Act to Combat Undeclared Work and Unlawful Employment

(Gesetz zur Bekämpfung der Schwarzarbeit und illegalen Beschäftigung - Schwarzarbeitsbekämpfungsgesetz, SchwarzArbG)


Part 1
Purpose

Section 1
Purpose of this Act

(1) The purpose of this Act is to intensify the fight against undeclared work.
(2) Undeclared work is deemed to have been engaged in by any persons who, in performing or commissioning work or services,

1. fail, in their capacity as an employer, business, or self-employed person subject to social security contributions, to fulfil the reporting, contribution, or record-keeping duties required of them under social security legislation,

2. fail, in their capacity as a taxpayer, to fulfil the tax obligations that arise from the work or services,

3. are in receipt of social benefits and fail to fulfil the reporting duties towards their benefits provider that arise from the work or services,

4. perform the work or services themselves and fail to fulfil their duty to report the opening of an independent business operating from a fixed location (section 14 of the Trade Regulation Code) or to obtain the required itinerant trader’s licence (section 15 of the Trade Regulation Code) or

5. perform the work or services themselves in the form of a craft or trade for which a licence is required as an independent business operating from a fixed location without being enrolled in the trade and craft register (section 1 of the Trade and Crafts Code).

(3) Subsection (2) does not apply to work or services that is/are not intended to produce sustainable profits and which is/are performed

1. by relatives as defined in section 15 of the Fiscal Code or by civil partners,
2. as a favour,
3. as a form of help among neighbours or
4. as a form of own labour as defined in section 36 (2) and (4) of the Second Housing Act as published on 19 August 1994 (Federal Law Gazette I, p. 2137), or as a form of own labour as defined in section 12 (1) sentence 2 of the Housing Subsidisation Act of 13 September 2001 (Federal Law Gazette I, p. 2376), last amended by Article 7 of the Act of 29 December 2003 (Federal Law Gazette I, p. 3076).

An activity that is not intended to produce sustainable profits is deemed to exist, in particular, if it is performed for a small fee.

Part 2
Inspections
Section 2
Matters for inspection

(1) The customs authorities inspect whether

1. the obligations arising from work or services under section 28a of Book IV of the Social Code are being, or were in the past, fulfilled,
2. benefits under Books II and III of the Social Code or benefits under the Partial Retirement Act are being, or were in the past, unlawfully claimed in connection with the work or services,
3. information submitted by the employer that is relevant for benefits under Book III of the Social Code was sufficiently substantiated,
4. foreign nationals are not being and were not, in the past,
   a) employed in contravention of section 284 (1) of Book III of the Social Code or in contravention of section 4 (3) sentences 1 and 2 of the Residence Act or employed under working conditions worse than those of comparable German workers or
   b) commissioned to provide paid work or services in contravention of section 4 (3) sentences 1 and 2 of the Residence Act
and
5. the working conditions set out in the Minimum Wage Act, the Posted Workers Act and section 8 (5) of the Temporary Employment Act are being, or were in the past, complied with.

The revenue authorities of the respective Land are responsible for inspecting whether the tax requirements set out in section 1 (2) no 2 are met. Customs authorities have the right to participate in inspections conducted by the revenue authorities of the respective Land. In order to comply with their reporting duty as set out in section 6 (1) sentence 1, in conjunction with section 6 (3) no 4, the customs authorities inspect whether there are indications that taxpayers have not fulfilled the tax obligations arising from the provision of work or services. Principles of cooperation are mutually agreed on by the highest revenue authorities of the Federation and the Länder.

(1a) The authorities responsible under the legislation of the respective Land for prosecuting and punishing administrative offences as described in this Act inspect whether

1. the duty to report the opening of an independent business operating from a fixed location (section 14 of the Trade Regulation Code) has been fulfilled or the required
itinerant trader’s licence (section 15 of the Trade Regulation Code) has been obtained and
2. a craft or trade for which a licence is required is being carried out as an independent business operating from a fixed location and has been enrolled in the trade and craft register.

