





## European Platform tackling undeclared work

### Act to Combat Unlawful Employment and Benefit Fraud

Germany

	<p><b>Summary</b></p> <p>The 2019 'Act to Combat Unlawful Employment and Benefit Fraud' aims to address undeclared work, illegal employment and the misuse of benefits more consistently and effectively. To enforce compliance with this act, the German Financial Control of Undeclared Work Unit (<i>Finanzkontrolle Schwarzarbeit</i>, FKS) has been provided further investigative powers, the mandate to increase cooperation with other authorities and additional staff.</p>
<p><b>Title of the practice in original language</b></p>	<p><i>Gesetz gegen illegale Beschäftigung und Sozialleistungsmissbrauch</i></p>
<p><b>Name(s) of authorities/bodies/organisations involved</b></p>	<p>The Financial Control of Undeclared Work Unit (<i>Finanzkontrolle Schwarzarbeit FKS</i>) of the German Customs Administration. Based on the 'Act to Combat Undeclared Work and Unlawful Employment' (<i>Schwarzarbeitsbekämpfungsgesetz</i>), the FKS checks compliance with labour, tax and social security law as well as with migration law. This is done in close cooperation with other authorities and social partners at the national and international levels.</p>
<p><b>Sectors</b></p>	<p>All</p>
<p><b>Target groups</b></p>	<ul style="list-style-type: none"> <li>• Staff in the FKS (directly targeted);</li> <li>• Other authorities concerned with the fight against undeclared work, illegal employment and benefit fraud (directly targeted);</li> <li>• Workers (indirectly targeted).</li> </ul>
<p><b>Purpose of measure</b></p>	<p>Deterrence: improve detection</p>

	<p><b>Aims and objectives</b></p> <p>The 'Act to Combat Unlawful Employment and Benefit Fraud' gives the FKS additional inspection and investigation responsibilities and greater data transmission powers for efficient information exchange. This aims to strengthen the authority in tackling unlawful employment and the misuse of government benefits more consistently and effectively.</p>
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<b>Background context</b>	<p>With the 2019 legislation, the German government has strengthened the FKS to help fight against illegal employment, benefit abuse and undeclared work. These issues can result in serious losses of social security and tax contributions, a violation of workers' rights and their entitlement to social security as well as hinder fair competition, damaging law-abiding employers and employees. Hence, the new legislation further improves the legal framework for the inspection and investigation activities of FKS. It especially focuses on:</p> <ul style="list-style-type: none"><li>• Organised economic crime in the area of illegal employment – a frequent form are fictitious invoices that are issued by bogus companies and brought into circulation for purposes of concealing undeclared work and tax evasion;</li><li>• Labour exploitation including insufficient housing for foreign workers;</li><li>• Organised benefit fraud and fake employment relations via the recruitment of EU nationals who need to hand over unduly claimed benefits to their 'recruiters';</li><li>• The potential misuse of child benefit payments.</li></ul>
<b>Key objectives of the measure</b>	<p><b>Objectives:</b></p> <ul style="list-style-type: none"><li>• The new legislation provides employees with better protection against lower than minimum wages, against employers who fail to remit social security contributions, and against exploitation in general;</li><li>• At the same time, it safeguards the government revenue needed for investing in the future, strengthens law-abiding companies by ensuring fair competition, and helps the unemployed by improving their chances of finding legal work.</li></ul>
<b>Main activities</b>	<p>The legislation provides FKS with expanded investigation powers, namely:</p> <p>Fighting economic crime and organised crime:</p> <ul style="list-style-type: none"><li>• Monitoring telecommunications in cases involving the non-payment and misappropriation of wages by criminal gangs;</li><li>• Identifying suspects for purposes of criminal proceedings;</li><li>• Increasing fines for fictitious invoices - now up to EUR 100 000 (EUR 500 000 for criminal gangs);</li><li>• FKS officials now have the power to conduct and conclude criminal proceedings independently in</li></ul>




