Generalzolldirektion

ZOLL

Financial control of undeclared work







Organisational structure

- Financial control of undeclared work (FKS) =

  Part of the Customs Administration
- 41 main customs offices
- 117 Financial control locations for undeclared work
- Approximately 9,400 employees

  in total (30 June 2025)



Organisational structure

Financial control of undeclared work

Field E

Field of work 1
- examination

Field of work 2
- investigation

Field of work 3
- Organised Forms of Undeclared Work (OFS)/Organised Crime (OK)/Serious Structural Crime (SSC) and Audit and Investigation Support

Field F / F 1

Penalties for criminal and administrative offences

Field of work 1
- 'functional public prosecutor' (withholding social security contributions)
- Complex ordering processes (AEntG, GSA meat, MiLoG, AÜG, SchwarzArbG)

Field of work 2
- 'functional public prosecutor' (social benefit fraud)
- Frequent administrative offence proceedings (abuse of benefits / illegal employment of foreigners)

Audits of the Financial control of undeclared work

The fight against undeclared work and illegal employment includes checking whether:

- social security reporting obligations are complied with
- Social benefits are lawfully received
- the employment of foreign persons is lawful;
- Minimum working conditions are respected

Audits of the Financial control of undeclared work

take place

- fundamentally in all sectors
  - ➢ mainly where experience has shown that undeclared work and illegal employment are particularly common
- ad hoc, but also suspicion-independent
- risk-oriented

Audits of the Financial control of undeclared work

Place:

- at the place of work (e.g. construction site), at the place of business or with third parties (e.g. tax consultants, accounting office)
- at the service

Announcement:

- with or without

Occurrence:

- in civil or service clothing
- fundamentally armed

Audit powers of the Financial control of undeclared work

- **Right to be interviewed**
  - Personal and employer data
  - Type, scope and duration of employment
  - Working conditions
  - if applicable, provisions under the law on foreign nationals

- **Access to business documents**
  - Employment contracts
  - Proof of social security declarations
  - Payrolls, payroll accounts, payroll journals
  - Time sheets

- **Right to enter** business premises and land
  - for employers, clients of self-employed active persons, borrowers, third parties (as Client of services)
  - during the working hours of the persons working there

