regulations of the third state must be observed.

6.3 From Germany

6.3.1 To an EU member state

The German arms authorities will issue a European firearms pass upon request. The laws and regulations of the state through or to which the weapon or ammunition is travelling must be observed.

6.3.2 To a non-EU country

No licence or European firearms pass required. The laws and regulations of the third country must be observed.

6.4 Exceptions for marksmen, hunters and traditional riflemen

6.4.1 From an EU member state

Marksmen, hunters and members of traditional rifle associations from an EU member state may travel to or through Germany with the following weapons without obtaining a German travel licence, provided they hold a European firearms pass issued by their state of origin and can prove the reason for the journey, e.g. by presenting an invitation:

- hunters: up to three long firearms and matching ammunition for hunting,
- marksmen: up to six sports firearms and matching ammunition for target shooting,
- riflemen: up to three single-shot or repeating long firearms and matching ammunition for participating in riflemen's meetings.

If firearms other than those licensed for the named purposes are brought, a German travel licence must be applied for.

6.4.2 For marksmen, hunters and traditional riflemen from non-EU countries

Marksmen, hunters and traditional riflemen from non-EU countries must obtain a German travel licence to bring the weapons listed under 6.4.1 above into the country. However, the requirements for obtaining such licences are considerably relaxed for them: they do not have to provide a certificate of integrity and personal fitness, and the licence will as a rule only be refused if the authorities have reason to believe that the applicant lacks such integrity and fitness. The authorities have been granted the discretion to refrain from requiring an examination of integrity and fitness.

If more weapons or different weapons are to be brought into the country, the above privileges do not apply – a German travel licence must be applied for under the normal conditions.

If the above-mentioned categories of people are travelling from a non-EU country through Germany to an EU member state, a German travel licence may only be issued upon presentation of the destination state's licence, should it require one, allowing the weapon or ammunition to be taken into its territory. If the destination state does not issue such licences, official confirmation of this must be provided.

6.5 Other exceptions

6.5.1 German licences for the possession of firearms (Waffenbesitzkarten)

A travel licence is not required if the traveller holds a German Waffenbesitzkarte for the weapons and ammunition concerned. A German Waffenbesitzkarte can in certain circumstances be issued to persons resident abroad (e.g. foreign hunters with rights over hunting grounds in Germany).

6.5.2 Arms used for signalling

Arms used for signalling that are carried on ships for safety reasons, and their ammunition, may be brought in without a licence.

A German travel licence may be issued for up to one year for either a single journey or multiple journeys, and may be repeatedly extended for periods of one year.

Persons travelling with firearms must transport their weapons and ammunition safely, i.e. these must not be readily accessible or ready to fire during the journey and must be kept in a securely locked container. If a weapon is readily accessible during the journey (e.g. in the

glove compartment of a car) or is ready to fire, then it is not merely being brought on the journey – it is being carried. Carrying firearms requires an additional licence. Carrying them without such a licence is a criminal offence.

The requirements for granting licences to carry and fire weapons brought into Germany for the purposes of hunting, target shooting or participating in riflemen's meetings are set out in sections 8 and 9 below.

Persons authorized to travel to or through Germany with weapons and ammunition (i.e. in cases where a travel licence is not required or where a travel licence has been obtained) do not require a German licence for the possession of firearms (Waffenbesitzkarte).

7. The obligation to declare weapons at borders when transferring or travelling with them from third countries

When transferring or travelling with weapons or ammunition to or through Germany from a non-EU country, the weapon/ammunition must be declared to the customs authorities at the border and, if requested, demonstrated. The documents entitling the holder to transfer or travel with them (see sections 5 and 6 above) must be presented. Customs officials and the Federal Border Police may stop and inspect vehicles and containers as well as the loading gear and the packaging materials used in order to check whether the provisions on transfer and travel into or through Germany have been met.

Items do not have to be declared when entering Germany from another EU member state.

8. Carrying arms in Germany

The following principles apply to carrying arms in Germany:

- A firearms certificate is always required. Since 1 April 2003, certificates are even required for arms used as warning devices or alarms or to fire non-lethal incapacitants, which were previously exempt (see section 4.4 above). A "minor firearms certificate" for these types of weapons is issued to persons who are at least 18 years old and have demonstrated their integrity and personal fitness.
- Even holders of firearms certificates may not carry their weapons at public entertainments, fairs, sports events, trade fairs, exhibitions, markets and similar public events.