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	<p>simple cases that involve withholding and misappropriating wages.</p> <p>Fighting labour exploitation and human trafficking:</p> <ul style="list-style-type: none"> <li>• Powers to combat exploitative working conditions and trafficking in relation to employment;</li> <li>• An early intervention by inspecting places where people are hired (e.g. 'pick-up' spots on roads);</li> <li>• Requesting the contact details of anonymous job offers from print and online publishers;</li> <li>• Inspecting housing conditions;</li> <li>• Stricter requirements concerning the identification of workers and their working time documentation in the private security sector;</li> <li>• Investigating bogus self-employment outside employment sites (e.g. by requesting documents).</li> </ul> <p>Addressing benefit fraud:</p> <ul style="list-style-type: none"> <li>• Investigating fake employment or self-employment to attain supplementary benefits;</li> <li>• Cooperating with the family benefits agencies on potential child benefit fraud.</li> </ul> <p>Strengthening cooperation and data exchange:</p> <ul style="list-style-type: none"> <li>• Data-sharing with additional authorities (e.g. family benefits agencies, regulators under the Prostitute Protection Act, social security funds etc.);</li> <li>• Intensified cooperation and data-sharing between the FKS and police;</li> <li>• Creation of numerous data protection law transmission powers for the FKS and other involved authorities;</li> <li>• Cooperation with support services addressing human trafficking and labour exploitation.</li> </ul>
<b>Funding/organisational resources</b>	<p>The FKS has around 7 000 employees who work for 41 main customs offices at 115 different locations around the country. The current financial plan already proposes to increase FKS staffing to over 10 000 by 2026. On top of this, additional staffing will be needed to perform the new functions introduced by the new legislation. This includes roughly 3 500 additional new positions in the FKS and 900 positions in supporting customs administration units (such as education and training, pre-deployment training, IT, and deployment support).</p>



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	<p><b>Outcomes</b></p> <p>The 2019 'Act to Combat Unlawful Employment and Benefit Fraud' addresses illegal employment and benefit fraud in a comprehensive, efficient way by increased investigative powers, and stronger links between competent authorities.</p>
<p><b>Achievement of objectives</b></p>	<p>At the time of drafting, this legislation has only been in force for a short time, but it can already be said that its implementation has started successfully. For example, information exchange and joint investigations have taken place with the authorities that the legislation outlines as new cooperation partners. The FKS has initiated the first criminal proceedings on suspicion of human trafficking and unduly claimed benefits. In addition, numerous criminal proceedings have been handed over by the public prosecutor's offices to the FKS for independent execution.</p> <p>The law provides for an evaluation after five years of coming into force. In doing so, the Federal Government will use suitable indicators to examine the extent to which the objectives of the regulations have been achieved.</p>
<p><b>Lessons learnt and success factors</b></p>	<p>A key success factor for the introduction of the new legislation was a broad political consensus about the need to tackle illegal employment and benefit abuse and its harmful consequences.</p>
<p><b>Transferability</b></p>	<p>Legally regulated mutual assistance between authorities and the exchange of data is essential for combating illegal employment.</p>

<b>Further information</b>	
<p><b>Contact</b></p>	<p>Sandra Fock, Bundesministerium der Finanzen E-Mail: IIIA3@bmf.bund.de</p>
<p><b>Useful sources and resources</b></p>	<p><a href="https://www.zoll.de/DE/Fachthemen/Arbeit/Bekaempfung-der-Schwarzarbeit-und-illegalen-Beschaeftigung/bekaempfung-der-schwarzarbeit-und-illegalen-beschaeftigung_node.html">https://www.zoll.de/DE/Fachthemen/Arbeit/Bekaempfung-der-Schwarzarbeit-und-illegalen-Beschaeftigung/bekaempfung-der-schwarzarbeit-und-illegalen-beschaeftigung_node.html</a></p>