

# What you should know about German Narcotics Law

## What are “narcotics”?

According to German Law, narcotics are the substances and preparations listed in Annexes I to III of the Narcotics Law. Hashish, marihuana, heroin, cocaine, LSD, amphetamines, opium and morphine all belong to this category. Dealing in substances that are not listed in Annexes I to III is not an offence against the Narcotics Law.

## What activities are offences against the Narcotics Law?

With the exception of pure consumption, German Law prohibits almost any contact with drugs. In accordance with Section 29 of the Narcotics Law, anyone who trades in narcotics commits an offence. In addition anyone who cultivates, produces, imports, exports, sells, supplies, acquires or procures narcotics in any other way without actually trading in them, also commits an offence.

## What does „trading in drugs“ mean?

The law does not define the term “trading”, although it is the most important in narcotics offences. But the legal precedents have established that “trading” includes any act whose *intention* is to deal in drugs. The commonest form of “trading” in drugs is to sell them at a profit. But you do not actually have to sell a drug to trade in it. The decisive factor is the offender’s *intention* to sell. That’s why a serious offer to supply drugs is already “trading”, even if the alleged customer is a police informer and no actual trade takes place.

## What penalties does the law provide?

Punishment under the German Narcotics Law depends on the gravity of the offence. Under Section 29, paragraph 1, there shall be punished by imprisonment of up to five years or a fine whoever cultivates, produces, and trades in narcotics or who imports, exports, sells, supplies, otherwise brings into traffic, acquires, or procures narcotics in any other way without trading with them. Under Section 29 paragraph 3, the sentence is imprisonment for not less than one year if the offender acts on a commercial basis or endangers the health of others.

Under Section 29a paragraph 1, Narcotics Law there shall be punished by imprisonment for not less than one year whoever being a person over 21 years of age illicitly supplies narcotics to a person under 18 years of age, or engages in the traffic in narcotics, manufactures, supplies or possesses them in not insignificant quantity.

Under Section 30 paragraph 1, there shall be punished by imprisonment for not less than two years whoever cultivates, produces, or trades with narcotics while acting as a member of a gang, whoever being a person aged over 21 years supplies narcotics to a person aged under 18 years on a commercial basis, whoever supplies narcotics to another negligently causing his death, or illegally imports narcotics in a not insignificant quantity.

Under Section 30a paragraph 1, there shall be punished by imprisonment of not less than five years whoever cultivates, manufactures, trades with, imports, or exports in not insignificant quantity while acting as a member of a gang. It also provides a five year sentence for any person aged over 21 years who causes a person aged under 18 years to engage in the trade with narcotics, and for anybody who trades in narcotics while carrying a firearm or any other object suitable and destined to cause bodily harm.

## What is the meaning of “a less serious case“?

For each kind of criminal offence the Narcotics Law provides the possibility to reduce the range of punishment if it can be shown in court that the offence is “a less serious case”. If so, it is possible to receive a sentence lower than the legal minimum provided in Section 30 (2 years minimum) and Section 30a (5 years minimum!). The German Supreme Court (Bundesgerichtshof) has ruled that an offence can be deemed “less serious” only if a consideration of all the circumstances shows it to be so different from normal cases that the normal punishment would be unreasonable. The same circumstances which have to be taken into consideration in finding the just punishment will be also important for this question, especially if the limit between the normal quantity and the so-called not insignificant quantity is overstepped only inappreciably, if

the narcotic in question is only the "soft" drug hashish, or if the offence was caused by the offender's own drug addiction etc.

### **What is the meaning of „on a commercial basis“ („gewerbsmäßig“), and what is a „gang“ („Bande“)?**

Acting „on a commercial basis“ and acting as a member of a „gang“ can seriously aggravate an offence, attracting stiffer penalties as laid out in Section 29 paragraph 3, Section 30 paragraph 1 und Section 30a of the German Narcotics Law. So the question may be of vital importance to a court’s decision.

“Acting on a commercial basis” means that the offender intends to gain a source of income for some time and of some significance by committing crimes regularly .

A „gang“ (Bande) is an organisation of at least three persons who have combines with the intention to commit crimes against the Narcotic Law for a certain time. The agreement to combine to commit crimes need not to be made expressly; it may also be an implicit agreement without words.

### **What is a „not insignificant quantity“?**

The issue of a “not insignificant quantity” is important, and affects judgement and sentence. It causes stiffer punishment if „trading“ (Sec. 29a Narcotic Law), “importation” (Sec. 30 Narcotic Law), and crimes “acting as a member of a gang” and “while carrying a firearm” (Sec. 30a Narcotic Law) are concerned. While the term is not defined by law, the German Supreme Court (Bundesgerichtshof) has established the meaning of a “not insignificant quantity” for most narcotics. It is not the drug’s gross weight that is important, but the pure quantity of the active substance. In effect, anything in excess of the following measurements is an „not insignificant quantity“: 7,5g THC (cannabis), 1,5g HCl (heroin), 5,0g CHCl (cocaine), 4,5g MorphinHCl (morphine), 6mg LSD (or 300 trips), 10g base of amphetamine, 30g base of metamphetamine und 30g cathinon (khat).

### **What other factors affect punishment?**

The quantity of the active narcotic substance involved will strongly influence the level of punishment. But other factors will carry weight as well. These will include the following considerations: The offender’s own drug addiction, the provocation to commit the crime by a confidential agent of the police, the safeguarding of the drug by the police, any help offered by the offender in investigating the offence. The offender’s confession and repentance have to be taken into consideration as well as the circumstances of his life, his financial situation, his criminal record, his age, physical condition and life expectancy. The level of punishment will be influenced by all the factors brought before the court.

### **Can a sentence be suspended on probation?**

Under Section 56, paragraph 1, of the Criminal Code sentences of not more than one year may be suspended if there is good reason to suppose that the offender will not offend again. If the sentence is more than one year imprisonment, Section 56 paragraph 2 Criminal Code allows for suspension on probation only if there are “special circumstances” as well as good reason to expect no further offence. A “special circumstance” might be, for example, if a first-time offender were to make a full, voluntary confession. For a sentence of more than two years imprisonment German law does not make any provision for suspension.

### **What is a “contribution to the offence being uncovered”?**

Section 31 of the Narcotics Law allows the court to lessen its sentence or, in less serious cases, even refrain from imposing a sentence at all, if the offender has helped to uncover offences beyond his immediate involvement, or voluntarily discloses information about planned criminal offenses to an authority in time to prevent them.

### **What does „therapy in place of punishment“ mean?**

Sections 35 to 37 of the Narcotics Law provide special rules for offenders who are also addicts perpetrators. So the execution of a sentence of not more than two years may be postponed, if the offense was committed due to an addiction to narcotics, if the convicted person agrees to undergo treatment for his addiction and its commencement is guaranteed. If treatment is not commenced or if it is discontinued, the postponement will be revoked by the authority in charge of executing the sentence. If treatment is successful, the period spent under treatment will be deducted from the sentence up to a maximum of two-thirds of the sentence. The execution of the remaining sentence will be suspended on probation.