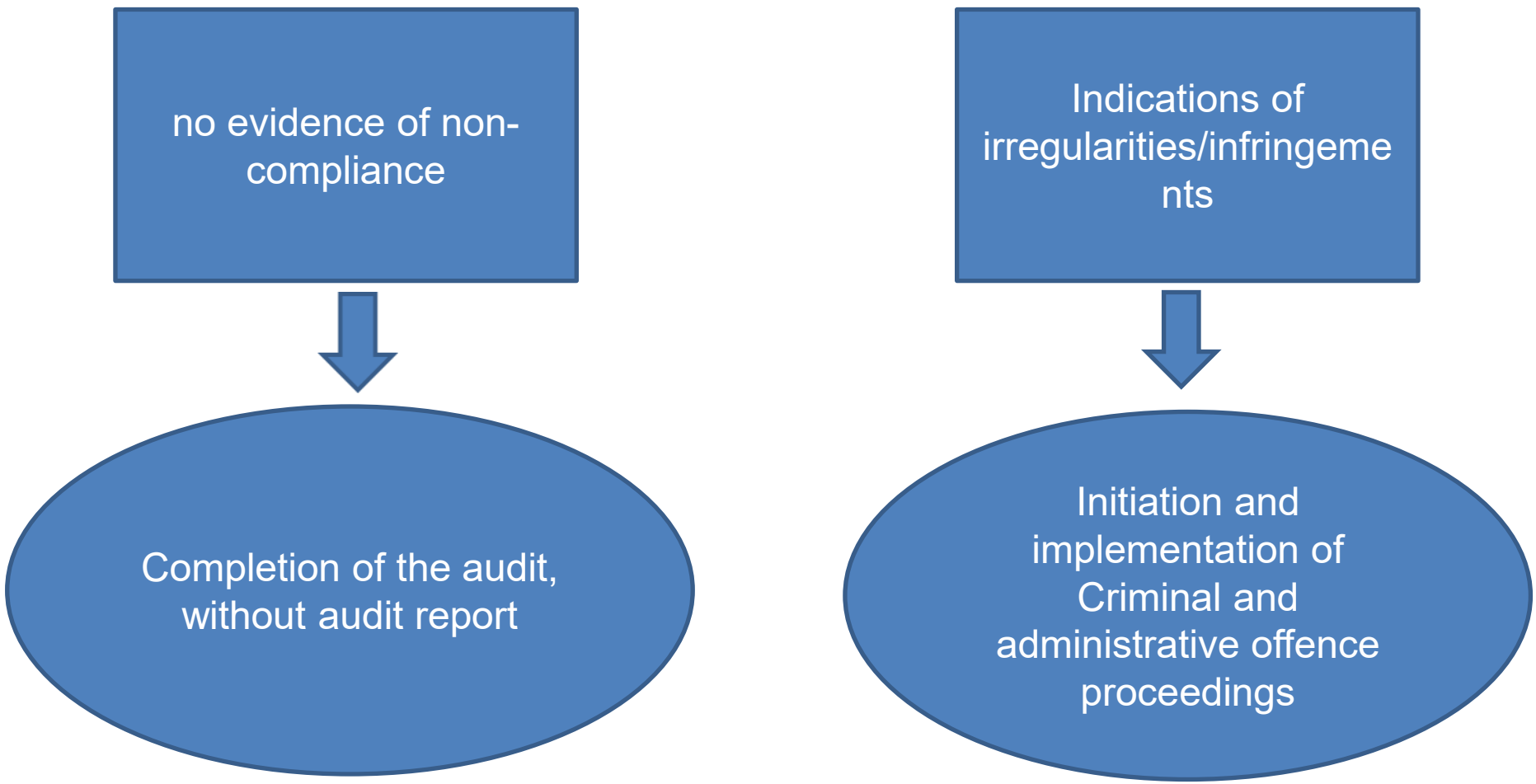


Obligations to cooperate and to tolerate

Employers, employees, clients and third parties are obliged to:

- Provision of information
- Granting of access to accompanying documents
- Granting of access to business documents
- Tolerance of entering land and business premises

Completion of the audit



Cooperation authorities

- currently 20 co-operation authorities
  (including tax authorities, employment agencies, Immigration authorities, social security, etc.)
- legal obligation to provide mutual assistance for examinations under the SchwarzArbG
- Regular exchange of information

Investigative competence

Investigative powers – administrative offences:

- Powers cf. § 46(2) OWiG
- Administrative authority for various administrative offences:

➢ because of non-payment of the statutory minimum wage
➢ because of unrecorded working time records
➢ for non-compliance with the obligation to report immediately
➢ i.a.

Investigative competence

Investigative powers – criminal offences:

- Police powers under the Code of Criminal Procedure in the prosecution of criminal offences directly related to the subject-matter under the SchwarzArbG
- Employees of the TCS are usually investigators of the public prosecutor's office

- In cases of performance fraud and withholding and misappropriation of remuneration, the Main Customs Office carries out the criminal proceedings independently as a functional public prosecutor's office.

