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Act to Combat Undeclared Work and Unlawful Employment

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

Act to Combat Undeclared Work and Unlawful Employment of 23 July 2004 (Federal Law Gazette I, p. 1842), amended by Article 22 of the Act of 25 June 2021 (Federal Law Gazette I, p. 2099)

Part 1 **Purpose**

Section 1 **Purpose of this Act**

- (1) The purpose of this Act is to combat undeclared work and unlawful employment.
- (2) Undeclared work is deemed to be 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 obligations required of them under social security legislation due to their work or services,
 2. fail, in their capacity as a taxpayer, to fulfil the tax obligations that arise due to the work or services,
 3. fail, in their capacity as a recipient of social benefits, to fulfil the reporting obligations towards the benefits provider that arise due to the work or services,
 4. have failed, in their capacity as a provider of work or services, to fulfil their concomitant obligation to report the opening of an independent business operating from a fixed location (section 14 of the Trade Regulation Code) or have not obtained the required itinerant trader's licence (section 55 of the Trade Regulation Code), or
 5. operate, in their capacity as a provider of work or services, a craft or trade for which a licence is required as an independent business operating from a fixed location, without being registered in the trade and craft register (section 1 of the Trade and Crafts Code).

Anyone who pretends to provide or commission work or services, leading to benefits under Book II or Book III of the Social Code being wrongfully obtained by the individual in question or by a third party, is also deemed to be engaging in undeclared work.

(3) Unlawful employment is deemed to be carried out by anyone who

1. as an employer, employs foreign nationals or, as a user of temporary work, allows foreign nationals to work without authorisation,
2. pursues employment as a foreign national without authorisation,
3. as an employer, provides workers or uses their work
 - a) without the permit required under section 1 (1) sentence 1 of the Act on Temporary Agency Work,
 - b) contrary to the provisions set out in section 1 (1) sentences 5 and 6, section 1a or section 1b of the Act on Temporary Agency Work, or
 - c) contrary to section 6a (2) in conjunction with section 6a (3) of the Act to Secure Workers' Rights in the Meat Industry,
4. as an employer, employs workers without complying with the working conditions pursuant to the provisions of the Minimum Wage Act, pursuant to the Posted Workers Act or pursuant to section 8 (5) of the Act on Temporary Agency Work in conjunction with a statutory instrument pursuant to section 3a (2) sentence 1 of the Act on Temporary Agency Work,
5. as an employer, employs workers under exploitative working conditions, or
6. as owner or third party, arranges for persons to work in violation of section 6a (2) of the Act to Secure Workers' Rights in the Meat Industry.

(4) Subsections (2) and (3) do not apply to work or services that are not intended to produce sustainable profits and that 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).

In particular, an activity that is performed for a small fee is deemed to be not intended to produce sustainable profits.

Part 2 Inspections

Section 2 Matters for inspection

(1) The customs authorities inspect whether

1. the obligations pursuant to section 28a of Book IV of the Social Code arising from work or services are being or have been fulfilled,
2. social benefits pursuant to Books II and III of the Social Code are being claimed unlawfully in connection with carrying out work or services or pretending to carry out work or services,

3. information submitted by the employer that is relevant for benefits pursuant to Books II and III of the Social Code has been sufficiently substantiated,
4. foreign nationals
 - a) in violation of section 4a (4) and (5) sentences 1 and 2 of the Residence Act, are being employed or commissioned, or have been employed or commissioned, or
 - b) in violation of section 284 (1) of Book III of the Social Code, are being employed or have been employed,
5. employees
 - a) are being, or have been, supplied or leased without the permit required under section 1 (1) sentence 1 of the Act on Temporary Agency Work,
 - b) are being, or have been, supplied or leased in violation of the provisions set out in section 1 (1) sentences 5 and 6, section 1a or section 1b of the Act on Temporary Agency Work, or
 - c) are being, or have been, supplied or leased in violation of section 6a (2) in conjunction with section 6a (3) of the Act to Secure Workers' Rights in the Meat Industry,
6. the working conditions pursuant to the Minimum Wage Act, the Posted Workers Act and section 8 (5) of the Act on Temporary Agency Work, in combination with a statutory instrument pursuant to section 3a (2) sentence 1 of the Act on Temporary Agency Work, are being or have been observed,
7. workers are being or have been employed under exploitative working conditions,
8. labour is being or has been offered, or demand is being or has been created for labour, in a public space in violation of section 5a, and
9. in violation of section 6a or section 7 (1) of the Act to Secure Workers' Rights in the Meat Industry,
 - a) a business or an overarching organisation where slaughtering is carried out, carcasses are cut up or meat is processed, is not or has not been operated by a single owner,
 - b) another party is or has been wholly or partially allowed to use a business or an overarching organisation where slaughtering is carried out, carcasses are cut up or meat is processed, or
 - c) persons are working or have worked in the area of slaughter, including the cutting up of carcasses, and in the area of meat processing.