(2) When conducting inspections under subsection (1), the customs authorities are supported by
1. the revenue authorities,
2. the Federal Employment Agency,
2a. the Federal Network Agency for Electricity, Gas, Telecommunications, Postal and Rail Services,
3. the agencies responsible for collecting the contributions for the different branches of social security (section 28i of Book IV of the Social Code),
4. the pension providers,
5. the work accident insurance providers,
6. the joint entities and approved local authority providers under Book II of the Social Code and the Federal Employment Agency in its capacity as the entity responsible for the centrally managed IT procedures under section 50 (3) of Book II of the Social Code,
7. the authorities responsible under the Asylum Seekers Benefits Act,
8. the authorities specified in section 71 (1) to (3) of the Residence Act,
8a. the Federal Office for Goods Transport,
8b. the authorities responsible under the legislation of the respective Land for monitoring and authorising occasional transport services using motor vehicles under section 46 of the Passenger Transport Act,
9. in individual cases and upon request, the police authorities of the Federation and the Länder,
10. the authorities responsible for employment protection in the respective Land,
11. in individual cases and upon request, the police authorities of the Federation and the Länder,
12. the authorities responsible under the legislation of the respective Land for prosecuting and punishing administrative offences as described in this Act and
12. the entities responsible for processing business registrations under section 14 of the Trade Regulation Code.

The responsibilities of these authorities under other legal provisions remain unaffected. The inspections can be combined with other inspections conducted by the bodies specified in this subsection; provisions governing information-sharing and cooperation remain unaffected. Administrative expenses incurred by the cooperating bodies will not be reimbursed.

Section 2a
Obligation to carry and produce identification

(1) When performing work or services, persons working in the following sectors and industries are obliged to carry on their person their identity card, passport, travel document issued in lieu of a passport or document issued in lieu of an identity card and present it to the customs authorities upon request:
1. construction, 
2. the catering and hotel business, 
3. passenger transport, 
4. the haulage, transport and associated logistics sectors, 
5. the fairground and amusement sector, 
6. forestry businesses, 
7. industrial cleaning, 
8. businesses engaged in setting up and dismantling at trade fairs and exhibitions, 
9. the meat industry and 
10. prostitution.

(2) Employers must provide each of their workers with a written notification of the obligation set out in subsection (1), keep this notification on file for the duration of the work or service, and produce it upon request during inspections under section 2 (1).

(3) In the cases described in section 2 (1a), the obligations to produce documents set out in subsections (1) and (2) also apply vis-à-vis the authorities responsible, under the legislation of the respective Land, for prosecuting and punishing administrative offences as described in this Act.

Section 3

Powers during inspections of persons

(1) For the purposes of conducting an inspection under section 2 (1), the customs authorities and the cooperating bodies specified in section 2 (2) are authorised to enter, during the working hours of the persons employed in these places, the business premises and properties of the employer and the party contracting self-employed persons and, in the case of an inspection under section 2 (1) no 5, of the user of temporary workers and

1. gather information from them about their employment or activities and 
2. check the documents carried on their person where it may be assumed that the scope, type or duration of their employment or activities can be obtained or deduced from these documents.

(2) Subsection (1) applies mutatis mutandis if a person is performing work or services in the business premises of a third party.

(3) For the purposes of conducting an inspection under section 2 (1), the customs authorities and the cooperating bodies specified in section 2 (2) are authorised to ascertain the personal data of any persons working in the business premises or properties of the employer, contracting party or third party and, in the case of an inspection under section 2 (1) no 5, of the user of temporary workers. For this purpose, they may stop the persons specified in sentence 1, ask them for their personal data (given names, surname, name at birth, date and place of birth, occupation, full address and nationality) and require them to submit for inspection the identification documents carried on their person.

(4) In the defence sector, the right to enter premises may be exercised only with the agreement of the Federal Ministry of Defence.

(5) Customs officials are authorised to stop vehicles. Drivers of vehicles must stop upon request and allow customs officials to enter and leave the vehicle. The customs administration must inform the police authorities of the Länder of any large-scale operations.