Special rules apply to the following categories of people:

8.1 Exceptions for hunters

Hunters holding a German hunting licence (including a German annual or day "hunting licence for foreigners") do not require a firearms certificate to carry hunting weapons, ready to fire, within the hunting grounds for the purposes of hunting, training hounds, and protecting game and forests. Hunters holding a young persons hunting licence may carry hunting weapons, ready to fire, within the hunting grounds for the purposes of training or hunting, including shooting competitions for hunters, without holding a firearms certificate. Hunters may also transport their weapons outside the hunting grounds, e.g. between their home and the hunting grounds or to a gunsmith, without a certificate, provided the weapons are not readily accessible and not ready to fire.

8.2 Exceptions for members of traditional rifle associations

Two different certificates are required to carry single-shot or repeating long weapons, ready to fire, at a riflemen's meeting – a waiver for carrying a weapon at all and an exemption from the ban on carrying weapons at public events. These two certificates do not need to be applied for by each participant in the meeting – they will rather be issued to a leading member of the riflemen's association organizing the event, if it is guaranteed that due care will be exercised. The single-shot and repeating long weapons may be transported outside the event grounds, e.g. from participants' homes to the grounds, without a certificate, provided the weapons are not readily accessible and not ready to fire.

9. Firing weapons in Germany

A licence is always required before a weapon may be fired. However, special rules apply to the following categories of people:

9.1 Exceptions for hunters

Hunters holding a German hunting licence (including an annual or day "hunting licence for foreigners") do not require a normal firing licence (Erlaubnisschein) to fire hunting weapons within the hunting grounds for the purposes of hunting, training hounds, protecting game or forests. Hunters holding a young persons hunting licence may fire hunting weapons within the hunting grounds at training sessions or hunts, including shooting competitions for hunters, without a normal licence.

9.2 Exceptions for members of traditional rifle associations

Firing cartridges from single-shot or repeating long weapons at a rifleman's meeting does require authorization, but licences do not have to be applied for by each individual participant. Authorization will rather be granted for multiple events over a period of up to five years to a leading member of the rifleman's association organizing the event, provided due care is taken, liability insurance has been taken out, the event cannot present any danger to public safety and there are no other reasons for not granting the authorization.

9.3 Exceptions for private grounds

Certain types of low penetration weapons or firearms that take cartridges may be fired on one's own fenced-in property, provided the projectiles cannot escape from the property. The same weapons may also be fired on fenced-in property belonging to others, provided the owner has consented to shooting on his property.

9.4 Exceptions for marksmen

Marksmen may fire their weapons at officially approved shooting ranges or, as participants in approved target shooting competitions, at other shooting ranges, without any special official licence.

10. General exceptions to licence requirements

General exceptions, in particular to the licence requirement for carrying weapons (Waffenschein), apply in one's own home, business premises or fenced-in property; a legally acquired and held weapon may be carried in these places, ready to fire, without official authorization. This privilege also applies to the home, business premises or fenced-in property of another person (with their consent). A weapon may also be transported on unavoidable journeys directly relating to the purpose for which it was acquired. One may also fire one's weapon at licensed shooting ranges without a licence of one's own.

Under the general rules of criminal law, one may also fire one's weapon in self-defence, to defend another or if justified by necessity.

11. German weapon authorities

The Federal Office of Administration (Bundesverwaltungsamt) is responsible for foreign members of foreign armed forces stationed in Germany and their families, persons deployed

to protect foreign aircraft and ships, and Germans as defined in Article 116 of the Basic Law who are permanently resident outside the territorial area over which that Law applies.

In all other cases, the Länder authorities designated by ordinance by the Länder Governments are responsible. As a rule, the Länder have designated district bodies (Kreisverwaltungen, Landratsämter), local police authorities, or other local agencies.

As a rule, the geographical jurisdiction of the various authorities is determined by the standard provisions of administrative procedural law. The Weapons Act however has its own rules for some specific cases. For example, the authority responsible for an applicant who is neither a German national nor permanently resident in Germany is the authority in the district in which he is presently staying or will stay. In the absence of a proven intention to stay in Germany (e.g. in the case of a transfer through Germany), responsibility lies with the authority in whose district the border is crossed.