In order to fulfil their reporting obligations pursuant to section 6 (1) sentence 1 in conjunction with section 6 (4) no 4, the customs authorities also check, as part of their inspections pursuant to sentence 1, whether there are indications that taxpayers have not fulfilled their tax obligations in connection with the provision of work or services within the meaning of section 1 (2) sentence 1 no 2. In order to fulfil their reporting obligations pursuant to section 6 (1) sentence 1 in conjunction with section 6 (4) nos 4 and 7, the customs authorities also check, as part of their inspections pursuant to sentence 1, whether there are indications that recipients of child benefit payments are not fulfilling their obligations to cooperate.

(2) The competent Länder revenue authorities are responsible for checking compliance with the tax requirements set out in section 1 (2) sentence 1 no 2, and the competent family

benefits agencies are responsible for checking compliance with the cooperation obligations relating to child benefit payments. The customs authorities are entitled to participate in inspections by the Länder revenue authorities and the Federal Employment Agency's family benefits agencies. The principles of the cooperation between the customs authorities and the Länder revenue authorities are determined by the highest revenue authorities of the Federation and the Länder in mutual agreement. The principles of the cooperation between the customs authorities and the Federal Employment Agency's family benefits agencies are determined by the customs authorities and the Federal Employment Agency's family benefits agencies in consultation with the competent supervisory authorities.

(3) 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 obligation 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 55 of the Trade Regulation Code) has been obtained,
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 registered in the trade and craft register.

(4) When conducting inspections pursuant to subsection (1), the customs authorities are supported by

1. the revenue authorities,
2. the Federal Employment Agency, including in its capacity as family benefits agency,
3. the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway,
4. the collection agencies (section 28i of Book IV of the Social Code),
5. the pension providers,
6. the accident insurance providers,
7. the joint entities and the 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 pursuant to section 50 (3) of Book II of the Social Code,
8. the authorities responsible under the Asylum Seekers Benefits Act,
9. the authorities specified in section 71 (1) to (3) of the Residence Act,
10. the Federal Office for Goods Transport,
11. the authorities responsible under the legislation of the respective Land for authorising and monitoring occasional transport services using motor vehicles pursuant to section 46 of the Passenger Transport Act,
12. the authorities responsible under the legislation of the respective Land for licensing and supervising commercial road haulage,
13. the authorities responsible for employment protection in the respective Land,
14. upon request in individual cases, the police authorities of the Federation and the Länder,

15. the authorities responsible under the legislation of the respective Land for prosecuting and punishing administrative offences as described in this Act,
16. the bodies responsible for processing business registrations pursuant to section 14 of the Trade Regulation Code,
17. the agencies responsible under the legislation of the respective Land for checking compliance with Land procurement laws and Land laws on compliance with collective labour agreements,
18. the authorities responsible under the legislation of the respective Land for receiving the registration of prostitutes pursuant to section 3 of the Prostitute Protection Act and for issuing permits to businesspersons in the area of prostitution pursuant to section 12 of the Prostitute Protection Act,
19. the authorities responsible under Land legislation for issuing permits pursuant to section 34a of the Trade Regulation Code, and
20. the common institutions of the parties to collective agreements within the meaning of section 4 (2) of the Collective Agreements Act.

The responsibilities of these bodies pursuant to other legal provisions remain unaffected. The inspections may be combined with other inspections conducted by the bodies specified in this subsection; the provisions governing information-sharing and cooperation remain unaffected. Administrative expenses incurred by the supporting bodies are not 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. the construction sector,
2. the catering and hotel sector,
3. the passenger transport sector,
4. the haulage, transport and associated logistics sectors,
5. the fairground and amusement sector,
6. forestry businesses,
7. the industrial cleaning sector,
8. businesses engaged in the setting up and dismantling of trade fairs and exhibitions,
9. the meat industry,
10. the prostitution sector,
11. the private security sector.

(2) Employers must verifiably provide each of their workers with a written notification of the obligation pursuant to subsection (1), retain this notification for the duration of the performance of the work or service, and produce it upon request during inspections pursuant to section 2 (1).

(3) In the cases described in section 2 (3), the obligations to produce documents pursuant to 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 pursuant to this Act.

Section 3

Powers during inspections of persons

(1) For the purposes of performing inspections pursuant to section 2 (1), customs authorities and the supporting bodies referred to in section 2 (4) are authorised to enter the business premises, with the exception of private homes, and properties of employers, contractors of work or services, users of temporary work and self-employed workers during the working times of the people employed there or during business hours. In this context, the customs authorities and the supporting bodies referred to in section 2 (4) are authorised

1. to obtain information from the persons working in the business premises and on the properties about their employment relations or their actual or apparent activities, and
2. to inspect documents carried by these persons from which it can be assumed that information about the scope, type or duration of their employment relations or their actual or apparent activities can be obtained or derived.

(2) Subsection (1) applies accordingly if a person is performing work or services at a third party. If a person offers work or services in a public space, subsection (1) sentence 2 applies accordingly.

(3) For the purposes of conducting the inspections pursuant to section 2 (1), the customs authorities and the supporting bodies referred to in section 2 (4) are authorised to check the personal details

1. of persons that are working in the business premises or on the property of the employer, the contractor of work or services, or the user of temporary work, and
2. of self-employed individuals.

For this purpose, they may stop the persons specified in sentence 1, ask them for their personal data (given names, family names, name at birth, date and place of birth, occupation, full address and nationality) and require them to hand over for inspection any 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 the vehicle and leave it again. The customs administration must inform the police authorities of the Länder of any large-scale controls.