(6) Subsections (1) to (4) apply mutatis mutandis to the authorities responsible under the legislation of the respective Land for prosecuting and punishing administrative offences as described in this Act for the purposes of conducting inspections under section 2 (1a),
provided that there are indications of undeclared work as defined in section 1 (2) nos 4 and 5.

**Section 4**

**Powers during inspections of business documents**

(1) For the purposes of conducting an inspection under section 2 (1), the customs authorities and the cooperating bodies specified in section 2 (2) are authorised to enter, during business hours, the business premises and properties of the employer and the party contracting work or services and, in the case of an inspection under section 2 (1) no 5, the user of temporary workers and check payroll and registration documents, accounts and other business documents from which information about the scope, type or duration of employment can be obtained or deduced.

(1a) For the purposes of conducting an inspection under section 2 (1a), the authorities responsible under the legislation of the respective Land for prosecuting and punishing administrative offences as described in this Act are authorised to enter, during the working hours of the persons employed in these places, the business premises and properties of the self-employed person, the employer and the party contracting self-employed persons and check documents where it may be assumed that the scope, type or duration of the operation of a business, an itinerant trade, a craft or trade for which a licence is required, or of employment can be obtained or deduced from these documents, provided that there are indications of undeclared work as defined in section 1 (2) nos 4 and 5.

(2) For the purposes of conducting an inspection under section 2 (1), the customs authorities are authorised to check documents indicating the remuneration provided for work or services commissioned by individuals, legal persons or associations. In the context of conducting an inspection under section 2 (1) no 5, sentence 1 applies mutatis mutandis to documents indicating the remuneration provided for temporary work.

(3) For the purposes of conducting an inspection under section 2 (1), the customs authorities are authorised to check, at the premises of contracting parties that are not traders as defined in section 2 of the VAT Act of 1999, invoices, payment vouchers or other substantiating documents about supplies of work (including materials) and other services in connection with real estate.

**Section 5**

**Duty to submit to and cooperate with inspections**

(1) Employers, workers, contracting parties and third parties present during an inspection under section 2 (1) and (1a) as well as users of temporary workers present during an inspection under section 2 (1) no 5 must submit to and cooperate with the inspection; in particular, they must provide information relevant to the inspection and present the documents specified in sections 3 and 4. In cases covered by section 3 (1), (2) and (6) as well as section 4 (1), (1a) and (2), they must also submit to the entering of their properties and business premises. A person obliged to furnish information may refuse to do so to avoid exposing him-/herself or a person related to him/her (as defined in section 383 (1) nos 1 to 3 of the Code of Civil Procedure) to the risk of prosecution for a criminal or administrative offence. Foreign nationals must, upon request, present to the customs authorities their passport, travel document issued in lieu of a passport or document issued in lieu of an identity card as well as their residence permit, proof of tolerated person status or permission to stay and, if there are indications of a violation of provisions relating to foreign nationals, surrender these to be handed over to the competent authority responsible for foreign nationals. If the documents are retained, the foreign national must be given a receipt specifying the documents that have been retained and the authority responsible for foreign nationals to which they are being handed over. The foreign national must then present him-/herself to the authority responsible for foreign nationals without delay. This must be explained on the receipt. If the authority responsible for foreign nationals returns the documents that have been retained, or if other documents are issued in lieu, the authority responsible for foreign nationals must retain the receipt.
(2) In cases covered by section 4 (3), contracting parties that are not traders as defined in section 2 of the VAT Act of 1999 must submit to and cooperate with inspections under section 2 (1); in particular, they must provide information relevant to the inspection and present the documents specified in section 4 (3). Subsection (1) sentence 3 applies mutatis mutandis.

(3) In the case of an inspection under section 2 (1) no 5, the employer and the contracting party as well as the user of temporary work must, upon request, extract data stored in data processing equipment and transmit them to the customs authorities either on data storage devices that can be processed by automated means or in the form of lists. If data extraction would involve a disproportionate amount of time and effort and there are no overriding legitimate interests of the person concerned, the employer and the contracting party and, in the case of an inspection under section 2 (1) no 5, the user of temporary work may provide either data storage devices that can be processed by automated means or lists containing the data required without previously having extracted the relevant data. In this case, the customs authorities must separate the data and delete any data that is not covered by sentence 1. If the transmitted data are not needed for the purpose of investigating criminal or administrative offences, investigating tax-relevant circumstances or setting social security contributions or benefits, the data storage devices or lists must, upon the request of the employer or contracting party, be returned or the data deleted without delay following the conclusion of an inspection under section 2 (1).