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German legislation for the posting of workers

General information

- Obligation to submit a notification when posting workers
- Additional obligations for employers
- Minimum conditions of employment
- A1-certification

Important laws and regulations according to minimum working conditions and additional obligations

- MiLoG (Gesetz zur Regelung eines allgemeinen Mindestlohns; Minimum Wage Act)

- AEntG (Gesetz über zwingende Arbeitsbedingungen für grenzüberschreitend entsandte und für regelmäßig im Inland beschäftigte Arbeitnehmer und Arbeitnehmerinnen; Posted Workers Act)

- AÜG (Gesetz zur Regelung der Arbeitnehmerüberlassung; Act on the Provision of Temporary Workers)

Notification Obligation

- https://www.meldeportal-mindestlohn.de/

- Legal basis:
  - § 16 Abs. 1 und 3 MiLoG
  - § 18 Abs. 1 und 3 AEntG
  - § 17b AÜG

Notification Obligation

- Exceptions: Minimum Wage Documentation Obligations Ordinance (MiLoDokV)

- If, in principle, there is a reporting obligation under the aforementioned regulations because the employee is posted to one of the relevant sectors, there are, however, exceptions that are regulated in the Minimum Wage Documentation Obligations Ordinance (MiLoDokV) with regard to the various reporting obligations.

- Example: There is an exception depending on the fixed pay or the regular fixed monthly pay with regard to the notification obligation pursuant to Section 16 (1) and (3) MiLoG

Additional obligations

- Additional obligations to make it easier for enforcement authorities to check compliance with minimum working conditions:
  - Keeping records of working hours
  - Obligation to keep and provide documents

- Exceptions basically correspond to those regarding the notification obligations

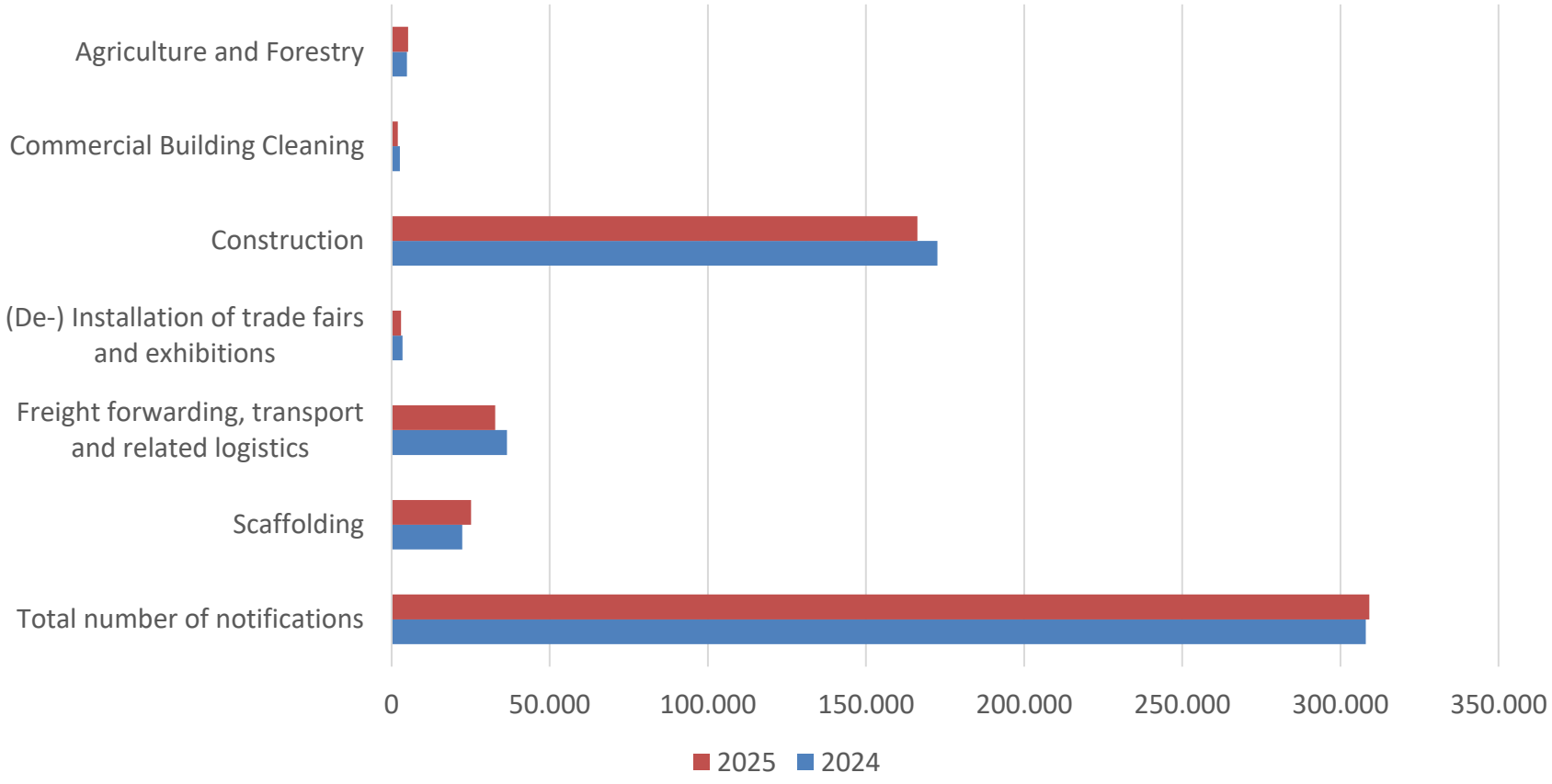
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Posting Statistics

