



Information sheet

Amendment to the Telecommunications Act
Section 48, para. **4 and 5**

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Amendment to the Telecommunications Act (German abbreviation TKG) Section 48, para. 4 and 5

Digitalradio Deutschland e.V. asked its member Lawyer H. G. Bauer to write an information sheet about the Amendment to the German Telecommunications Act. Today, we are pleased to present you with a summary which clarifies some important questions.

The information sheet does not constitute legal advice.

If you still have questions, the German Digital Radio Office (Digitalradio Büro Deutschland) would be glad to help. Its e-mail address is shown above.

Kind regards

A handwritten signature in blue ink, appearing to read "Bauer".

Carsten Zorger
Director German Digital Radio Office

The obligation to be able to receive digital radio programmes is laid down in Section 48, paragraph 4 and 5 of the Telecommunications Act as well as Section 150 paragraph 6 of the Act, both of which have now been inserted into the Telecommunications Act. They define what is known as interoperability. The Telecommunications Act makes a distinction between radio sets which are built into a car (Section 48 para. 4 TKG) and radio sets that can be bought from dealers (Section 48 para. 5 TKG).

Section 48 para. 4 and 5 TKG

§ 48 TKG

"(4) Any car radio built into a new vehicle designed and built with at least four wheels for the transport of persons must contain a state-of-the-art receiver which can at least receive and immediately play radio services transmitted via terrestrial digital broadcasting. Receivers which comply with harmonised standards or parts thereof, the references of which have been published in the Official Journal of the European Union, are assumed to meet the requirement in paragraph 1 which corresponds to the relevant standards or parts thereof.

(5) Any radio set intended for consumers, and which is being newly brought onto the market for sale, rental or otherwise, predominately for receiving audio broadcasts, which can display the station name and is not covered by paragraph 4, must contain a receiver which is at least capable of receiving and playing digital radio programmes. Exceptions apply to kits for radio systems, devices that are part of a radio system for amateur radio services and devices in which the radio receiver has a purely secondary function."

"Section 48 paragraph 4 and 5 applies to devices which will be brought onto the market from 21 December 2020".

Section 150 para. 6 TKG

Since the start of the first nationwide DAB+ multiplex in 2011, as with televisions, there has been a legal requirement to be able to incorporate digital reception capabilities into radio sets. The initial drafts from the Federal Ministry of Economics did not get anywhere. The breakthrough came in 2018 with the European Electronic Communications Code¹. In order to encourage the spread of digital radio, the EU obliges the Member States to ensure interoperability of car radios for terrestrially broadcast radio programmes. At the same time, it also allowed reception capabilities for digitally broadcast

Background

¹ Article 113 of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 (Official Journal L 321 of 17/12/2018), p.36).

programmes to be prescribed for other radio sets. The German legislator made use of these possibilities in 2019, when supplementing the Telecommunications Act (TKG).

As from 21/12/2020, all radios built into new cars must be capable of receiving digital radio broadcasts; De facto, they have to be able to receive DAB+.

The car radio requirement only applies to **new** cars. The classification of what constitutes a car is based on the European definition of vehicle categories, which puts cars into vehicle category M. Besides cars, the category includes mobile homes, ambulances, rescue vehicles and buses. Other vehicles, such as the VW Multivan, Mercedes V-class and SUVs like the VW Tiguan or the Opel/Vauxhall Mokka also fall into this category.

The obligation to equip new cars with digital radio does not apply to trucks or other vehicles for goods transport (Vehicle category N). This category includes small vans such as the Mercedes Sprinter, the Opel/Vauxhall Movano or VW Crafter. Recreational vehicles are also included, as well as box vans like the VW Caddy, Citroen Berlingo or Renault Kangoo, even if they are usually registered as cars.

The equipment obligation does not apply to Quads, which are classified as motorcycles despite having four wheels.