(6) Subsections (1) to (4) apply accordingly to the authorities responsible under the legislation of the respective Land for prosecuting and punishing administrative offences pursuant to this Act for the purposes of conducting inspections pursuant to section 2 (3), if there are indications that undeclared work as defined in section 1 (2) nos 4 and 5 is being performed.

Section 4

Powers during inspections of business documents

(1) For the purposes of conducting inspections pursuant to section 2 (1), customs authorities and the supporting bodies referred to in section 2 (4) are authorised to enter the business premises, with the exception of private homes, and properties of employers, contractors of work or services, users of temporary workers and self-employed individuals during business hours and to inspect there payroll and registration documents, accounts and other business documents from which information about the scope, type or duration of the actually existing or simulated employment relations may be obtained or derived.

(2) For the purposes of conducting inspections pursuant to section 2 (3), 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 self-employed persons, employers and contractors and inspect there 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 employment relations may be obtained or derived from these documents, if there are indications that undeclared work as defined in section 1 (2) nos 4 and 5 is being performed.

(3) For the purposes of conducting inspections pursuant to section 2 (1), the customs authorities are authorised to inspect documents indicating the remuneration provided for actually performed or simulated work or services commissioned by individuals, legal persons, or associations. Sentence 1 applies accordingly, when an inspection under section 2 (1) nos 4, 5 and 6 is being conducted, to documents indicating the remuneration provided for temporary work.

(4) For the purposes of conducting inspections pursuant to section 2 (1), the customs authorities are authorised to inspect, on the premises of contractors that are not traders as defined in section 2 of the VAT Act of 1999, invoices, payment vouchers or other substantiating documents about work performed, including materials, and other services in connection with real estate.

Section 5

Duty to submit to and cooperate with inspections

(1) Employers, actually or apparently employed employees, contractors of work or services, persons who are actually or apparently self-employed and third parties that are encountered during an inspection pursuant to section 2 (1) and (3) as well as users of temporary work that are encountered during an inspection pursuant to section 2 (1) sentence 1 no 5 and 6 must

1. submit to and cooperate in the inspection, in particular by providing information that is relevant for the inspection and providing the documents specified in sections 3 and 4,
2. in the cases covered by section 3 (1), (2) and (6) as well as section 4 (1), (2) and (3), also submit to the entering of properties and business premises, and
3. in the cases covered by section 2 (1), at the request of customs authorities, provide information in written form or at a customs office in verbal form or present the documents specified in sections 3 and 4.

Persons may refuse to supply information that would place the obliged person or one of their relatives as specified in section 15 of the Fiscal Code at risk of being prosecuted for a crime or administrative offence.

(2) In particular, the customs authorities are authorised to demand the provision of verbal information at a customs office if no written information has been provided despite being requested, or if the written information has not led to the circumstances being clarified. A written record of the verbal information provided at the customs office must be made if the party obliged to give information so requests. The written record should include the names of the persons present, the location, the date and the key contents of the information. It should be signed by the official to whom the verbal information was given and by the party obliged to provide information. A copy of the written record must be given to the participants.

(3) Foreign nationals are in addition obliged to present to the customs authorities upon request 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 submitted 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 the documents are being submitted. The foreign national must then present themselves to the authority responsible for foreign nationals without delay with the

receipt. This must be stated on the receipt. If the authority responsible for foreign nationals returns the documents that have been retained, or if replacement documents are issued or produced, the authority responsible for foreign nationals retains the receipt.

(4) In cases covered by section 4 (4), contractors that are not traders as defined in section 2 of the VAT Act of 1999 must submit to and cooperate with inspections pursuant to section 2 (1), in particular by providing information relevant to the inspection and presenting the documents specified in section 4 (4). Subsection (1) sentence 3 applies accordingly.

(5) As part of an inspection pursuant to section 2 (1) nos 4, 5, 6 and 9, employers and contractors as well as users of temporary work must, upon request, extract data stored in data processing systems and submit it to the customs authorities 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, employers and contractors as well as users of temporary work may, as part of an inspection pursuant to section 2 (1) nos 4, 5, 6 and 9, provide data storage devices that can be processed by automated means or lists containing the data required without having previously extracted the relevant data. In this case, the customs authorities must separate the data and delete any data that does not need to be submitted pursuant to sentence 1. If the transmitted data is not needed for the purposes of investigating criminal or administrative offences, investigating tax-relevant circumstances or setting social security contributions or benefits, the data storage devices or lists must, at the request of the employer or contractor, be returned or the data deleted without delay following the conclusion of the inspections pursuant to section 2 (1).

Section 5a

Unauthorised offering of and creating demand for labour

(1) It is forbidden for a person to offer their labour as a day labourer in a public space from a group in such a way that enables undeclared work or unlawful employment. Similarly, it is forbidden for a person to create demand for the unlawful offering of labour by obtaining or accepting such an offer.

(2) The customs authorities may temporarily banish from a location a person that violates the prohibition on the unauthorised offering of and creating demand for labour or temporarily ban them from entering a location.

