

# **Ministerial Draft**

## **of the Federal Government**

### **Fifteenth Ordinance on the Product Safety Act**

(Ordinance prohibiting the import, placing on the market and making available on the market of sky lanterns – 15. ProdSV)

#### **A. Problem and objective**

The ordinance covers unmanned balloon-like flying luminaires that produce hot air through open fire and fly freely and uncontrolled. As a result, they pose significant risks to human body and life, as well as to animals, plants and material assets of considerable value.

These flying luminaires are commercially referred to as wish lanterns, sky lanterns or lucky balloons. In the following, they are referred to as sky lanterns. Essentially, they consist of an inverted bag made of light material (for example, tissue paper), a ring (of wood or metal) that spreads open the lower opening, and a burner (for example with dry spirit as fuel) attached to the centre of the ring. After lighting, sky lanterns rise uncontrollably as they cannot be controlled. They can sometimes reach a height of 500 metres and, depending on the wind force, can be driven down up to several kilometres from the starting point. The burning time is between 5 and 20 minutes. Sky lanterns are available in different sizes. The largest specimens have dimensions of up to two meters in height and one meter in diameter. When the amount of fuel is exhausted, the sky lantern sinks to the ground. It may happen that the sky lantern still burns (BR-Drs. 816/09, page 21).

Because of these dangers that can arise from sky lanterns, the Petitions Committee of the German Bundestag (Pet 1-19-09-712-029156; BT-Drs. 19/24705; BT-Drs. 20/2200, p. 41) endorsed a petition that would also like to ban the placing on the market of sky lanterns. The petition was triggered by the fire at Krefeld Zoo, which killed over 50 animals. Although the federal states have enacted bans on the use of lanterns in accordance with hazard prevention legislation since 2009, the Federal Government considers it necessary to ban the placing on the market and the provision of sky lanterns with an open fire source as a buoyancy and without the possibility of control. So far, sky lanterns are easy to buy in online shops. The prohibition of use is often not comprehensively pointed out at the time of purchase by the traders. Moreover, end-users often assume that if the purchase is allowed, use is also permitted. In a country as densely populated as the Federal Republic of Germany, these sky lanterns pose a considerable potential danger in the form of fires and obstruction of air traffic close to the ground.

The German Bundestag has endorsed the resolution recommendation of the Committee on Petitions (see serial number 1 of the general overview 705 – document 19/24705; Plenary minutes 19/199 p. 27072). This petition was sent to the Federal Government and the State Parliaments to review the implementation of the petition and to look for ways to remedy the situation.

#### **B. Solution**

On the basis of the Product Safety Act, a regulation is issued that prohibits the introduction of sky lanterns into Germany, placing them on the market in Germany and making

them available on the German market. Thus, the previous conflicting legal situation of lawful provision and acquisition on the one hand and unlawful use on the other is eliminated. This prevents significant risks to the body and life of humans, animals and plants, as well as to material assets of considerable value.

## **C. Alternatives**

None.

## **D. Budgetary expenditure exclusive of compliance costs**

There are no costs for the federal government, state governments and municipalities due to the implementation of the Ordinance.

## **E. Compliance costs**

### **E.1 Compliance costs for citizens**

For citizens, a compliance burden is neither created, nor amended or nor abolished.

### **E.2 Compliance costs for businesses**

Businesses shall not incur any compliance costs.

Of which bureaucracy costs arising from information obligations

No administrative costs arise from these obligations to provide information.

### **E.3 Compliance costs for the authorities**

Government agencies will not incur any compliance costs. This is covered by Section 25(2) of the Product Safety Act.

## **F. Further costs**

No effects on individual prices and the level of prices, in particular the consumer price level, are expected.

# **Ministerial Draft of the Federal Government**

## **15. Ordinance on the Product Safety Act**

### **(Ordinance prohibiting the import, placing on the market and making available on the market of sky lanterns – 15. ProdSV)**

**Dated ...**

On the basis of Section 8(2) of the Product Safety Act of 27 July 2021 (Federal Law Gazette I, p. 3146, 3147), the Federal Government decrees:

#### **§ 1**

##### **Scope**

This Regulation lays down the prohibition on the import, placing on the market and making available of sky lanterns on the German market.

#### **§ 2**

##### **Definition**

(1) A sky lantern for the purposes of this Regulation is an unmanned balloon-like flying lantern,

1. In which the buoyancy is generated by an open source of fire, and
2. which flies freely and without the possibility of control.

The fuel used as the fire source to heat the may be solid, liquid or gaseous.