Section 6
Information-sharing and cooperation among authorities

(1) The customs authorities and the cooperating bodies specified in section 2 (2) have a duty to share with each other any information necessary for inspections, including personal data and the results of inspections, to the extent that the authorities and bodies need these to perform their tasks. The customs authorities on the one hand and the law enforcement authorities and police authorities on the other hand must share with each other any information necessary for the prevention and prosecution of criminal and administrative offences related to one of the matters for inspection specified in section 2 (1). Personal data may be transmitted to law enforcement authorities and police authorities only if there are actual indications that the data are necessary for the prevention and prosecution of criminal or administrative offences related to one of the matters for inspection specified in section 2 (1).

(2) In order to fulfil their tasks as set out in section 2 (1) and for the purpose of prosecuting criminal and administrative offences, the customs authorities may electronically retrieve the Federal Employment Agency's data records on EU work permits and authorisations to take up employment issued as well as on foreign nationals employed under works and services contract quotas; law enforcement authorities may retrieve such data records by automated means only to the extent that this is necessary for the prosecution of criminal and administrative offences. Section 79 (2) to (4) of Book X of the Social Code applies mutatis mutandis.

(3) The customs authorities must inform the relevant authorities if, in fulfilling their responsibilities as set out in this Act, they find any indications of violations of

1. this Act,
2. the Temporary Employment Act,
3. provisions of Books IV and VII of the Social Code on the payment of contributions,
4. tax laws,
5. the Residence Act,
6. the duty to cooperate as set out in section 60 (1), sentence 1, nos 1 and 2 of Book I of the Social Code or the reporting obligation as set out in section 8a of the Asylum Seekers Benefit Act,

7. the Trade and Crafts Code or the Trade Regulation Code,

7a. the Road Haulage Act,

7b. the Passenger Transport Act,

8. other criminal laws,

9. the Posted Workers Act or

10. the Minimum Wage Act.

Documents seized under section 5 (1), sentence 4, must be transmitted to the authority responsible for foreign nationals without delay.

(4) If there are indications that a document seized under section 5 (1), sentence 4, is forged or has been tampered with, it must be transmitted to the police authority responsible.

Section 6a

Transmission of personal data to member states of the European Union

(1) The customs authorities may transmit personal data related to one of the matters for inspection specified in section 2 (1) to an authority of a European Union member state competent for the prevention and prosecution of crimes. In this context, the transmission of personal data without a request is permissible only if, in the case in question, there is a risk of the commission of a crime as defined in Article 2(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18/07/2002, p. 1), most recently amended by Framework Decision 2009/299/JHA (OJ L 81, 27/02/2009, p. 24), and there are specific indications that the transmission of this personal data could contribute to preventing such a crime.

(2) The transmission of personal data under subsection (1) is permissible only if the request contains at least the following details:

1. name and address of the requesting authority,

2. designation of the crime that is to be prevented with the help of the requested data,

3. description of the case on which the request is based,

4. purpose for which the data are requested,

5. connection between the purpose for which the information or intelligence is requested and the person who is the subject of the information,

6. details about the identity of the person concerned, if the request relates to a known person and

7. reasons for believing the relevant information and intelligence are available in Germany.

(3) Data must not be transmitted under subsection (1) if

1. doing so would impair core security interests of the Federation or the Länder,

2. the transmission of the data would be disproportionate or the data are not required for the purposes for which they are to be transmitted,
3. the data to be transmitted are not held by the requested authority and can only be obtained by taking coercive measures or
4. doing so would contravene special federal utilisation provisions; the duty to observe statutory secrecy obligations and professional or special official secrets that are not based on legal provisions remains unaffected.

