

Explanatory remarks
on the draft law amending the Tyrolean Youth Act [Tiroler Jugendgesetz]

I.
Overview

A.

The purpose of this amendment is to update provisions that no longer reflect current circumstances, and to adapt them where necessary based on the experience gained during implementation.

Overall, the following changes are of primary importance:

- Revision of target provisions,
- Adjustment of funding provisions,
- New regulations governing the composition and working procedures of the Youth Advisory Board,
- Update of administrative penalty provisions,
- Various legislative adjustments and clarifications.

B.

The competence of the provincial legislature to enact a law in accordance with this draft is based on Article 15(1) of the Federal Constitution [B-VG].

As the scope of cooperation of the public security services is to be adjusted or expanded accordingly with regard to enforcement, with the possession of media, objects, alcoholic beverages or preparations, tobacco and other goods that are harmful to young people as well as the private consumption of alcoholic beverages, tobacco or other goods that are harmful to young people now also to be considered an administrative offence and are to be punished accordingly (Article I (18), (21), (22), (23), (25) to (29) and (31); Sections 17(3), 18(3), 18(4)(a), 18a(2), 18b(2), 21(2)(e), 21(2)(f), 21(2)(g) and 21(2)(h), 22(1)), a corresponding bill adopted by the Landtag is subject to the procedure under Article 97(2) of the B-VG.

C.

The entry into force of a law in accordance with this draft will not result in any additional costs for the Province of Tyrol or for the municipalities; nor will there be any cost implications for the Federal Government.

II.

Comments regarding the individual provisions

Re Article I:

Re Point 1 (Section 1(1)):

The target provisions are currently formulated in a very broad manner. A linguistic adjustment in the form of a summary is therefore to be made in order to improve comprehensibility and readability.

Furthermore, measures were previously included alongside the targets in this provision. This combination of targets and measures is now clarified. The measures mentioned to date, such as preventive measures or support for association and open youth work facilities, will continue to be implemented.

Re Points 2, 4 and 6 (Section 2(2) and (6)):

Youth counselling aims to provide young people with information on topics that are relevant to them and to offer straightforward guidance tailored to their individual situation. The Open Youth Work Tyrol Manual 1.0 (Dachverband Plattform Offene Jugendarbeit Tirol – POJAT, 2nd edition 2016) states the following: "The Open Youth Work (OJA) facilities are contact points for young people looking for a chat or for information or advice. OJA offers counselling, support and referrals to relevant institutions. The counselling sessions are accessible, youth-friendly and can start in the park or over a game of table

football without an appointment and anonymously. Depending on the nature of the issue, further, more intensive counselling sessions may follow.” In addition to accessible counselling, the open youth work facilities already provide information, which is therefore to be added to Section 2(2). The provision of information and counselling to young people also includes conducting informative and advisory sessions in accordance with Section 21(3). The reference to young people is intended to highlight that this service is also available to individuals who have reached the age of 18.

By supporting open youth work facilities, which can be found in every district of Tyrol, the Province of Tyrol is also promoting youth counselling services. This is done in accordance with the existing funding guidelines and taking into account the budgetary circumstances.

The obligation to inform, which was previously stipulated in Section 2(6), no longer seems appropriate, as the youth protection regulations applicable in each province are compiled by the Austrian youth information centres, for example, and made available online or in the form of a brochure. Corresponding information is also provided by the Ombudsman for Children and Youth People. In this context, the paragraph heading is also adjusted accordingly.

Re Point 3 (Section 2(1)):

A legislative amendment has been included here as the provisions of Section 5 are also being implemented within the framework of public administration (e.g. test purchases in accordance with Section 21a).

Re Point 5 (Sections 2(5), 4(1)(c), 12(1), 14(3) and 17(2)):

Adjustments have been made with regard to spelling here.

Re Points 7 to 10 (Sections 3(1) and (2), 4(2) and (5)(c)):

A linguistic adjustment has been made with regard to projects for which funding can be granted. Furthermore, the intention is to summarise a indicative list of eligible projects to make it easier to read (Points 7 and 8; Section 3(1) and (2)).