(2) Other designations of a sky lantern, such as wish lanterns or lucky balloons, shall not affect to § 3 of this Ordinance.

#### **§ 3**

##### **Ban of import, placing on the market and making available on the market**

(3) The import, placing on the market and making available on the German market of sky lanterns is prohibited.

(4) Where a sky lantern is offered for sale online or via any other form of distance selling, the sky lantern shall be deemed to be made available on the German market if the offer is directed at end-users. An offer of sale shall be deemed to be directed at end-users if the relevant economic operator directs its activities relating to the placing on the market or making available of sky lanterns in any way to the Federal Republic of Germany in any way.

§ 4

**Administrative offences and criminal offences**

(5) An administrative offence within the meaning of Section 28(1)(7)(a) of the Product Safety Act shall be committed anyone who intentionally or negligently imports, places on the market or makes available on the market a sky lantern contrary to Section 3(1).

(6) Whoever persistently repeats an intentional act referred to in Subsection 1 or endangers the life or health of another or foreign property of significant value through such an intentional act, is liable to prosecution under Section 29 of the Product Safety Act.

§ 5

**Entry into force**

This Ordinance shall enter into force on the day following its promulgation.

Approved by the Federal Council.

## **Explanatory notes**

### **A. General part**

#### **I. Objective of and need for the provisions**

Sky lanterns pose a high risk when used. There is a risk of fire from ignition of the lantern at take-off, so that surrounding persons can be endangered. It can burn in the air and crash while burning. Other fire hazards can be caused by falling into a regular burning condition due to loss of buoyancy (e.g. due to a leaking balloon envelope), flight into an obstacle (e.g. trees, buildings; in this regard: Higher Regional Court Frankfurt a.M., judgment of 24.7.2015 – 24 U 108/14; Higher Regional Court Saarbrücken, judgment of 25.11.2015-1 U 437/12; Higher Regional Court Koblenz, judgment of 15.10.2015 – 6 U 923/14) or caused by glowing remnants after “regular” landing (apt hence: Jörg Teumer/ Sina Stamm, Flying arsonists – Liability risks in the use of “Sky Lanterns”, VersR 2009, 1036; cf. on accidents: Administrative Court Düsseldorf, judgment of 5.3.2009 – 6 K 5937/07. The BVerwG [Federal Administrative Court] made it clear in its judgment of 25 October 2017 (file number 6 C 44/16) that, in the case of balloon-like flying lights, the more significant the threatened legal asset and the higher the threat of damage in the event of damage are likely to be, the lower demands are to be made on the actual findings in the abstract risk prognosis. In any event, the typical risk of the occurrence of damage would have to significantly exceed the general risk of life. Sky lanterns pose a significant risk of fire that exceeds the general risk of life due to the design of the lanterns and the materials used. On the one hand, the source of fire is open, on the other hand there are no precautions against the spread of fire to flammable objects. Therefore, the risk of a fire is high when sky lanterns with an open source of fire hit flammable objects. This risk of fire is not manageable because the course of the flights cannot be reliably predicted. Sky lanterns cannot be steered, so evasive maneuvers are impossible. After the ascent, they are completely exposed to wind and weather. Flight duration, height and route depend decisively on the wind conditions. The course of flight is unpredictable, especially since these balloon-like flying objects can reach a height of 500 meters and fly up to 20 minutes (BR-Drs. 816/09, page 21). In the event of a fire, the fire will often be able to spread unhindered, because sky lanterns, in order to achieve the desired lighting effect, rise in the evening and at night, and then endanger people, animals and significant material assets at times when people are asleep or when work and business premises and other facilities are not attended by people.

There may also be impairments to air traffic close to the ground or irritation of motorists and other road users. Section 19(1)(2)(b) of the Air Transport Order also serves to avert hazards to air traffic near the ground, which makes the ascending of sky lanterns near the airfield subject to a permission.

(cf. on air traffic: “Infoblatt Skylaternen” of the German Air Traffic Control:

[https://ais.dfs.de/pilotservice/bnl/leisure/skylantern/pdf/infoblatt\\_fluglaternen\\_de.pdf](https://ais.dfs.de/pilotservice/bnl/leisure/skylantern/pdf/infoblatt_fluglaternen_de.pdf) and balloon & lanterns FAQ).

Of course, there is a particularly high risk when sky lanterns are used in dry weather or after long periods of heat (risk of forest fire). In addition, mass starts were held again and again. With pyrotechnic articles, misdirection of a missile and also its downfall can usually be observed. Since the unmanned balloon-like missiles have a much wider range, this is not possible here.