based on the notifications send via Meldeportal-Mindestlohn

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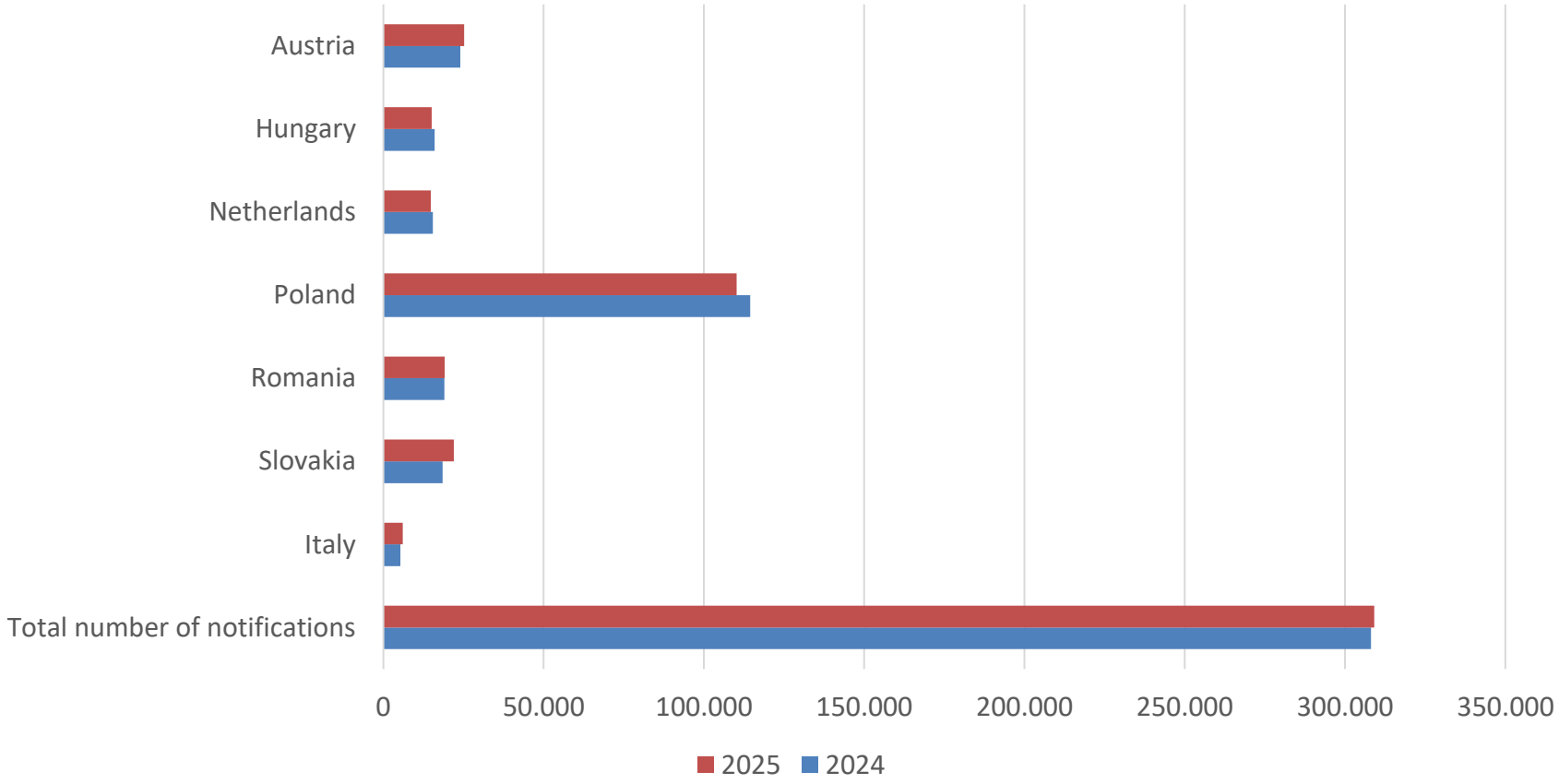
Top 6 Sectors (alph.)