Section 6

Notification of and cooperation with authorities in Germany and in the European Union as well as in the European Economic Area

(1) The customs authorities and the supporting bodies specified in section 2 (4) are obliged to share with each other any information necessary for their inspections, including personal data and the results of inspections, to the extent that the authorities or bodies need to be aware of this information to perform their tasks. The customs authorities on the one hand, and the law enforcement authorities and police authorities on the other hand, are obliged to share with each other any information required for the prevention and prosecution of criminal and administrative offences related to one of the matters for inspection specified in section 2 (1), including personal data. Information, including personal data, may in addition be shared with law enforcement authorities and police authorities if there are actual indications that this information is required for the prevention and prosecution of criminal or administrative offences that are not related to one of the matters for inspection specified in section 2 (1).

(2) In order to perform their tasks pursuant to section 2 (1) and for the purpose of prosecuting criminal or administrative offences, the customs authorities may automatically access the Federal Employment Agency's data systems on issued EU work permits and authorisations to take up employment, on foreign nationals employed under works and services contract quotas, as well as on recipients of benefits pursuant to Book III of the Social Code; law enforcement authorities are only entitled to carry out automated access if this is necessary for the prosecution of criminal or administrative offences. Section 79 (2) to (4) of Book X of the Social Code applies accordingly. The customs authorities may

automatically access data from the databases of the pension providers, insofar as this is required for the prevention and prosecution of criminal or administrative offences; section 150 (5) sentence 1 of Book VI of the Social Code remains unaffected. The customs authorities may automatically access data from the following databases insofar as this is required for the preparation and carrying out of inspections pursuant to section 2 (1) sentence 1 nos 2 and 3 and for the prevention and prosecution of criminal and administrative offences that are associated with this inspection task:

1. the databases of the joint entities and the approved local authority providers under Book II of the Social Code and
2. the databases of 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 regarding recipients of benefits under Book II of the Social Code.

The Federal Ministry of Labour and Social Affairs is authorised to specify, by issuing ordinances with the consent of the Bundesrat, the conditions for the access procedure pursuant to sentence 4 and how to carry out the access procedure.

(3) The customs authorities may access the data held by the Federal Central Tax Office pursuant to section 5 (1) no 13 of the Fiscal Administration Act, insofar as this is required for performing its inspection tasks pursuant to section 2 (1) or for directly connected administrative fine proceedings and criminal proceedings. An on-demand automatic procedure must be set up for accessing data subject to tax secrecy pursuant to section 30 of the Fiscal Code. The customs authority that accesses the data is responsible for the permissibility of the individual access instance. The body accessing the data may process the data pursuant to sentence 1 for the purpose for which it accessed the data. If there is a risk that data access pursuant to the first sentence will jeopardise the purpose of an investigation as referred to in section 30 (2) no 1 (b) of the Fiscal Code, the revenue authority responsible for this investigation or the competent public prosecutor's office may order that no data access is allowed to take place. Section 478 (1) sentences 1 and 2 of the Code of Criminal Procedure apply if the data relates to investigations that resulted in criminal proceedings. A statutory instrument issued by the Federal Ministry of Finance requiring the consent of the Bundesrat stipulates further details, in particular regarding the on-demand automatic procedure including the logging and regarding the proof of the technical and organisational measures necessary on the basis of Articles 24, 25 and 32 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation; OJ L 119, 4.5.2016, p. 1; OJ L 314, 22.11.2016, p. 72; OJ L 127, 23.5.2018, p. 2) or on the basis of section 64 of the Federal Data Protection Act.

(4) The customs authorities must inform the respective competent authorities if, when fulfilling their tasks pursuant to this Act, they find indications of violations of

1. this Act,
2. the Act on Temporary Agency Work,
3. the 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 pursuant to section 60 (1) sentence 1 nos 1 and 2 of Book I of the Social Code or the reporting obligation pursuant to section 8a of the Asylum Seekers Benefit Act,

7. the Federal Child Benefit Act,
8. the Trade and Crafts Code or the Trade Regulation Code,
9. the Road Haulage Act,
10. the Passenger Transport Act,
11. other criminal laws,
12. the Posted Workers Act,
13. the Minimum Wage Act,
14. the occupational health and safety laws, or
15. the Land procurement laws and Land laws on compliance with collective labour agreements.

Documents seized pursuant to section 5 (3) sentence 1 must be sent to the authority responsible for foreign nationals without delay.

(5) If there are indications that a document seized pursuant to section 5 (3) sentence 1 is forged or has been tampered with, it must be sent to the competent police authority.

(6) Sections 8a to 8e of the Administrative Procedures Act in conjunction with Article 6 (1), (2) and (4)–(9), Article 7 and Article 21 of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11) apply to the cooperation between the customs authorities and authorities of other European Union member states and authorities of other contracting states to the Agreement on the European Economic Area in accordance with section 20 (2) of the Posted Workers Act, section 18 (2) of the Minimum Wage Act and section 18 (6) of the Act on Temporary Agency Work.

Section 6a

Sharing of personal data with European Union member states

(1) The customs authorities may share personal data related to one of the matters for inspection specified in section 2 (1) with an authority of a European Union member state responsible for the prevention and prosecution of crimes for the purpose of preventing crimes. In this context, the sharing of personal data without a request is only permissible 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, 27.03.2009, p. 24), and there are specific indications that the sharing of this personal data could contribute to preventing such a crime.