(4) Transmission is not required if
1. the maximum penalty under German law for the act that is to be prevented is one year’s imprisonment or less,
2. the transmitted data are to be used as evidence before a judicial authority,
3. the data to be transmitted are not held by the requested authority but could be obtained without taking coercive measures or
4. transmission would present a risk to the success of ongoing investigations or to a person’s body, life or freedom.

(5) Without the consent of the transmitting state, personal data transmitted to the customs authorities under Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ L 386 of 29/12/2006, p. 89, OJ L 75 of 15/3/2007, p. 26) may be used only for the purposes for which they were transmitted or to avert a present and substantial threat to public security. The data may be used for other purposes or as evidence in judicial proceedings only if the transmitting state has given its consent. The conditions set by the transmitting state for the use of the data must be observed.

(6) For the purposes of monitoring data protection, the customs authorities must provide information to the transmitting state upon request about how the transmitted data were used.

(7) Subsections (1) to (6) also apply to the transmission of personal data to authorities of a Schengen associated state that are responsible for the prevention and prosecution of crimes as described in section 91 (3) of the International Assistance in Criminal Matters Act.

Section 7
Right to information in cases of anonymous advertising
If advertising is published without a name and address under a box number, and if there are indications of undeclared work under section 1, the person who published the box number advertisement must inform the customs authorities of the name and address of the client of the advertisement free of charge.

Part 3
Administrative fines and criminal penalties

Section 8
Administrative fines
(1) An administrative offence is deemed to have been committed by any persons who

1. a) (rescinded)
   b) (rescinded)
   c) (rescinded)
   d) fail to fulfill their duty to report the opening of an independent business operating from a fixed location (section 14 of the Trade Regulation Code) or to
obtain the required itinerant trader’s licence (section 15 of the Trade Regulation Code) or

e) carry out a craft or trade for which a licence is required as an independent business operating from a fixed location without being enrolled in the trade and craft register (section 1 of the Trade and Crafts Code)

and perform a substantial volume of work or services or

2. arrange for a substantial volume of work or services to be carried out by commissioning one or more persons to perform such work or services in intentional violation of one of the provisions specified in no 1.

(2) An administrative offence is deemed to have been committed by any persons who, either intentionally or negligently,

1. in violation of section 2a (1), fail to carry on their person one of the documents specified therein or fail to produce such document either at all or within the prescribed period,

2. in violation of section 2a (2), fail to keep the notification on file either at all or for the prescribed period, or fail to produce such notification either at all or within the prescribed period,

3. in violation of

   a) section 5 (1) sentence 1 or 2 or

   b) section 5 (2) sentence 1,

   refuse to submit to an inspection or to the entering of a property or business premises or refuse to cooperate with an inspection,

4. in violation of section 5 (1) sentence 4, fail to produce one of the documents specified therein either at all or within the prescribed period or

5. in violation of section 5 (3) sentence 1, fail to transmit data, or fail to do so correctly, completely, in the prescribed manner or within the prescribed period.

(3) In the cases described in subsection (1) no 1 d) and e) as well as no 2 in conjunction with no 1 d) and e), the administrative offence may be punished with an administrative fine of up to fifty thousand euros; in the cases described in subsection (2) no 3 a) as well as no 5, the administrative offence may be punished with an administrative fine of up to thirty thousand euros; in the cases described in subsection (2) no 1, the administrative offence may be punished with an administrative fine of up to five thousand euros; in all other cases, the administrative offence may be punished with an administrative fine of up to one thousand euros.

(4) Subsection (1) does not apply to work or services that are not intended to produce sustainable profits and which are performed

1. by relatives as defined in section 15 of the Fiscal Code or by civil partners,

2. as a favour,

3. as a form of help among neighbours or

4. as a form of own labour as defined in section 36 (2) and (4) of the Second Housing Act as published on 19 August 1994 (Federal Law Gazette I, p. 2137), or as a form of own labour as defined in section 12 (1) sentence 2 of the Housing Subsidisation Act of 13 September 2001 (Federal Law Gazette I, p. 2376), last amended by Article 7 of the Act of 29 December 2003 (Federal Law Gazette I, p. 3076).
An activity that is not intended to produce sustainable profits is deemed to exist, in particular, if it is performed for a small fee.