Posting Statistics

based on the notifications send via Meldeportal-Mindestlohn

Top 6 Member States posting to Germany



General minimum conditions of employment

- All employers based in Germany and abroad who regularly employ workers in Germany or post them to Germany to perform work and services must comply with the general labour conditions in accordance with § 2 AEntG

- Note: With regard to the regulations mentioned in § 2 AEntG, the customs authorities are only responsible for checking compliance with

    1. proper remuneration (mininum pay pursuant to § 14 MiLoG and wage floor pursuant to § 17 (2) AÜG)

    and

    2. the proper provision of temporary workers.

Minimum conditions of employment as laid down in collective bargaining agreements

- Possible Subjects:
  - Minimum Wage
  - Further remuneration components
  - Overtime supplement
  - Holiday duration, Holiday pay, Holiday bonus, Holiday fund
  - Accommodation requirements
  - Travel expenses

Minimum conditions of employment as laid down in collective bargaining agreements

- List showing conditions of employment as laid down in collective bargaining agreements and legal provisions:

  https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Minimum-conditions-of-employment/Minimum-pay-pursuant-AEntG-AUEG/Industries-minimum-wage-pursuant-AEntG-wage-floors-pursuant-AUEG/conditions_of_employment.html?nn=207008

- Overview of sector-specific minimum wages

  https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Minimum-conditions-of-employment/Minimum-pay-pursuant-AEntG-AUEG/Industries-minimum-wage-pursuant-AEntG-wage-floors-pursuant-AUEG/overview_of_sector_specific_minimum_wages.html?nn=207008

Consequences of violations

- Minimum working conditions and wage payment regulations are not complied with: Fines of up to 500,000 euros (§ 23 AEntG; § 21 MiLoG; § 16 AÜG)

- Documents were not prepared, kept available or provided: Fine of up to 30,000 euros (§ 23 AEntG; § 21 MiLoG; 16 AÜG)

- Client liability: fines of up to 500,000 euros (§ 23 Abs. 2 AEntG, § 21 Abs. 2 MiLoG)

Exceptions to the applicability of the AEntG

- Special rules for certain activities / business trips (Section 35 AEntG)
- The working conditions described above do not apply to workers who are temporarily* employed in Germany, whilst not performing work or providing services to third parties in Germany on behalf of their employer,
  - hold meetings or conduct negotiations in Germany, draw up contractual offers or conclude contracts on behalf of their employer,
  - attend as a visitor a trade fair, specialist conference or symposium without performing in the setting up and dismantling,
  - establish a business unit in Germany on behalf of their employer, or
  - are employed as a professional by an international group or company for the purpose of providing in-house training in a group or business unit in Germany.