In line with the subsidiarity of funding already laid down in Section 4(1)(a), paragraph 2 is supplemented to the effect that funding from other local authorities or other institutions must be taken into account. For methodological reasons, compliance with the principles of gender mainstreaming and the constructive handling of diversity is included in Section 4(2) (instead of Section 1(1)(g) as previously) (Point 9; Section 4(2)).

Furthermore, the types of funding are adjusted to exclude the provision of rooms and furnishings, as these examples are not relevant in practice. The resources provided by the Province of Tyrol primarily include coloured bands for age verification at events or glass coasters from the InfoEck der Generationen [InfoCorner of the Generations] printed with the provisions of the Tyrolean Youth Act (Point 10; Section 5(c)).

Re Points 11, 12 and 13 and 33 (Sections 9(2), 10, 10a and 22d):

The purpose of this amendment is to streamline and improve the efficiency of the Youth Advisory Board. The task of the Youth Advisory Board is to advise the provincial government on fundamental issues regarding youth protection and youth development. This also includes the tasks previously listed in Points (b) and (c) (“presenting general youth policy objectives to the provincial government” and “developing proposals and policies for solving fundamental youth policy issues”), meaning that these no longer need to be listed separately (Point 11; Section 9(2)). This change therefore does not entail any restrictions in terms of the previous tasks.

Previously, the Youth Advisory Board consisted of a chairperson and three deputies, who were elected from among its members. In line with other advisory boards established by provincial law, such as the Child and Youth Welfare Advisory Board or the Minimum Income Advisory Board, the member of the provincial government responsible for youth protection matters according to the distribution of responsibilities within the provincial government will now chair the Youth Advisory Board, and only one deputy will be elected from among its members. In previous terms, the Youth Advisory Board has sometimes had more than 30 members. With a committee of this size, there is a risk of reduced efficiency. The number of members of the Youth Advisory Board is therefore adjusted accordingly. The number of representatives that can be proposed by the POJAT umbrella organisation is reduced from four to two, and the number of representatives from the provincial pupils’ association and the municipalities is reduced from two to one each. As regards youth work associations, the right to submit proposals is restricted to organisations based in Tyrol which focus on extracurricular work with children and young people and whose activities cover the entire province of Tyrol. This means that organisations that offer youth-specific services are eligible to submit proposals (Point 12; Section 10(1)).

For methodological reasons, the right to participation of the head of the organisational unit responsible for youth protection matters according to the division of responsibilities of the Tyrolean Provincial Government is now regulated in Section 10(1) instead of Section 10a(4) as previously (Point 12; Section 10(1)(g)).

Extending the term of office from two years to three is intended to ensure greater continuity in the work of the Youth Advisory Board (Point 12; Section 10(3)).

Meetings will be convened as required based on the tasks of the Youth Advisory Board listed in Section 9. In this respect, reducing the minimum frequency of meetings to once a year would appear sufficient (Point 13; Section 10a(1)).

Furthermore, with regard to the deliberation requirements, it is added that in the event of a tie, the chairperson shall have the casting vote (subparagraph 13; Section 10a(4)).

The Youth Advisory Board has existing rules of procedure; a legal basis is now created for these rules and the content that they must include is also defined (Point 13; Section 10a(6)).

The appointment of members and alternate members of the Youth Advisory Board in accordance with the new provisions requires advance notice. For this reason, it is to be stipulated that the Youth Advisory Board is to be appointed by 31 August 2026 in accordance with Section 10 of the draft. The term of office for the Youth Advisory Board appointed under the previous provisions is to continue until a new Youth Advisory Board is appointed and takes over its duties (Point 33; Section 22d).

Re Point 14 (Section 11(3)(a)):

A linguistic adaptation to the General Civil Code (ABGB) has been made here.

Re Point 15 (Section 14(4)):

The public security services can generally make an assessment of whether an event is harmful to minors. Since it cannot be assumed that experts in the field of youth protection will be available in a timely manner during an ongoing event, and since this provision has not yet been applied in practice to date, it is now repealed.

Re Point 16 (Section 15):

This provision contains a correction to a citation.

Re Point 17 (Section 17(1)):

The word DVDs is omitted from the indicative list as the example no longer appears relevant.

