

First easing of corona measures in the hotel industry - overview of the German federal states

14 May 2020

The Covid-19 pandemic continues to keep the world in suspense. On 6th May, the prime ministers of the German federal states agreed with the German Chancellor on further easing of the current restrictions. The starting-point of the negotiations was, in addition to increased pressure from the restaurant and hotel industry, the "five-stage plan" presented by the Lower Saxony federal state government at the beginning of the week, on the basis of which a successive reduction of pandemic-related restrictions was pushed forward as the first nationwide overall concept of this kind.

While the restaurant and hotel industry, in contrast to the retailing sector, has not yet been able to benefit from the initial easing by the federal states, this is now set to change soon. Nationwide, extended contact restrictions, hygiene and distance rules will continue to apply, and large-scale events will also be banned until August 31st (what will be considered a large-scale event, varies from federal state to federal state). The German federal and state governments have agreed that the federal states can, at their own responsibility, allow a step-by-step opening of hotels and restaurants; tourist overnight stays will be permitted again starting by the end of May. Due to the Covid-19 pandemic, the opening of restaurants and bars is subject to strict compliance with hygiene regulations, distance rules and the submission of a plan for the protection of employees.

While at first, the respective prime ministers of the federal states have held out the possibility of easing the rules mostly by word of mouth, further regulations and general rulings were issued in the course of the 20th calendar week (regulations or rulings already issued are listed separately below).

The different deadlines and approaches of the respective federal states show a patchwork of regulations which is likely to result in great legal uncertainty. In some cases, permission to reopen is to be granted on an individual basis by every municipality, in some states restrictions on the number of people allowed in the premises, in others buffets are no longer permitted or the serving of alcohol is regulated, and in other states there are restrictions on the times at which the premises can be opened. In any case, the planned easing of these restrictions is one thing for sure, unclear.

Overview of the easing measures announced to date in the individual federal states (as of May 14th)

Bavaria

- **Gastronomy**

As of May 18th: Opening of outside areas at first (until 8 p.m.), starting May 25th inside areas can be opened (until 10 p.m.).

- **Hotel business**

As of May 30th: Possible openings of hotels, holiday homes, camping sites and further offers in tourism are being discussed.

Baden-Württemberg (regulation already passed)

- **Gastronomy**

As of May 18th: Opening of outside and inside areas.

- **Hotel business**

As of May 18th: Opening of holiday homes, camping sites and caravan sites for touristic purposes, as long as self-sufficiency is achieved without the use of common facilities; the operation of swimming pools, indoor swimming pools and saunas is not permitted.

[Expected as of May 25th: Accommodation establishments - no further regulations yet].

Berlin (regulation already passed)

- **Gastronomy**

As of May 15th: Opening of restaurants (from 6 a.m. until 10 p.m.); offering of food and drinks only at tables, no self-service buffets.

Reservation systems or other appropriate contact tracing information procedures are strongly recommended; the information shall be kept by the operator for a four-week period after the end of the stay and handed over to the competent authority on request.

- **Hotel business**

As of May 25th: Hotels and other accommodation facilities as well as operators of holiday homes may offer overnight accommodation for tourists again; spa and wellness areas must remain closed.

Brandenburg (regulation already passed)

- **Gastronomy**

As of May 15th: Opening of restaurants and cafés (from 6 a.m. to 10 p.m.) that serve prepared food, provided that the operator ensures that the hygiene rules are observed.

- **Hotel business**

As of May 15th: Permanent and mobile home camping and the rental of holiday apartments and houses with their own sanitary system is permitted; the operation of thermal baths, wellness and similar facilities is prohibited (even if they are part of accommodation facilities).

[Probably as of May 25th: Opening of hotels and further accommodation facilities - no further regulations yet].

Bremen (regulation already passed)

- **Gastronomy**

As of May 18th: Opening of restaurants and other catering facilities if operator ensures that the regulations of the prohibition of contact are complied with (max. 50% occupancy); operators must provide an operational protection concept with a hygiene plan and must submit it to the authorities on request; 2,0 m space between tables in restaurants and 1,5 m between employees and guests must be ensured; no self-service buffets and seating obligation; operators must document the name and contact details of each guest and the time of entering and leaving the facility and retain them for a period of three weeks; where spatial conditions or the nature of the activity carried out do not permit compliance with the minimum distance regulations, mouth-nose covers must be worn or suitable protective screens or separation devices fitted.

- **Hotel business**

As of May 18th: Tourist offers, leisure activities and services such as city tours and city walks; operators must ensure that the rules of contact prohibitions are observed and a hygiene and pandemic plan is in place.

Hamburg (regulation already passed)

- **Gastronomy**

As of May 13th: Opening of gastronomy provided that min. distance of 1,5 m between guests is ensured (exception: persons of one's own household); guests have to be requested by written or pictorial notices to keep a distance of 1.5 m from each other; no buffets; no obligation to wear masks in the restaurant business (except for service and kitchen staff); surfaces of door handles must be cleaned several times a day; providers are obliged to document the contact details of all guests in writing and keep the records for a period of four weeks and present them to the competent authority on request.