(5) The Federal Ministry of Finance is authorised to adopt, by way of ordinances issued with the consent of the Bundesrat, rules on standard administrative fine amounts for administrative offences under subsections (1) and (2).

Section 9
(rescinded)

Section 10
Employment of foreign nationals who lack a work permit or residence permit under unfavourable working conditions

(1) Any person who intentionally commits one of the acts specified in section 404 (2) no 3 of Book III of the Social Code and employs a foreign national under conditions that are clearly less favourable than those of German workers who carry out the same or a similar activity is punished with imprisonment for up to three years or with a criminal fine.

(2) In particularly serious cases, a penalty of between six months and ten years’ imprisonment is imposed. As a rule, a particularly serious case is one in which the offender acts on a commercial basis or out of gross self-interest.

Section 10a
Employment of foreign nationals who lack a residence permit and who are victims of human trafficking

Any person who, in violation of section 4 (3) sentence 2 of the Residence Act, employs a foreign national and, in doing so, exploits a situation in which the foreign national finds him-/herself as a result of an act committed against him/her by a third party under section 232a (1) to (5) or section 232b of the Criminal Code is punished with imprisonment for up to three years or with a criminal fine.

Section 11
Larger-scale employment of foreign nationals who lack a work permit or residence permit and employment of underage foreign nationals

(1) Any person who

1. simultaneously employs more than five foreign nationals in violation of section 284 (1) of Book III of the Social Code or in violation of section 4 (3) sentence 2 of the Residence Act or commissions them to perform work or services,

2. repeatedly commits an intentional act specified in

   a) section 404 (2) no 3 of Book III of the Social Code,
   b) section 404 (2) no 4 of Book III of the Social Code,
   c) section 98 (2a) of the Residence Act or
   d) section 98 (3) no 1 of the Residence Act

or

3. employs a person under the age of 18 in violation of section 4 (3) sentence 2 of the Residence Act

will be punished with imprisonment for up to one year or with a criminal fine.

(2) If, in the cases described in subsection (1) no 1, no 2 a) or c), or no 3, the offender acts out of gross self-interest, a penalty of up to three years’ imprisonment or a criminal fine will be imposed.

Part 4
Investigations
Section 12
General provisions on administrative offences
(1) The administrative authorities as described in section 36 (1) no 1 of the Administrative Offences Act are

   1. (rescinded)
   2. in the cases described in section 8 (1) no 1 d) and e) as well as no 2 in conjunction with no 1 d) and e), the authority responsible under the legislation of the respective Land and
   3. in the cases described in section 8 (2), the customs authorities as well as the authority responsible under the legislation of the respective Land, each for its area of responsibility.

(2) Administrative fines accrue to the cash office of the administrative authority that issued the fine notice.
(3) Notwithstanding section 105 (2) of the Administrative Offences Act, the cash office responsible under subsection (2) bears the necessary expenses. It is also liable to pay compensation as described in section 110 (4) of the Administrative Offences Act.
(4) The customs authorities notify the central register of trade and industry of final administrative fine notices under section 8 (2) no 3 a) and no 5 if the administrative fine exceeds two hundred euros.

Section 13
Cooperation in administrative fine proceedings
(1) The customs authorities must work together with the cooperating bodies specified in section 2 (2) in particular.
(2) If, in performing their statutory tasks, the cooperating bodies specified in section 2 (2) nos 2 to 11 find indications of offences specified in section 8, they must notify the authorities responsible for prosecuting and punishing administrative offences as described in this Act. Section 31a of the Fiscal Code remains unaffected.
(3) Courts and public prosecutors should transmit to the authorities responsible under this Act any intelligence that they deem necessary to prosecute administrative offences under section 8, unless the court or public prosecutor has evidence that the person affected or another party has an overriding legitimate interest in non-transmission. In this context, due consideration must be given to how solid the intelligence to be transmitted is.

