

## COVID-19 in Germany: Proper Handling of Curfews

### *First districts in Bavaria impose curfews — further measures on the horizon.*

On 18 March 2020, the District of Tirschenreuth issued a curfew for the town of Mitterteich based on the German Infection Protection Act (Infektionsschutzgesetz, IfSG). A similar measure has been adopted for at least two further municipalities. Meanwhile, the Bavarian state government has publicly considered imposing a curfew for the entire state of Bavaria if necessary. Other federal states (Bundesländer) may soon follow suit.

Since the adoption of a general order (Allgemeinverfügung) in this regard, the territory of the town of Mitterteich is subject to a curfew until 2 April 2020. This means people are generally forbidden to leave home without good reason. However, certain errands (*i.e.*, to cover the needs of daily life) or journeys to and from the workplace remain permitted. Any further curfews are likely to have a similar objective.

Curfews do not just affect private individuals. Businesses will also need to take certain measures.

### **What is the legal framework for curfews?**

Orders and restrictions to control infectious diseases can be issued on the basis of the IfSG. The federal states are in charge of enforcing the regulations of the IfSG. In principle, there are two possible legal measures to issue a curfew, which differ in particular in their territorial scope of applicability.

A lower administrative authority may issue a so-called general order on the basis of Sec. 28 IfSG to protect citizens from the risk of infection. If there is a general risk of infection, all residents may be ordered not to leave the place where they are located (*i.e.*, a ban on leaving) or not to enter certain places (*i.e.*, a ban on entering). Unlike quarantine measures as set out in Sec. 30 IfSG, a general order applies to everyone — not just to persons who have been infected or who are suspected of being infected.

In addition, the respective state government has the power to issue ordinances (Rechtsverordnungen) with state-wide effect on the basis of Sec. 32 IfSG. A curfew may also be adopted through an ordinance. With regard to the risk of infection, the legal requirements for issuing an ordinance correspond to those of a general order under Sec. 28 IfSG.

The content of these legal acts must be clear and specific (principle of legal certainty). This includes, for example, the temporal and territorial scope, but also any exceptions.

## Are there exceptions or gradations?

The acting authority may adopt exceptions to its orders, which in turn must be as specific as possible. The first Germany-wide general order of the District of Tirschenreuth expressly provides for the following exceptions:

- Travel to and from the place of work with employer's certificate
- Shopping for the needs of daily life within the city area
- Visits to medical practices, medical supply stores, opticians, hearing aid acousticians, and health practices
- Visits to pharmacies within the affected city area
- Visits to post offices (Deutsche Post branches)
- Refuelling at petrol stations
- Firefighters and rescue workers on their way to the base or place of action
- Necessary delivery traffic

The adopting authorities are also entitled to provide the legislative acts with the possibility for interested parties to request an individual exception from the legislative act in question (as happened in the city of Mitterteich). Allowing exceptions may also be constitutionally required in order to comply with the principle of proportionality (Verhältnismäßigkeitsprinzip).

## What are the sanctions for violating a curfew?

The monitoring of legal acts is carried out both by the local administrative authorities (in particular, public order offices (Ordnungsämter)) and by the police enforcement service of the respective federal state.

The violation of an enforceable order (general order or ordinance) under the IfSG is a punishable offence. The relevant criminal offence (§ 75 IfSG) provides for a fine or imprisonment of up to two years in the case of intentional offence. A violation in negligent ignorance is also punishable by a fine or imprisonment of up to one year. Admittedly, a prison sentence will only be possible in the case of a persistent offence. Depending on the monthly income, however, there is at least the threat of a substantial fine, which can also quickly lead to a criminal record (so-called Vorstrafe).

## Possibilities of action for companies

Companies should prepare themselves now for extensive curfews, as these can be imposed at very short notice. In particular, the following preparations should be made:

- **Employer certificate (Arbeitgeberbescheinigung):** Companies should prepare formal certificates for their employees to ensure that their workplaces can be reached. In this way, at least an emergency operation can be maintained.
- **Organization of the current operation or emergency operation:** Companies should closely coordinate with customers and suppliers to further organize any necessary emergency operations. Curfews can have a significant impact on supply chains (at least, if the supplies are not necessary in the current crisis).
- **Documentation:** In general, companies must comply with the requirements of the IfSG (not only with regard to curfews, but also with regard to reporting cases of illness as well as suspected cases to the health authorities) should be well documented for later verification. Where this has not yet been done, appropriate internal allocation of responsibilities and other organizational

measures should be taken. In this way, the company and those responsible for it can avoid subsequent fines under the law on administrative offences in the case of violations by its own employees, just as with the employer's certificates mentioned above.

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