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

1. the name and address of the requesting authority,
2. the designation of the crime that is to be prevented with the help of the requested data,
3. a description of the case on which the request is based,
4. the purpose for which the data is requested,
5. the connection between the purpose for which the information or findings 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 that the relevant information and findings are available in Germany.

(3) Data is not shared pursuant to subsection (1) if

1. doing so would impair key security interests of the Federation or the Länder,
2. the sharing of the data would be disproportionate or the data is not required for the purposes for which it is to be shared,
3. the data to be shared is not available to 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 protect professional or special official secrets that are not based on legal provisions remains unaffected.

(4) The sharing of data may be refrained from if

1. the maximum custodial sentence that can be imposed under German law for the offence that the sharing of data is supposed to help prevent is one year's imprisonment or less,
2. the shared data is to be used as evidence before a judicial authority,
3. the data to be sharing is not available to the requested authority but can be obtained without taking coercive measures, or
4. sharing would present a risk to the success of ongoing investigations or to a person's body, life or freedom.

(5) Personal data shared with 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, 29.12.2006, p. 89, OJ L 75, 15.3.2007, p. 26) may be processed only for the purposes for which it was shared or to avert a present and substantial threat to public security, unless the transmitting state gives its consent. The data may be processed for other purposes or as evidence in judicial proceedings only if the transmitting state has given its consent. Any conditions that the transmitting state sets for the processing 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 shared data was processed.

(7) Subsections (1) to (6) also apply to the sharing of personal data with authorities of a Schengen Associated State that are responsible for the prevention and prosecution of crimes, as referred to in section 91 (3) of the Act on International Mutual Assistance in Criminal Matters.

Section 7

Right to information in cases of anonymous advertising

(1) If offers or advertisements have been published without a name and address being given, and if there are indications of undeclared work or unlawful employment pursuant to section 1 in this connection, the person who published the offer or advertisement is obliged to inform the customs authorities, upon request and free of charge, of the name and address of the party who commissioned the offer or advertisement. If the name and address are not available, data that enables the commissioning party to be identified must be supplied. In the case of indications pursuant to section 1 (2) sentence 1 no 4 or 5, this obligation applies vis-

à-vis the authorities responsible under the legislation of the respective Land for prosecuting and punishing administrative offences pursuant to this Act.

(2) The customs authorities and the authorities responsible under the legislation of the respective Land for prosecuting and punishing administrative offences pursuant to this Act may, for the purpose of fulfilling their tasks pursuant to section 2 (1) and (3), request information from those parties that make available on a commercial basis their own or third party telemedia for use, or that broker access for usage, regarding the data collected pursuant to section 14 of the Telemedia Act (section 15a (1) sentence 1 of the Telemedia Act). The information pursuant to sentence 1 may only be requested if in the individual case there are actual indications of undeclared work or unlawful employment pursuant to section 1 in the context of the publication of offers or advertisements without the name and address being given, and the data to be collected for the purpose of identifying the contracting party is necessary in order to detect undeclared work or unlawful employment. The information may also be requested on the basis of an IP address assigned at a particular time (section 15a (1) sentences 3 and 4 of the Telemedia Act), if there are actual indications that the person in question is a user of the telemedia service where the data should be collected, subject to the proviso that a request for information is based on the assumption that it will prevent a crime pursuant to section 10, 10a or 11 of this Act or section 266a of the Criminal Code. The legal and factual bases of the request for information must be recorded.

(3) The person affected must be notified about the information request in the cases covered by subsection (2) sentence 3. The notification is made provided that, and as soon as, the purpose of the information will not be thwarted as a result. The notification is not made if overriding legitimate interests of third parties or of the person affected weigh against it being made. If the notification is postponed pursuant to sentence 2 or is not made pursuant to sentence 3, the reasons are to be recorded.

(4) The party that is obliged to fulfil the request for information must submit the data that is required for the provision of information without delay and in full.

(5) The authority that is requesting the information must provide compensation to the obliged party for their supplied information. The amount of compensation is calculated pursuant to section 23 and Annex 3 of the Judicial Remuneration and Compensation Act; the time-barring provisions in section 2 (1) and (4) of the Judicial Remuneration and Compensation Act apply accordingly.

Part 3

Provisions on administrative fines and criminal penalties

Section 8

Administrative fine provisions

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

1.

- a) (rescinded)
- b) (rescinded)
- c) (rescinded)
- d) have failed 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 have not obtained the required itinerant trader's licence (section 55 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, where the commissioning party knows or ought to know that these persons perform 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 retain the written notification 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 nos 1, 2 or 3 or
 - b) section 5 (4) 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 (3) sentence 1, fail to produce one of the documents specified therein either at all or within the prescribed period, or
5. in violation of section 5 (5) sentence 1, fail to transmit data, or fail to do so correctly, completely, in the prescribed manner or within the prescribed period,
6. in violation of section 5a (1) sentence 1, offers their labour or
7. in violation of section 5a (1) sentence 2, creates demand for labour.