Section 14
Powers of investigation
(1) When prosecuting criminal and administrative offences directly related to one of the matters for inspection specified in section 2 (1), the customs authorities have the same powers as the police authorities under the Code of Criminal Procedure and the Administrative Offences Act. In this respect, their officials are investigators of the public prosecutor. Employees transferred to the customs administration exercise the powers under sentence 1 and are, in this respect, investigators of the public prosecutor if they

   1. have reached the age of 21,
   2. were in the employ of the Federal Employment Agency on 31 December 2003 and
   3. were engaged in combating undeclared work and unlawful employment at the Federal Employment Agency for at least two years.

(2) The customs authorities, the police and the revenue authorities of the respective Land may form joint investigation teams in consultation with the public prosecutor.
Part 5
Data protection

Section 15
General provisions

With regard to social data, the provisions of the Second Chapter of Book X of the Social Code apply to the customs authorities in performing their tasks under this Act. In terms of data protection, these tasks are deemed to be tasks pursuant to the Social Code. The tax secrecy provisions set out in the Fourth Chapter of the First Part of the Fiscal Code remain unaffected.

Section 16
Central information system for the financial control of undeclared work

(1) The customs authorities maintain a central information system for the financial control of undeclared work in which the data required to perform the tasks set out in this Act are processed by automated means.

(2) The following data are stored in the central information system for the financial control of undeclared work:

1. surname, former names, given names, date and place of birth (including district), country of birth, sex, nationalities, addresses, marital status, occupation, tax number, identity card and passport number, bank details, social security number; in the case of companies: name, headquarters, legal form, registration number and place, agency relationships, address data, tax number, establishment number, bank details,

2. the name of the customs authority handling the case and the file number and

3. the time of initiation of the proceedings, the time of the most recent procedural action and the time of resolution of the proceedings, in each case by the customs authorities, as well as the time and manner of resolution by the court or public prosecutor.

The Federal Ministry of Finance may, by way of ordinances, designate further supplementary data insofar as these are necessary for the financial control of undeclared work in connection with its tasks of

1. preparing and conducting inspections under section 2 (1) or

2. preventing and prosecuting criminal and administrative offences related to one of the matters for inspection specified in section 2 (1).

(3) Personal data may be processed and used in the central information system for the financial control of undeclared work for the following purposes only:

1. preparing and conducting inspections under section 2 (1),

2. preventing and prosecuting criminal and administrative offences related to one of the matters for inspection specified in section 2 (1).

3. taxation, insofar as it is related to the performance of work or services,

4. performing the tasks assigned to the customs authorities under section 5a of the Fiscal Administration Act or section 17a of the Customs Administration Act and

5. training in the area of the financial control of undeclared work, provided that the data are anonymised.

(4) The Central Customs Authority must issue an opening order for automated processing under subsection (1) which requires the approval of the Federal Ministry of Finance. The opening order must specify:

1. the name of the responsible authority,
2. the legal basis and the purpose of processing the data,
3. the group of persons about whom data are stored,
4. the type and content of the personal data stored,
5. the types of personal data that serve to render the file accessible,
6. the supply or input of the data stored,
7. the conditions under which the personal data stored may be transmitted, the recipients to whom they may be transmitted and the procedures to be followed,
8. the time limits and storage duration,
9. the logging requirements and
10. the obligation to develop and maintain role and authorisation guidelines.

The Federal Commissioner for Data Protection and Freedom of Information must be heard prior to an opening order being issued.

Section 17
Transmission of data to the police authorities of the Federation and the Länder, the revenue authorities and public prosecutors

(1) Upon request, data from the central information system for the financial control of undeclared work must be transmitted to

1. (rescinded)
2. public prosecutors for the purposes of criminal prosecution,
3. the police authorities of the Federation and the Länder for the prevention and prosecution of criminal and administrative offences related to one of the matters for inspection specified in section 2 (1).
4. the Länder revenue authorities for the purposes of conducting tax crime or tax offence proceedings and for the purposes of taxation, insofar as it is related to the performance of work or services or
5. the Financial Intelligence Unit for the performance of its tasks under section 28 (1) sentence 2 no 2 of the Money Laundering Act.

