



Germany: Gun Control Legislation

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GERMANY

GUN CONTROL LEGISLATION

Executive Summary

Germany has had national gun control laws since 1928. The current Weapons Act was enacted in 2002. It is very restrictive, requiring short-lived and hard to get permits for the purchase, possession and use of firearms. Minors below the age of eighteen may not handle firearms, and persons below the age of twenty-five need a psychiatric evaluation before being allowed to possess a gun.

I. Development of Gun Control Law

Germany began to have nationwide gun control legislation in 1928,¹ when a very restrictive gun control law was enacted that was used by the emerging National Socialist Party to disarm its opponents.² A somewhat more moderate, yet still quite restrictive Weapons Act was enacted in 1938³ that remained in force as national law until the end of World War II, and then as state law in the West German states under Allied occupation. In 1972, Germany once again enacted a national gun control law that was valid throughout the Federal Republic of Germany as federal law. It covered the proving of gun and the restrictions on private possession, purchase and use. It was implemented by numerous regulations and it was difficult to administer. Moreover, it was frequently amended in order to make German gun control even more restrictive.

In December 2002, a total reform of gun control was enacted.⁴ It included the enactment of a new Weapons Act⁵ that deals with security restrictions on the purchase, ownership, carrying, and export and import of weapons, plus the enactment of a now separate Act for the Proving of Guns and Ammunitions, and amendments to seventeen other federal laws and regulations. The new legislation is even more restrictive than the previous one, requiring psychological testing of anyone under the age of 25 wishing to own or purchase a weapon, and limiting the use of large-

¹ Gesetz über Schusswaffen und Munition, Apr. 12, 1928, REICHSGESETZBLATT [RGBL.] I at 143.

² J. STEINDORF, WAFFENRECHT 5 (München, 2007).

³ Waffengesetz, Mar. 18, 1938, RGBL. I at 265.

⁴ Gesetz zur Neuregelung des Waffenrechts, Oct. 11, 2002, BUNDESGESETZBLATT [BGBL., official law gazette of the Federal Republic of Germany] I at 3970.

⁵ Waffengesetz, Oct. 11, 2002, [BGBL. I at 3970.

caliber pistols and long-arms to marksmen over the age of 21. Passage of the 2002 law was facilitated by a 19 year old who, on the day that the bill was discussed in the Federal Diet (the representative chamber of the bicameral federal legislature), went on a shooting rampage during which he killed fifteen persons.⁶

Public opinion on the new legislation is divided; weapons law experts find the new law cumbersome, difficult to administer, and incomprehensible to laymen.⁷ Yet even this law already has been amended four times. The last of these amendments was enacted in March 2008, and it disallows the carrying of fake guns and knives, and makes it more difficult to inherit guns.⁸

Despite all these restrictions, another German teenager went on a shooting rampage on March 11, 2009 during which he killed sixteen persons, including himself.⁹ The first reactions to this tragedy range from public demands that all private gun ownership be banned,¹⁰ to assertions by rifle associations that the law is strict enough,¹¹ and to more differentiated views by police unions that, while finding the current law strict enough, would nevertheless welcome the creation of a national gun register.¹²

II. Current Gun Control Legislation

In its current form, the Weapons Act¹³ applies to firearms, ammunitions and other portable objects that can be used as a weapon. Several Appendices of the Act define weapons and list totally banned weapons as well as weapons to which the restrictions of the Act apply. Banned are fully automatic weapons, weapons that are concealed as other objects or can be folded to an unusually small size, and various night vision devices.

Permits are required for any involvement with firearms. Persons below the age of eighteen, however, may not have any dealings with weapons, and exceptions from this ban are granted to minors only if justified by some overriding interest such as their need to handle weapons in the course of their vocational education.¹⁴ Persons of the ages between 18 and 25 are also subject to various restrictions.

⁶ S. Fischer, *Union und Polizisten lehnen schärferes Waffenrecht ab*, SPIEGEL ONLINE (Mar. 11, 2009), at <http://www.spiegel.de/politik/deutschland/0,1518,612735,00.html>.

⁷ Steindorf *supra* note 2 at 11.

⁸ Gesetz, Mar. 23, 2008, BGBl I at 426, art. 1.

⁹ *Einzelgänger im Waffenwahn*, SPIEGEL ONLINE (March 11, 2009) at <http://www.spiegel.de/panorama/justiz/0,1518,612775,00.html/>.

¹⁰ H. Buschheuer, *Waffen-Verbot. Sofort!*, BERLINER KURIER 4 (Mar. 12, 2009), at LEXIS/libraryNEWS/fileZeitng.

¹¹ *Das Waffengesetz ist scharf genug*, Stuttgarter Nachrichten (Mar. 12, 2009), at LEXIS/libraryNEWS/fileZeitng.

¹² R. Kroeter, *Vorbeugen, aber wie?*, Frankfurter Rundschau, (Mar. 12, 2009), at LEXIS/libraryNEWS/fileZeitng.

¹³ Waffengesetz, Oct. 11, 2002, BGBl I at 3970, as last amended by Gesetz, Mar. 26, 2008, BGBl I at 426.

¹⁴ Steindorf *supra* note 2 at 102.

Permits are required for the acquisition and possession of guns, and separate permits are required for the carrying of guns, and yet another permit is required for the using of guns. For each of these categories of permits the authorities examine whether the applicant is reliable (that is, free from any disqualifying criminal penalties), whether the application is well-suited for weapons ownership or other requested involvement, whether the applicant has a need for the requested ownership or activity, and whether the applicant has the required knowledge and skills.

The examination of the personal suitability of the applicant serves to disqualify individuals who have substance abuse problems, are physically or mentally disqualified, or otherwise raise the suspicion that they might not be able to deal with the weapon responsibly. Detailed and time-consuming investigations are undertaken to ascertain these facts.

The need for a weapon is another very restrictive category, apparently limiting ownership and acquisition to individuals such as collectors and to active marksmen who practice their sport in a club. The need for handguns and semi-automatic weapons is even harder to prove, as is the need to carry a gun. For a carrying permit, the applicant must prove that he is endangered by unavoidable circumstances such as his job.

Permits are not only difficult to obtain but they are also short-lived and can be encumbered with further restrictions. Generally, a permit to purchase one specific weapon is valid for one year, and the permit for its possession is valid for three years. Carrying licenses can be limited to even shorter periods, to ensure that they are still needed.

Special rules exist for marksmen, collectors, and hunters. These groups are permitted to carry out their activities, albeit under additional rules and supervision. Very stringent rules exist, in particular, for the safekeeping¹⁵ and transportation of weapons.

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¹⁵ The safekeeping requirements are regulated in detail in section 36 of the Weapons Act, *Waffengesetz*, Oct. 11, 2002, BGBl I at 3970. Ammunitions and Firearms have to be kept in separate containers. These have to live up to specified quality standards, and compliance can be individually supervised by the authorities.