(3) An administrative offence is deemed to have been committed by any person who as an employer negligently commits one of the acts specified in section 266a (2) no 1 or 2 of the Criminal Code and thereby negligently fails to pay to the collection agency the employee's contributions for social security including employment promotion, or the social security contributions to be paid by the employer including contributions for employment promotion, irrespective of whether wages are paid.

(4) An administrative offence is deemed to have been committed by any persons who

1. issue a document that is factually not correct and that simulates the performance or the commissioning of work or services, or
2. place a document as specified in no 1 into circulation

and facilitate as a result undeclared work as defined in section 1 (2) or unlawful employment as defined in section 1 (3).

(5) An administrative offence is deemed to have been committed by any persons who commit one of the acts specified in subsection (4) and

1. out of gross self-interest, obtain large-scale financial benefits for themselves or for another party, or
2. act as a member of a gang formed for the purpose of repeatedly committing such offences.

(6) The administrative offence is punishable by an administrative fine of up to five hundred thousand euros in the cases referred to in subsection (5), an administrative fine of up to one

hundred thousand euros in the cases referred to in subsection (4), an administrative fine of up to fifty thousand euros in the cases referred to in subsection (1) no 1 d) and e), no 2 in conjunction with no 1 d) and e) and in the cases referred to in subsection (3), by an administrative fine of up to thirty thousand euros in the cases referred to in subsection (2) no 3 a) nos 5 and 7, by an administrative fine of up to five thousand euros in the cases referred to in subsection (2) nos 1 and 6, and by an administrative fine of up to one thousand euros in all other cases.

(7) Subsection (1) does not apply to work or services that are not intended to produce sustainable profits and that 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).

In particular, an activity that is performed for a small fee is deemed to be not intended to produce sustainable profits.

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

(9) An administrative fine is not imposed in the cases covered by subsection (3) if the employer, at the latest at the time of the fine becoming due or immediately afterwards, vis-à-vis the collection agency,

1. communicates in writing the amount of the withheld contributions,
2. explains in writing why it is not possible to make the payment in time, even though the employer has made sincere efforts to do so, and
3. pays the withheld contributions retroactively within an appropriate deadline set by the collection agency.

Section 9 (repealed)

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 working conditions that are clearly less favourable than those of German workers who carry out the same or a similar activity, is punished with imprisonment of up to three years or with a fine.

(2) In particularly serious cases of the type referred to in subsection (1), the punishment is imprisonment of between six months and five years. 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 4a (5) sentence 1 of the Residence Act, employs a foreign national and, in doing so, exploits a situation in which the foreign national finds

themselves as a result of an offence committed against them by a third party pursuant to section 232a (1) to (5) or section 232b of the Criminal Code is punished with imprisonment of up to three years or with a 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 4a (5) sentence 1 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) no 1 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 4a (5) sentence 1 of the Residence Act

is punished with imprisonment of up to one year or with a 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, the penalty is imprisonment of up to three years or a fine.

Part 4

Investigations

Section 12

General provisions on administrative offences

(1) The administrative authorities as referred to 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,
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,
4. in the cases described in section 8 (3) to (5), the customs authorities.

(2) Administrative fines accrue to the cash office of the administrative authority that issued the fine notice.

(3) In derogation from 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 must notify the central register of trade and industry of final administrative fine notices pursuant to section 8 (2) no 3 a) and no 5, as well as subsections (3) to (5), if the administrative fine exceeds two hundred euros.

(5) If the public prosecutor's office does not participate in the main proceedings pursuant to section 75 (2) of the Administrative Offences Act, the court must give the customs authorities the opportunity to put forward the reasons that, in its opinion, are relevant for the decision. This also applies if the court is considering dismissing the case. The representative of the customs authorities must, upon request, be given leave to speak during the main proceedings. The representative must be allowed to address questions to affected parties, witnesses and experts.

Section 13

Cooperation in administrative fine proceedings

(1) The customs authorities cooperate with the supporting bodies specified in section 2 (4) in particular.

(2) If, in connection with performing their statutory tasks, the supporting bodies specified in section 2 (4) nos 2 to 20 find indications of the offences specified in section 8, they must notify the authorities responsible for prosecuting and punishing administrative offences pursuant to this Act. Section 31a of the Fiscal Code remains unaffected.

(3) Courts and public prosecutors' offices should share with the competent authorities pursuant to this Act any findings that they deem necessary for the purposes of prosecuting administrative offences pursuant to section 8, unless it is clear to the court or public prosecutor's office that legitimate interests of the person affected or another party to the proceedings override the sharing of the information. In this context, consideration must be given to how substantiated the findings to be shared are.

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 act as investigators for the public prosecutor's office. Employees transferred to the customs administration exercise the powers pursuant to sentence 1 and act, in this respect, as investigators of the public prosecutor's office if they

1. have reached the age of 21,
2. were in the service 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 authorities and the revenue authorities of the respective Land may form joint investigation teams in consultation with the public prosecutor's office for the purpose of combating undeclared work and unlawful employment.

(3) The customs authorities may, when prosecuting crimes pursuant to subsection (1), also conduct measures to identify suspects pursuant to section 81b of the Code of Criminal Procedure as preparations for future criminal proceedings.