If the transmission of data might endanger the purpose of an investigation, the customs authority responsible for the investigation or the public prosecutor responsible may order that no transmission take place. Section 478 (1) sentences 1 and 2 of the Code of Criminal Procedure apply if the data relate to cases that resulted in criminal proceedings.

(2) The data must be transmitted through an automated retrieval procedure or an automated query and information-sharing procedure or, in the case of a disruption of data transmission or in cases of exceptional urgency, by telephone or fax. The authorities involved must ensure that state-of-the-art measures to safeguard data protection and data security are in place which, in particular, guarantee the confidentiality and integrity of the data; if generally accessible networks are used, state-of-the-art encryption procedures must be applied. Section 79 (2) to (4) of Book X of the Social Code applies.

Section 18
Notification of the person concerned

Section 83 of Book X of the Social Code applies when it comes to the notification of the person concerned. Such notification requires the agreement of the public prosecutor responsible if it relates to data from a case that resulted in criminal proceedings.
Section 19
Deletion
The data contained in the central information system for the financial control of undeclared work and the corresponding case files in paper form must be deleted and destroyed in accordance with the provisions of section 489 of the Code of Criminal Procedure, section 49c of the Administrative Offences Act and section 84 of Book X of the Social Code, but no later than

1. one year following the end of the calendar year in which an inspection under section 2 was completed without an investigation being initiated,
2. five years following the end of the calendar year in which an investigation was concluded with binding legal effect or
3. two years following the end of the calendar year in which criminal proceedings were concluded if
   a) the person about whom data were stored under section 16 was acquitted of the crime in question with binding legal effect,
   b) the opening of the main proceedings was incontestably rejected or
   c) the proceedings were discontinued more than just temporarily.

Part 6
Administrative proceedings, legal recourse

Section 20
Reimbursement for witnesses and experts
If the customs authorities consult witnesses and experts, these must, upon application, be compensated or remunerated by way of application mutatis mutandis of the Judicial Remuneration and Compensation Act.

Section 21
Exclusion from public contracts
(1) Applicants should be excluded from competing for supply, works or service contracts of contracting authorities specified in section 99 and 100 of the Act against Restraints of Competition if they themselves or their authorised representatives as designated by law or articles of association have been sentenced to imprisonment for a period of more than three months or to a criminal fine exceeding 90 daily units or punished with an administrative fine of at least two thousand five hundred euros under

1. section 8 (1) no 2, sections 10 and 11 of this Act,
2. section 404 (1) or (2) no 3 of Book III of the Social Code,
3. section 15, 15a or 16 (1) nos 1, 1c, 1d, 1f or 2 of the Temporary Employment Act or
4. Section 266a (1) sentences 1 to 4 of the Criminal Code.

The exclusion can be imposed prior to criminal or administrative proceedings if the evidence in the case in question leaves no reasonable doubt that a serious offence under sentence 1 has been committed. Upon request, the authorities responsible for prosecution and punishment under sentence 1 nos 1 to 4 may provide the required information to contracting authorities under section 99 of the Act against Restraints of Competition and to authorities that maintain preliminary qualification registers or registers of companies and suppliers approved by contracting authorities. As part of their duties, contracting authorities under sentence 3 must request information from the central register of trade and industry under section 150a of the Trade Regulation Code or require the applicant to submit a declaration.
stating that there are no grounds for an exclusion under sentences 1 or 2; contracting authorities may request information from the central register of trade and industry under section 150a of the Trade Regulation Code at any time even if such a declaration has been submitted. In the case of contracts exceeding 30,000 euros, the contracting authority under sentence 3 must request information about the successful applicant from the central register of trade and industry under section 150a of the Trade Regulation Code prior to awarding the contract. The applicant must be heard before a decision on exclusion is taken.

(2) An offence under subsection (1) is deemed equivalent to a breach of obligations under section 241 (2) of the Civil Code.

**Section 22**
**Administrative proceedings**

Unless otherwise stipulated in this Act, the provisions of the Fiscal Code apply mutatis mutandis to administrative proceedings of customs authorities under this Act.

**Section 23**
**Legal recourse**

Recourse to the tax courts is possible in public-law disputes regarding the administrative actions of customs authorities under this Act.