

# Ineffectiveness of the smoking bans in Germany's Restaurants and Bars: A Study in 10 Federal States

## Background

Since August 2007, all of Germany's federal states have gradually passed legislation meant to protect citizens from the dangers of second-hand smoke, including laws governing the protection of non-smokers in hospitality venues. A comprehensive ban on smoking in bars and restaurants has so far only been implemented in Bavaria and Saarland; the remaining 14 states allow several exemptions to their regulations. How effective the states' varying laws have proven is not yet clear: A number of the state governments have since issued initial evaluation reports<sup>3-7</sup>, but these reports are based exclusively on the positions of regulatory authorities, opinions expressed by restaurant or bar owners, and other statements that can make no claim to general applicability. This study by the German Cancer Research Center (DKFZ) intends to address the current lack of research on the subject at hand.

## Data collection methodology

To evaluate the smoking bans in Germany's restaurants and bars, this study conducted a survey of all the inner-city establishments in Düsseldorf, Hanover, Kiel, Mainz, Magdeburg, Schwerin, Stuttgart, and Wiesbaden. In the megacities of Berlin and Munich, this effort was extended to two additional quarters with high concentrations of bars. In the evening hours of February and March 2011, all publicly accessible establishments in the areas selected were inspected by study personnel and the smoking regulations in these establishments were ascertained by means of questionnaires. This produced information on a total of over 2,939 bars and restaurants in the 10 state capitals surveyed.

## Results

■ **Smoke-free establishments:** In the capital cities of the states that allow exemptions to their bans on smoking, only two of every three establishments (68 %) are smoke-free. Patrons smoke in every area of nearly a quarter (24 %) of the bars and restaurants surveyed, while 8 % have designated smoking areas. These averages, however, mask significant differences among the individual state capitals (see Fig. 1).

■ **Restaurants:** Some segments of the restaurant industry are now virtually smoke-free – and not only in Munich, where smoking has been prohibited in bars and restaurants since August 2010, but in the other cities surveyed as well (see Fig. 2). This is particularly true of cafés, takeaways, and restaurant and coffeehouse chains. More traditional restaurants, however, present a different picture. In the states with exemptions, an average of one in five restaurants allows smoking, and the regional differences are once again considerable: While patrons may smoke in just 7 % of the restaurants in Wiesbaden, for example, this number jumps to 30 % for Hanover. There appear to be grave issues with enforcing the legal regulations in place. Of all the restaurants surveyed, 8 % were de facto smoking establishments (see Fig. 2) – a clear violation of the laws passed in their respective states.

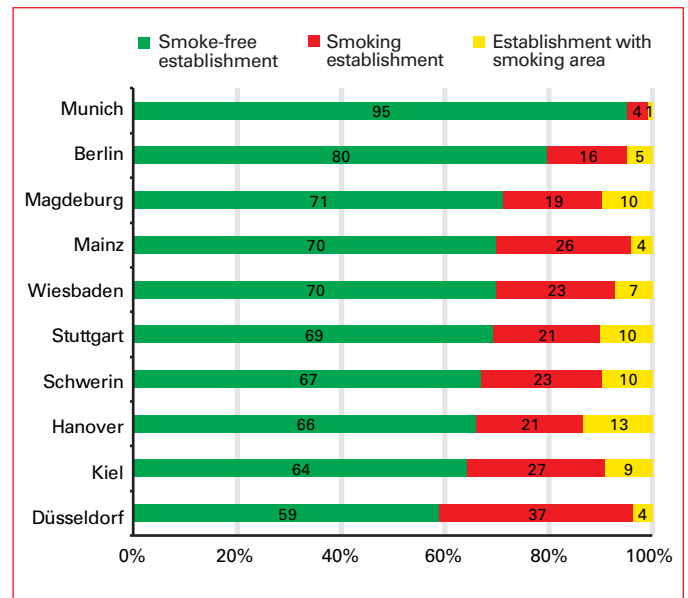


Figure 1: Regulations on smoking in the bars and restaurants in the state capitals surveyed.

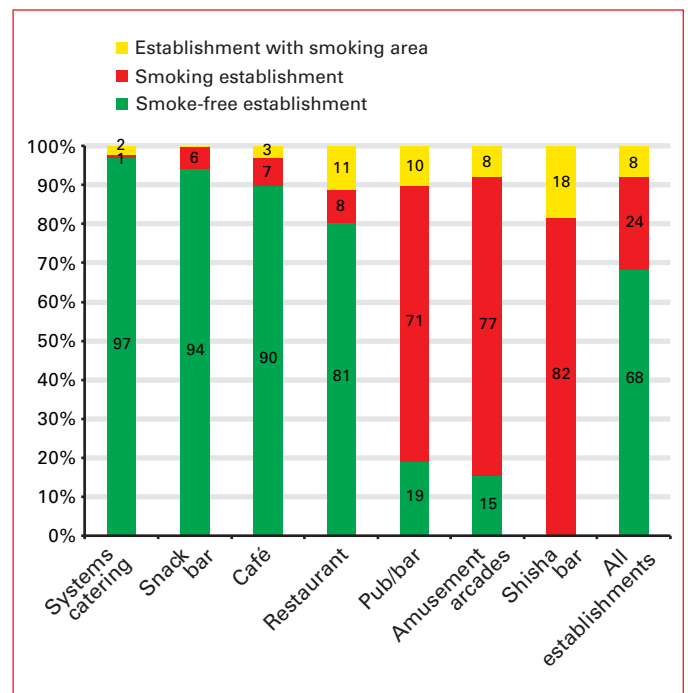


Figure 2: Establishments (by type) and their policies on smoking in the states that allow exemptions.