Re Points 18, 21, 22, 23, 25 to 29 and 31 (Sections 17(3), 18(3), 18(4)(a), 18a(2), 18b(2), 21(2)(e), 21(2)(f), 21(2)(g) and 21(2)(h), 22(1)):

In each of these provisions, the German word 'innehmen' (to hold) is replaced by the more comprehensive German word 'besitzen' (to possess) in the grammatically correct form and/or inserted in the appropriate place. The term 'possession' includes not only holding an item but also the intention of retaining ownership of that item.

Under the current provisions, children and young people are prohibited from acquiring or using media, objects, alcoholic beverages or preparations, tobacco and other goods that are harmful to young people. However, due to the corresponding penal provisions, it is not possible to punish young people for possessing the aforementioned harmful items, especially if they are not caught in the act of consuming them. The relevant provisions are therefore made more specific and the corresponding penal provisions are amended or expanded accordingly.

Furthermore, under the current provisions, a young person can only commit an administrative offence if alcoholic beverages, tobacco or other goods harmful to young people are consumed in public. Since the consumption of alcohol by children and young people is harmful regardless of whether it takes place in public or in private, the ban on consumption now applies without restriction for the protection of young people. It therefore cannot be ruled out that such a ban could have some points of resemblance with the scope of protection of Art. 8 ECHR – even if, according to prevailing opinion, the right to privacy in Article 8 of the ECHR does not guarantee general freedom of action (see *Klaushofer/Kneihs*, Article 8 of the ECHR et al., in *Kneihs/Lienbacher, Rill-Schäffer-Commentary on Federal Constitutional Law* [29th edition, 2022] paragraph 29). Any resulting interference with the scope of protection of this fundamental right can be attributed to the interests of public health, as recognised in Article 8(2) of the ECHR. In connection with the subsequent weighing of interests, it should also be noted in particular that the present amendment does not extend the powers of control of the public security authorities beyond the general possibilities available under administrative criminal law. In view of the objectives of youth protection and

the harmfulness of the goods covered by the ban, there does not appear to be any disproportionate interference with the right to respect for private and family life under Article 8 of the ECHR.

Consequently, the scope of involvement of the public security services in respect of enforcement is also adjusted accordingly (Point 31; Section 22(1)).

Re Points 19 and 20 (Section 18(2)(a) and (b)):

Linguistic adjustments have been made here.

Re Point 24 (Section 18b(1)):

It is clarified that the other goods harmful to young people are listed for illustrative purposes only and that the provision also takes current developments into account, with more recent examples to be provided in this regard.

Re Point 30 (Section 21(4)):

With the amendment Provincial Law Gazette (LGBI.) No 7/2019 to the former ECHR (now the Tyrolean Youth Act), the age limit for the consumption of tobacco (Section 18a) and other goods that are harmful to young people (Section 18b; e.g. water pipes or shishas) was raised from 16 to 18 years. As a result, young people who had previously been allowed to purchase and consume tobacco and other goods harmful to young people were now also prohibited from doing so. At the same time, Section 21(4) introduced the possibility of addiction counselling for a second offence under Sections 18a and 18b, whereby the imposition of a fine is waived if the young person avails of the opportunity – similar to the existing information and counselling session under Section 21(3) for a first offence under the Tyrolean Youth Act. Addiction counselling is therefore intended to enable young people to avoid punishment, as a kind of transitional provision to the stricter regulatory measures previously described.

However, this regulation leads to unequal treatment with regard to other administrative offences, because, for example, counselling is provided for a first offence in connection with curfew times in accordance with Section 21(3), while two further offences against the provisions on alcohol consumption are each followed by punishment; if, on the other hand, the next two offences were in connection with the provisions on tobacco consumption, punishment would first be imposed and only then would addiction counselling be provided in accordance with Section 21(4).

Since the young people affected by the stricter regulatory measures on the purchase and consumption of tobacco and other goods harmful to young people at that time are now of legal age, addiction counselling plays only a minor role in practice, and due to the unequal treatment of administrative offences as outlined above, this provision is now repealed.

Re Point 32 (Section 22a(2)):

The references to federal regulations have been updated here.

Re Point 33 (Section 22c(3)):

This Act was notified in accordance with the provisions of Directive (EU) 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ 2015 No L241, p. 1, which is why the notification notice in Section 22c is amended accordingly.

Re Article II:

This provision regulates entry into force.