The obligation only applies to new vehicles. Radios in used cars do not have to be equipped to receive digital terrestrial radio, and no retrofitting is required. So vehicles with a one-day registration are not subject to the equipment obligation, since they are treated as used vehicles, as long as they were registered before the deadline of 21/12/2020. If they are registered after the deadline, the requirement to fit a digital radio does apply pursuant to Section 48, paragraph 4.

Unlike in many other countries, in Germany a car radio is not usually considered as standard equipment, but has to be ordered as an option. The equipment requirement applies regardless of whether the radio is built in as standard or ordered as an option.

Section 48 para. 4 requires that the digitally broadcast radio programmes must be able to be received 'immediately', i.e. without separate activation of the functionality. Therefore, from 21 December 2020, it is not allowed to make activation of DAB+ reception conditional on additional payment.

If the devices are part of combined infotainment systems, it will not suffice for radio programmes only to be received digitally via the Internet. Section 48 para. 4 TKG requires that reception of digital

Car radios

(Section 48 para. 4 TKG)

Cars

Trucks

Quads

Used vehicles

Standard equipment or option

Activation

Infotainment systems

terrestrial broadcast programmes must be possible. Therefore, the infotainment system must enable this mode of reception.

Therefore, it will not suffice to equip the car radio with an interface which is used for connecting to a telecommunications network or a telecommunications device (e.g. Bluetooth).

The Telecommunications Act does not stipulate which transmission standard should be built-in. This is intended to ensure that the equipment obligation can keep pace dynamically with the latest technology. Currently, programmes are only being broadcast terrestrially on DAB+. Car radios must be able to be received using this standard.

Car radios built into vehicles must meet European standards, for which the references are published in the Office Journal of the European Union (presumption of conformity). That does not mean that the whole standard needs to be published in the Official Journal. It will suffice if a reference is published indicating where the standard can be found in a different location. If, in future, other standards such as DRM are used for radio broadcasting, this standard must also be capable of being received.

The equipment obligation for **commercially-available radios** differs slightly from that for car radios. While car radios in new vehicles must be able to receive programmes via digital terrestrial broadcasting, for all other radios, it will suffice if they contain a receiver which can receive and play digitally broadcast programmes via another means. As is apparent from the explanatory memorandum, this is the case if the user can listen to Internet radio. There is no obligation to build in an additional DAB+ receiver.

It will not suffice if the radio not only receives FM but also has built-in Bluetooth so that the user can listen to Internet radio via a smartphone. Bluetooth is an industry standard for data transmission between devices over short distances by means of radio waves. That means it is not a process via which digital radio services are broadcast. Moreover, the intention is that the radios should contain a receiver for digital radio services. In the case of this receiver that uses Bluetooth connection, it is not the radio itself, but an external device that is receiving the radio programme.

Not every radio must be equipped for digital reception. The equipment obligation only applies to radios which can display the station name. This means that radios which can only display the frequency band and the actual frequency are not covered by this obligation. The size of the display is irrelevant in this regard.

Digital interface

DAB+ transmission standard

Commercially-available radios

(Section 48 para. 5 TKG)

Bluetooth

Exceptions

Exceptions apply to kits for radio systems and devices that are part of a radio system for amateur radio services.

All in all, what matters is that the devices should be intended predominantly for reception of radio broadcasts. So smartphones, tablets or laptops are not covered by this obligation, since they are used primarily for other tasks and radio reception is merely an ancillary function.

Amplifiers for HiFi systems which have no radio reception component are not subject to the obligation to incorporate a digital receiver unit. If the manufacturer has built-in an FM radio, this makes it clear that it is a radio. In that case, it is also obliged to buildin a digital receiver.

The obligation to build in a DAB+ or other digital terrestrial receiver does not apply to car radios in the After-Sales market. Section 48 para. 4 TKG applies only to car radios built into new vehicles. Section 48 para. 5 TKG applies to car radios in the After-Sales market. But in any case, they must be capable of receiving and playing digitally broadcast programmes.