- **Hotel business**

As of May 13th: Accommodation services in tourist accommodation, holiday homes, on camp sites and in comparable establishments may only be offered for tourist purposes with a max. occupancy of 60% (based on rooms); dormitories may not exceed four persons; min. distance regulation of 1,5 m in common areas; jointly used wellness areas as sauna or swimming pools are to be kept closed; surfaces of door handles must be cleaned several times a day; providers are obliged to document the contact details of all guests in writing and keep the records for a period of four weeks and present them to the competent authority on request.

Hessen (regulation already passed)

- **Gastronomy**

As of May 15th: Restaurants (including indoor areas), cafés, beer gardens, casinos, betting shops and arcades; one guest per 5 sqm (exceptions for families, household members or members of two households); no mask required (except for service and kitchen staff); in case of service in enclosed areas, contact details of the guests must be recorded to enable tracking of infections.

- **Hotel business**

As of May 15th: Accommodation offers for touristic purposes is permitted again; community saunas, swimming and wellness areas must remain closed; suitable hygiene measures in accordance with the recommendations of the Robert Koch Institute must be taken and monitored and notices must be hung up on the necessary distance and hygiene measures.

Mecklenburg Western Pomerania (regulation already passed)

- **Gastronomy**

As of May 9th: Gastronomy for locals (6 a.m. to 9 p.m.), as of 25th May: gastronomy for visitors from other federal states (6 a.m. to 9 p.m.); requirements: maximum 6 persons per table plus a distance rule of 1.50 m; no mask required in gastronomy (except for service and kitchen personnel); no buffets; reservation requirement: one person per group of guests must be listed with contact details in a day-attendance list to enable the tracking of infections; information must be retained by the operator for a period of four weeks after the end of the stay and handed over to the competent authority upon request.

- **Hotel business**

As of May 9th: Accommodation in holiday apartments and houses and on camping sites is allowed for permanent accommodation for more than 6 months.

[Further plans from the Cabinet's phased plan: Expected as of May 18th: Accommodation in hotels and guesthouses, youth hostels, school hostels and similar establishments as well as on camping sites, caravan sites and in holiday homes for locals; with own protection and hygiene concept. Expected as of May 25th: for guests from other federal states under certain conditions (max. 60% occupancy); entry permitted for all German citizens, except day tourists; events can take place with special permission [max. 75 persons indoors and

150 persons outdoors; from the end of June, up to 200 persons indoors and 500 persons outdoors].

Lower Saxony (regulation already passed)

- **Gastronomy**

As of May 11th: Opening of restaurants, pubs, cafés and beer gardens both indoors and outdoors, but max. 50% occupancy; customer contact data recording and obligation to keep records for three weeks after the end of the stay; tables at a distance of at least 2.0 m and distance rule of 1.50 m (exception: persons of one's own household); no buffets; no obligation to wear masks in the restaurant business (except for service and kitchen staff); guests must be guaranteed the possibility of hand disinfection.

- **Hotel business**

As of May 6th: Permission for private use of second homes and permanent camping; lifting of transport restrictions to the East Frisian Islands.

As of May 11th: Accommodation for touristic purposes in holiday apartments and houses permitted (re-occupancy ban of at least 7 days, i.e. accommodation may only be used by one guest and their fellow travelers within a period of 7 days); accommodation on campsites, boat docking sites and caravan sites permitted (occupancy rate max. 50%). Further plans from the five-step plan of the Lower Saxony state government:

[Expected as of May 25th: Hotels, guesthouses and youth hostels; occupancy rate max. 50% and re-occupancy; hotels are not allowed to offer self-service meals or buffets, meal times should be regulated.]

North Rhine-Westphalia (regulation already passed)

- **Gastronomy**

As of May 11th: Gastronomic offer in restaurants provided that the distance and the standards of hygiene and protection against infections are observed indoors and/or outdoors; only relatives and/or partners or persons from a maximum of two households may sit at one table.

- **Hotel business**

As of May 11th: Touristic use and stay in holiday apartments, holiday homes and on camping sites (subject to contact restrictions and only for persons resident in Germany, with the exception of permanently rented or owned real estate and permanently parked caravans by the authorised users).

As of May 18th: Hotels, hostels, youth hostels and similar accommodation facilities also reopened for tourists (but only for residents of Germany); strict regulations analogous to those for gastronomy with obligatory compliance with hygiene and infection protection standards.

Rhineland-Palatinate (regulation already passed)

- **Gastronomy**

As of May 13th: Opening of indoor and outdoor gastronomy (6 a.m. to 10 p.m.) while maintaining the rules of distances and hygienic regulations; only catering at tables is allowed (in outdoor areas max. 6 persons per table older than 12), free choice of seats is not possible; guests must place a reservation or register for spontaneous visits and allow contact tracing (storage of data for one month and, if necessary, information will be forwarded to competent authorities); contact restrictions continue to apply (also at tables) and must be complied with (table distance of at least 1.5 m); masks must be worn by staff and guests (except directly at their seats).

- **Hotel business**

As of May 13th: Caravan pitches can be opened and permanent camping is possible, but only with their own sanitary facilities.