■ **Bars:** Unlike restaurants, patrons of establishments focused on beverage consumption are largely exposed to all the health dangers posed by tobacco smoke. On average, just one of

every five bars is smoke-free, with Schwerin (Mecklenburg-West Pomerania) holding the dubious record of 93 % smoking establishments. Anyone looking for a place to have a beer in the evening here without being forced to inhale second-hand smoke will likely be searching for quite a while. Meanwhile, the special cases of particular concern with regard to health protection include gambling and billiard halls – many of which (85 %) are typically filled with smoke – and shisha bars that allow smoking throughout their premises.

■ **Düsseldorf – the smoker's paradise.** Since North Rhine-Westphalia is the German state with the most exemptions for bars and restaurants, it comes as little surprise that Düsseldorf proved to be the stronghold of smokers among the state capitals surveyed. Not only is the city home to the most bars where smoking is allowed, it is also the scene of the most violations of the regulations governing the mandatory identification of smoking establishments, as a similar DKFZ study in North Rhine-Westphalia revealed<sup>2</sup>. Düsseldorf's failings were also observed in other cities in the state.

■ **Berlin – the divided city.** Of the state capitals that allow exemptions to their bans on smoking, Berlin has the highest share of smoke-free establishments. Clouding this positive overall impression, however, are the differences between the city's various districts. The upper-class gastronomy in Berlin-Mitte – in the government quarter and along the promenades Unter den Linden and Friedrichstraße – is largely smoke-free, presenting a stark contrast to the smoke-filled corner bars that remain in Berlin's poorer areas. While passing the popular areas around Heinrichplatz and Kollwitzplatz, it proved difficult to find a non-smoking bar.

■ **Munich – (almost) smoke-free.** Since the successful referendum on a comprehensive smoking ban in Bavaria, bars and restaurants in this state have been subject to a general smoking ban. However, the state still has its own loophole, and the survey of Munich revealed the extent to which establishment owners are exploiting it. Smoking was witnessed at 17 % of Munich's bars, typically under reference to the exemption for "private function" – although checks at the entrance were rare.

■ **Smoking establishments – a problem area.** Following the July 2008 ruling of the Federal Constitutional Court of Germany, most of the country's states have allowed bars to operate as smoking establishments. This right is contingent upon several preconditions that are often not heeded in practice:

- Although the law specifies that smoking bars must be one-room establishments, 13 % consist of multiple rooms.
- 11 % of the smoking bars surveyed offered food prepared on-site, which is prohibited.
- In at least 9 % of the smoking bars surveyed, the area accessible by guests exceeded the 75-square-metre limit specified by law.

With regard to youth protection, the current situation can be described as scandalous: The entrances to 62 % of the smoking bars surveyed were missing the mandatory sign forbidding entry to people under 18 years of age.

Smoking rooms also an issue: In the states that have not generally prohibited smoking in bars and restaurants, establishments with multiple rooms have the option of designating a side room as a smoking room – provided that said room is effectively separated from the remaining non-smoking area. This requirement is often disregarded. Of the smoking rooms surveyed, 22 % had no closable door; when such a door was present, it was constantly open in 37 % of the cases witnessed, allowing tobacco smoke to freely enter the non-smoking area. None of these situations can be described as offering effective protection against the dangers of second-hand smoke. Furthermore, 8 % of the smoking rooms surveyed were significantly larger than the respective non-smoking areas, and the majority (55 %) of the smoking rooms were not properly indicated as such. These cases constitute additional blatant violations of the state laws.

## Summary

Although this investigation is intended as an explorative study that still needs to be supplemented by surveys of the other German state capitals, two basic conclusions can already be drawn today. First, the multitude and complexity of the exemptions in the individual states have made it virtually impossible to monitor compliance with the ban on smoking in bars and restaurants, and legal violations are an everyday occurrence. Second, it is now apparent that bars offer no notable protection of non-smokers. Those who wish to have a beer after work are in many places forced to inhale the smoke of other patrons. In its ruling from 2 August 2010 regarding the strict prohibition of smoking in bars and restaurants in Bavaria, the Federal Constitutional Court of Germany stated: "The legislative organ is free to enable [non-smokers] to participate fully in social life in establishments that serve food and beverages without having to expose themselves to tobacco smoke. Particularly with regard to establishments that focus on the sale of beverages, the possibility of said participation has proven, at best, limited"<sup>1</sup>. That which the court observed concerning the situation in Bavaria before the state's general ban on smoking in bars and restaurants is still true of the majority of the other states: Those who wish to protect themselves from the dangers of second-hand smoke are excluded from participating in the social life in drinking establishments. Therefore, in light of their ineffectiveness and impracticality, the exemptions in place in many states must be considered a failure. Germany needs the kind of simple, comprehensive, uniform regulations many other European countries have successfully implemented to effectively protect non-smokers in restaurants and bars.

## Legal information

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