Only analogue commercially-available radios and car radios can no longer be brought onto the market as from 21 December 2020.

The term 'bringing onto the market' is used frequently, but depending on the area of the law, its definition can vary. This term is most important to the manufacturers, and to a lesser degree to the consumer. The EU "Blue Guide" states that bringing onto the market means that a **manufacturer or importer** makes the device available to the vendor or the consumer **on the European Market for the first time**.

The explanatory memorandum states that by setting the deadline as 21 December 2020, manufacturers are being allowed 'sufficient time to convert their production processes' and that until then 'selling-off stock on a reasonable scale remains possible'. By doing this, the legislator is making it clear that it is the date of sale to the consumer that is the decisive factor.

Therefore, as from 21 December 2020, no radios or car radios that do not comply with the law may be brought onto the market.

December 21 2020 is a fixed date. However, devices **which have been brought onto the market before December 21** may be sold after this date to reduce inventory. **After this inventory has been sold, only compliant new radios** may be **brought onto the market**.

Cars with car radios where the sales contract is entered into before the 21 December 2020 and the car is delivered after that date must be

Smartphones and tablet PCs

Receiver / Amplifiers

Car radios (After-Sales market)

Deadline/period

Bringing onto the market

Transitional period

Sale and delivery

equipped with DAB+ and reception must be possible immediately. On delivery of the car, use must not be made conditional on additional payment, because the bringing onto the market is tied to the first use.

The German digital radio obligation also applies to sales on the Internet via foreign platforms. The sales contract is, in principle, subject to the law of the state in which the consumer has his usual place of residence, as long as the business carries on its commercial activity in some way in that state.²

There should not be any objection if, in future, a consumer brings an analogue-only radio with him on holiday, because the device is not being brought onto the market but instead kept for private use.

The legislator has expressly stipulated that three years after the requirement comes into effect, i.e. as from 21 December 2023, it will evaluate the interoperability requirement. It will then review whether it has been successful in promoting DAB broadcasting.

The legislator will evaluate this on the basis of the sales statistics produced by the associations. The legislator left open the matter of which sales figures it would deem to constitute success in spreading digital radios.

If, as from 21 December 2020, radios are sold which do not fulfil the requirements of Section 48 para. 4 and 5 TKG, this is **not an offence**. The legislator did not incorporate any such provision in the Telecommunications Act.

The vendor must take into account that it is violating a statutory prohibition, and the sale could be void pursuant to Section 134 of the German Civil Code. Since the obligation to ensure interoperability concerns the vendor, this is deemed a unilateral infringement if the vendor was aware of the illegality and used it to its own advantage. That is something that will usually be assumed.

The purchaser can demand the rescission of the invalid contract under the Unjust Enrichment Act (paras. 812 onward of the German Civil Code). Each party must return what they received under the invalid contract. Whether the courts will accept the nullity of a purchase contract in the event of a dispute, if an analogue-only radio is sold as from 21 December 2020, will become apparent in time.

It is problematic if it concerns a car radio built into a new car, because

Internet purchases

Private Import

Evaluation

Infringements of Section 48 para. 4 and 5 TKG

Offences

Nullity of the contract

² Art. para. 6 1 b) Rome I Regulation

that could be a partial violation. Section 139 provides that in the event of the nullity of part of a legal transaction, the entire legal transaction is invalid, unless it can be presumed that it would have gone ahead even without the invalid part.

Selling or otherwise bringing onto the market of an analogue-only radio device can also constitute an infringement of the Unfair Competition Act (UWG). It may be deemed an infringement due to unfair business practices within the meaning of Section 3 paragraph 3, Annex No. 9 of the Unfair Competition Act. This is the case if untruthful statements create the false impression that goods are merchantable. If the product infringes a prohibition of sale, as provided in Section 48 para. 5 and 6 TKG, this constitutes an infringement. The competent authorities or a competitor can take action against this. Nobody has to tolerate a competitor making money from illegal products.

Unfair competition