Section 14a

Carrying out autonomous investigations

(1) In cases in which they have the power to do so pursuant to section 14, the customs authorities conduct investigations autonomously in accordance with this provision and within the limits set out in section 14b, if the offence exclusively constitutes a criminal offence pursuant to section 266a of the Criminal Code and the public prosecutor's office has handed the criminal case over to the customs authorities. The general laws on criminal proceedings are applicable.

(2) The public prosecutor's office does not hand over the case pursuant to subsection (1) if special circumstances make it appear advisable that the investigation be continued under the responsibility of the public prosecutor's office. This is in particular deemed to be the case if

1. a measure pursuant to section 99, 102, 103 or 104 of the Code of Criminal Procedure has been applied for,
2. a measure pursuant to section 100a of the Code of Criminal Procedure has been applied for,
3. the ordering of pre-trial detention pursuant to section 112 of the Code of Criminal Procedure has been applied for,
4. the criminal case features special difficulties,
5. in addition to this offence, the accused is also accused of another criminal offence that is the subject of separate proceedings and the offences should be prosecuted in a single investigation,
6. a custodial sentence that cannot be imposed in summary proceedings is anticipated,
7. the following individuals are being investigated:
 - a) members of the European Parliament, the German Bundestag or a legislative body of one of the Länder,
 - b) members of diplomatic missions and other individuals who have diplomatic immunity,
 - c) members of a force or a civilian component of a NATO state or their relatives,
 - d) individuals who fall within the scope of the Juvenile Courts Act, or
 - e) individuals where there are indications that they have diminished responsibility (section 21 of the Criminal Code) or that they are hindered in their defence for psychological reasons, or
8. a customs administration official is suspected of being involved.

(3) If, after the public prosecutor's office has handed over the case pursuant to subsection (1), a measure pursuant to subsection (2) sentence 2 no 1 or 2 is applied for, the customs authorities do not have the power to issue orders themselves in exigent circumstances. If, after the public prosecutor's office has handed over the case pursuant to subsection (1), a measure pursuant to subsection (2) sentence 2 no 2 or 3 is applied for, or it transpires retroactively that the case falls under subsection (2) sentence 2 nos 4 to 8, the customs authorities must return the criminal case to the public prosecutor's office.

(4) In all other situations, the customs authorities may return the criminal case to the public prosecutor's office at any time, and the public prosecutor's office may take over the criminal case again at any time.

Section 14b

Rights and obligations when investigations are being carried out autonomously

(1) If the customs authorities are carrying out investigations autonomously pursuant to section 14a, they must observe the rights and obligations that apply to the public prosecutor's office during investigations.

(2) They do not have the power to arrange for investigations to be carried out by the authorities and officials of the police force.

(3) If the investigations offer sufficient cause to bring public charges, the customs authorities apply, via the public prosecutor's office, to the competent court for the issuance of a penalty order, if the criminal case appears suitable to be dealt with in summary proceedings; otherwise the customs authorities present the files to the public prosecutor's office.

(4) If the customs authorities have applied for the issuance of a penalty order, they must observe the rights and obligations of the public prosecutor's office, as long as no date for the main hearing has been set pursuant to section 408 (3) sentence 2 of the Code of Criminal Procedure or no appeal has been lodged against the penalty order.

(5) If the customs authorities have submitted an application to autonomously order a confiscation pursuant to section 435 of the Code of Criminal Procedure or to autonomously impose a fine against a legal person or an association pursuant to section 444 (3) of the Code of Criminal Procedure, they must observe the rights and obligations of the public prosecutor's office, as long as no application for oral hearings has been filed or no oral hearings have been ordered by a court.

Section 14c

Subject-matter and geographical jurisdiction when investigations are being carried out autonomously

(1) The main customs office holds subject-matter jurisdiction for the carrying out of autonomous investigations pursuant to section 14a.

(2) Geographical jurisdiction for the carrying out of autonomous investigations is held by the main customs office

1. in whose district the criminal offence was committed or discovered,
2. which was responsible for the inspection pursuant to section 2 (1) at the time that the public prosecutor's office handed over the investigation, or
3. in whose district the accused is resident at the time that the public prosecutor's office hands over the investigation; if the accused is not resident within the territorial scope of this Act, the jurisdiction is determined by the place of habitual abode.

If more than one main customs office holds jurisdiction pursuant to sentence 1, the main customs office to which the public prosecutor's office has handed over the investigation holds geographical jurisdiction.

(3) If, in the cases covered by subsection (2) sentence 1 no 3, the accused's residence or place of habitual abode changes after the investigation has been handed over, the main customs office in whose district the new residence or place of habitual abode is located also has geographical jurisdiction. If the main customs office that has geographical jurisdiction pursuant to subsection (2) transfers the investigation to the main customs office that also has geographical jurisdiction pursuant to sentence 1, it must notify the public prosecutor's office of this.

Part 5

Data protection

Section 15

General provisions

With regard to social security data, the provisions of the Second Chapter of Book X of the Social Code apply to the customs authorities when performing their tasks pursuant to this Act. From the perspective of data protection law, these tasks are deemed to also 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 must maintain a central information system for the financial control of undeclared work in which the data that is collected and transmitted for the purpose of performing the tasks pursuant to this Act is processed by automated means.