The general danger of sky lanterns is proven by a large number of known damage cases, most recently the fire in the Krefeld Zoo at the turn of 2019/2020. More than 50 monkeys, flying dogs and birds were killed.

There was a death on Pentecost Sunday 2009; the building damage caused by fires was regularly severe.

Despite a ban on use in all federal states, a severe fire occurred in the Krefeld Zoo on New Year's Eve 2019. Such events are intended to be prevented by prohibiting the placing on the market and making available of sky lanterns.

## **II. Main content of the draft**

The import, placing on the market and making available of unmanned balloon-like flying lights (sky lanterns) on the German market is prohibited. This prevents significant risks to the body and life of humans and animals.

## **III. Alternatives**

None.

## **IV. Regulatory Power**

The ordinance competence arises from Section 8(2) of the Product Safety Act.

## **V. Compatibility with European Union law and international treaties**

This Ordinance is compatible with the laws of the European Union. The Regulation prohibits the import, placing on the market and making available balloon-like flying lights and illuminating devices and has been notified as a product-related technical regulation pursuant to Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and rules on information society services, OJ L 241, 17.9.2015, page 1. The Ordinance is compatible with the international treaties concluded by the Federal Republic of Germany.

## **VI. Consequences of the Legislation**

### **1. Legal and administrative simplification**

The Regulation does not provide for any legislative or administrative simplification.

### **2. Sustainability aspects**

Sustainability aspects are not affected by the Regulation.

### **3. Budgetary expenditure exclusive of compliance costs**

None.

### **4. Compliance costs**

#### **4.1 Compliance costs for citizens**

There are no compliance costs for citizens.

#### 4.2 Compliance costs for the economy

Businesses shall not incur any compliance costs.

#### 4.3 Compliance costs for the authorities

There is no compliance costs for the Federal Government, the Federal States and the municipalities. This is already covered by Section 25(2) of the Product Safety Act.

### 5. Further costs

No effects on price levels, particularly consumer price levels, are anticipated.

### 6. Further consequences of the legislation

For consumers, the rules have no effect. There will be no gender and demographic impact or impact on the maintenance and promotion of equal living conditions.

## VII. Time limit; Evaluation

A time limit or evaluation of this Regulation is not envisaged, as the high risk of free-flying sky lanterns with an open source of fire cannot be countered in the future in any other way than through a ban.

## B. Specific part

### Re § 1 (Scope)

The provision defines the scope of application.

### Re § 2 (definition)

#### Re Paragraph (1)

The description of the shape of the sky lanterns as “balloon-like” includes other geometric shapes of the outer shell of the sky lanterns. Insofar as a sky lantern with a control option (such as a cord) is used, for example, as a decorative item, it must be ensured that this control option is tear-proof and fireproof in order to prevent loss of control. The control feature must already be permanently connected to the sky lantern when it is placed on the market in such way that it neither detaches nor tears off when used as intended or in a foreseeable manner.

#### Re Paragraph (2)

Sky lanterns are also known as wishing lanterns, sky balloons, Kong-Ming lanterns, lucky lanterns, paper lanterns, flying lanterns or lucky balloons, among others. Another name of the sky lantern does not affect the prohibition of imports, placing on the market and making available on the German market.

### **Re § 3 (Prohibition of import, placing on the market and making available on the market)**

#### **Re Paragraph (1)**

The provision regulates the prohibition of import within the meaning of Section 2(9) of the Product Safety Act, the placing on the market within the meaning of Section 2(16) of the Product Safety Act and the making available within the meaning of Section 2(4) of the Product Safety Act of ready-to-use sky lanterns on the German market.

#### **Re Paragraph (2)**

Paragraph 2 refers to the definition of distance selling in Article 6 of Regulation (EU) 2019/1020. Article 6 of Regulation (EU) 2019/1020 focuses on the offer to end-users. According to Article 3(21) of Regulation (EU) 2019/1020, “any natural or legal person residing or established in the Union to whom a product is made available either as a consumer outside his trade, business, craft or professional activity or as a professional end-user in the course of his or her commercial or professional activity”. This definition also applies to products under the Product Safety Act via Section 2 sentence 2 of the Market Surveillance Act and is broader than the concept of consumer. The wording ensures that the offer must also not be addressed to end-users. In addition, the authorisation basis of Section 8(2) of the Product Safety Act focuses not only on consumer products, but on products in general.

### **Re § 4 (regulatory offences and criminal offences)**

The regulation regulates administrative offences and criminal offences.

### **Re § 5 (Entry into force)**

This provision regulates the entry into force of the Regulation.