[According to the announcement of the Minister President of Rhineland-Palatinate: Expected as of May 18th: Opening of hotels (while maintaining protective measures); this also includes accommodation facilities such as holiday homes and apartments].

Saarland

- **Gastronomy**

As of May 18th: Opening of restaurants and pubs.

- **Hotel business**

As of May 18th: Opening of hotels, hostels, inns, camping sites, youth hostels and holiday apartments; max. occupancy of accommodation facilities 50% (as of May 25th max. 75%, as of June 2nd (depending on the number of infections) full occupancy may be possible).

Saxony (regulation already passed)

- **Gastronomy**

As of May 15th: Opening of catering establishments with strict restrictions (in particular compliance with contact restrictions) and creation of an own hygiene concept for operators.

- **Hotel business**

As of 15 May: Operation of hotels and accommodation facilities as well as the use of holiday apartments and houses and camping and caravan sites; indoor swimming pools, saunas and steam baths have to remain closed.

Saxony-Anhalt (regulation already passed)

- **Gastronomy**

As of May 22nd: Opening of restaurants (indoor and outdoor); compliance with existing contact restrictions and respective sign boards for guests; distance and hygiene measures must be followed (distance rule of 1.50 m); no mask required in gastronomy (except for service and kitchen personnel); no buffets; guests are registered in an attendance list upon entering the facility; health authority must be notified in writing about resumption of operations.

As of May 18th: Opening of restaurants if responsible county or the responsible independent city has drawn up a general security concept for the public holiday on May 21st and has announced the opening on the basis of a report submitted by the operator; hygiene concept approved on a case-by-case basis.

- **Hotel business**

As of May 15th: Accommodation for persons having their principal residence in Saxony-Anhalt on camping sites and caravan sites as well as in holiday homes, holiday home parks, holiday apartments, yacht and sports boat harbors as long as self-sufficiency is achieved without the use of common facilities; distance and hygiene measures must be followed; guests are registered in an attendance list upon entering the facilities.

As of May 22nd: Accommodation of persons having their principal residence in Saxony-Anhalt in hotels, pensions and other accommodation facilities for tourist purposes; the above measures apply accordingly.

Schleswig-Holstein

- **Gastronomy**

As of May 18th: Restaurants both inside and outside (until 10 p.m.); max. 50 guests per room; establishments must ensure that hygiene and distance rules are followed.

- **Hotel business**

As of May 18th: Hotels and holiday apartments may reopen under (not yet further specified) conditions.

Thuringia (regulation already passed)

- **Gastronomy**

As of May 15th: Opening of restaurants and pubs; regulations for the serving of alcoholic beverages are made by the municipalities independently. Establishments must ensure that hygiene and distance rules are followed.

- **Hotel business**

As of May 15th: Overnight accommodation offers for tourist purposes. Establishments must ensure that hygiene and distance rules are followed.

Economic consequences of the easing for hotel operators

The regulations of those federal states which provide for an upper occupancy limit for the opening of hotels and accommodation facilities for the tourism industry (e.g. Hamburg, Lower Saxony, Saarland and Mecklenburg-Western Pomerania) or which set individual case specifications (e.g. no opening of communal SPA/wellness areas), confront hotel operators with the question of whether a reopening makes any economic sense at all. If a hotel is currently living off its SPA/wellness facilities or can only cover its costs when occupancy rates exceed the permitted occupancy rates, it will in many cases make more economic sense for operators to keep hotels closed and to keep employees on short-time working (to avoid having to bear the full cost burden and thereby incur even higher deficits).

A number of follow-up questions also arise in practical handling: Due to the increased hygiene regulations, the cleaning staff in particular must expect additional work, which will lead to further additional costs. Where buffet offers are no longer permitted, concepts and cost calculations by operators will not work anymore (because either breakfast can no longer be offered at all - which in turn leads to losses and guest satisfaction suffers, or additional personnel is required and must be paid for serving tables). It is rather unlikely that the additional costs arising from this will be passed on to future hotel guests in the form of higher overnight prices.

Legal consequences of the easing of restrictions - Obligation to operate

If a reopening of hotels becomes legally permitted but does not make economic sense, the question arises again for hotels whose rental or lease agreements provide for an obligation to operate, whether this obligation still applies. As the operating obligation already continued to apply during the even stricter operating restrictions, as long as the operation was basically (legally) still possible, this also applies now (details can be found in our blog post "Shutdown of hotel operations due to Covid-19 "Corona Virus" - Force Majeure?" of March 25, 2020).

Due to the developments in recent weeks, many agreements have been concluded in the market between lessees and lessors in which a suspension of the contractually agreed duty to operate has been agreed. From an operator's point of view, such a suspension should - if not already done - be extended if possible (unless future periods are already covered), although the details of a decision against reopening certainly requires further explanation to owners.

Conclusion

While all easing is subject to the condition that renewed aggravation is possible in the event of an increased incidence of infection, a first step has been taken for the catering and hotel industry in Germany. A more in-depth discussion by politicians about the sense and nonsense of any restrictions - including the expert opinions of operators - and a unified nationwide regulation would be welcome nevertheless

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