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

1. family name, 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, location of registered office, 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 a court or public prosecutor's office.

The Federal Ministry of Finance may, by way of ordinances, designate further supplementary data insofar as this is required by the financial control of undeclared work in connection with its tasks

1. for preparing and conducting inspections pursuant to section 2 (1), or
2. for 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 in the central information system for the financial control of undeclared work for the following purposes only:

1. for preparing and conducting inspections pursuant to section 2 (1),
2. for preventing and prosecuting criminal and administrative offences related to one of the matters for inspection specified in section 2 (1),
3. for the purposes of taxation, insofar as it is related to the performance of work or services,
4. for 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. for training within the remit of the financial control of undeclared work, provided that the data is anonymised.

(4) The Central Customs Authority must issue an opening order for automated processing pursuant to subsection (1), for which the approval of the Federal Ministry of Finance is required. The opening order must specify:

1. the name of the responsible party,
2. the legal basis and the purpose of processing the data,
3. the group of persons about whom data is stored,
4. the type and content of the personal data stored,
5. the types of personal data that serve to render the data pool accessible,
6. the supply or inputting of the stored data,

7. the conditions under which the stored personal data may be shared, the recipients with whom it may be shared and the procedures which may be used for sharing,
8. the review deadlines and storage duration,
9. the logging requirements, and
10. the obligation to develop and maintain a policy for roles and rights.

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

Section 17

Sharing of data from the central information system

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

1. (rescinded)
2. public prosecutors' offices 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 the taxation is related to the performance, or the simulation of the performance, of work or services,
5. the Financial Intelligence Unit for the purposes of performing its tasks pursuant to section 28 (1) sentence 2 no 2 of the Money Laundering Act,
6. the Federal Employment Agency for the purposes of carrying out administrative offence proceedings related to benefit fraud and for the associated termination of the provision of benefits pursuant to Book III of the Social Code,
7. the Federal Employment Agency for the purposes of carrying out administrative offence proceedings pursuant to the Act on Temporary Agency Work and for the revocation of, the refusal of, or the refusal to extend, the permit as referred to in section 1 (1) sentence 1 of the Act on Temporary Agency Work,
8. the Federal Employment Agency in its capacity as family benefits agency for the purposes of carrying out criminal tax proceedings and administrative offence proceedings and for the associated termination of the provision of child benefit payments and the child supplement,
9. the joint entities and the approved local authority providers pursuant to Book II of the Social Code for the purposes of carrying out administrative offence proceedings relating to benefit fraud and for the associated processing of payments pursuant to Book II of the Social Code, or
10. the providers pursuant to Book XII of the Social Code for the purposes of carrying out administrative offence proceedings relating to benefit fraud and for the associated processing of payments pursuant to Book XII of the Social Code.

If there are concerns that the sharing of data might endanger the purpose of an investigation, the customs authority responsible for this investigation or the competent public prosecutor's office may order that no sharing of data is allowed to take place. Section 480 (1) sentences 1 and 2 of the Code of Criminal Procedure apply if the data relates to procedures that resulted in criminal proceedings.

(2) The sharing of data must be carried out through an automated access 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 used. 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 with regard to the notification of the person concerned. Such notification requires the agreement of the competent public prosecutor's office if it relates to data from a procedure 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 pursuant to section 2 was completed without criminal fine proceedings or administrative fine proceedings being initiated,
2. five years following the end of the calendar year in which criminal fine proceedings or administrative fine proceedings were 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 was stored pursuant to section 16 was acquitted of the criminal charges 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 analogous application 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 for a period of up to three years if they themselves or their authorised representatives as designated by law or articles of association have been sentenced to imprisonment of 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 pursuant to

1. section 8 (1) no 2, sections 10 and 11,
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 Act on Temporary Agency Work, or
4. section 266a (1) sentences 1 to 4 of the Criminal Code.

The exclusion can also already be imposed prior to criminal fine proceedings or administrative fine proceedings if the evidence in the specific case leaves no reasonable doubt that a serious offence pursuant to sentence 1 has been committed. Upon request, the authorities responsible for prosecution or punishment pursuant to sentence 1 nos 1 to 4 may provide the required information to contracting authorities pursuant to 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 pursuant to sentence 3 must request information from the central register of trade and industry pursuant to section 150a of the Trade Regulation Code or require the applicant to submit a declaration stating that there are no grounds for an exclusion pursuant to sentences 1 or 2; contracting authorities may request information from the central register of trade and industry pursuant to section 150a of the Trade Regulation Code at any time even if such a declaration has been submitted. In the case of contracts with a value of 30,000 euros or more, the contracting authority pursuant to sentence 3 must, prior to awarding the contract, request information from the central register of trade and industry pursuant to section 150a of the Trade Regulation Code regarding the applicant who is to be awarded the contract. The applicant must be consulted before a decision on exclusion is taken.

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

Section 22

Administrative proceedings

Unless otherwise stipulated in this Act, the provisions of the Fiscal Code apply accordingly to customs authorities' administrative proceedings pursuant to this Act.

Section 23

Legal recourse

Recourse to fiscal courts is possible in public-law disputes regarding customs authorities' administrative actions pursuant to this Act.