* Work is regarded as ‘temporary’ if the worker is not active in Germany for more than 14 consecutive days and for no more than 30 days within 12 months.

Exemplary: Construction sector
-Collective agreements-

- Collective agreement on minimum wages
  - currently no nationwide collective agreement

- Federal Framework Collective Agreement (Bundesrahmentarifvertrag – BRTV)
  - https://api.soka-bau.de/fileadmin/Dokumente/tarifvertrag_brtv.pdf

- Collective agreement on the social fund procedure in the construction sector (Tarifvertrag über das Sozialkassenverfahren – VTV)
  - https://api.soka-bau.de/fileadmin/Dokumente/tarifvertrag_vtv.pdf

Conditions of employment as laid down in collective bargaining agreements and legal provisions

The following list shows the minimum statutory wages which result from collective bargaining agreements that have been declared generally applicable under the Posted Workers Act (Arbeitnehmer-Entsendegesetz - AentG) and the Act on the Provision of Temporary Workers (Arbeitnehmerüberlassungsgesetz - AÜG).

→ Remuneration elements in addition to the minimum wage
→ National minimum wage

Business	Minimum Wage	Further remuneration components	Overtime supplement	Holiday duration	Holiday pay	Holiday bonus	Holiday fund	Accommodation requirements*	Travel expenses**
Waste management, including street cleaning and winter road maintenance	No	No	No	No	No	No	No	No	Yes
Further education services Minimum wage Training and further training services in accordance with SGB II or SGB III PDF | 306 KB | Not a barrier-free file	Yes	No	No	Yes	Yes	No	No	No	No
Construction sector Federal collective wage agreement for the building industry PDF | 1 MB | Not a barrier-free file	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Special mining activities in coal mines	No	No	No	No	No	No	No	No	No

Exemplary: Construction sector -SOKA-BAU-

- Origin in the Tarifvertrag über das Sozialkassenverfahren (§ 8 Nr. 15 BRTV, VTV)
- Consists of two organisations
    - ULAK – Urlaubs- und Lohnausgleichskasse der Bauwirtschaft (Vacation and Equalization Fund of the Construction sector)
    - ZVK – Zusatzversorgungskasse des Baugewerbes AG (Supplementary Pension Fund of the Construction sector)
- Securing holiday entitlements
- Closing supply gaps
- Financial security for training

Exemplary: Construction sector
-Temporary employment-

- Generally not allowed
- Exceptions in § 1b AÜG

Social security: A1 certificate for the period of posting

- The applicable social insurance legislation does not change during posting if the following criteria are met:
  - the expected duration of the posting abroad does not exceed 24 months,
  - the direct employment relationship between the employer and the employee is maintained,
  - the employer engages in substantial activities in the state where he is established,
  - the employee is not replaced by another person.

- If the employee has been employed in order to be posted, the relevant criterion is which legislation applied to him immediately before being posted (Article 14 (1) of Regulation (EC) 987/2009).

- The employer informs the competent social insurance institution - where possible, in advance - of the posting of his employee.

Posting of third country nationals (TCN)

- General rule: A residence permit is required to take up employment in Germany.
- Key exception for posting: Vander Elst - Visa
  - TCNs legally employed by a company based in an EU/EEA Member State who are temporarily posted to Germany to provide services under Articles 56 and 57 of the TFEU:
    - Do not require a german residence permit
    - Only require a Vander Elst - Visa (obtained via notification to the diplomatic mission or consular post of the TCN in accordance with a simplified registration procedure)
  - Exemptions for Long-Term Residents:

    TCN with long-term resident status in another EU member state are exempt from the Vander Elst - requirement if they provide temporary services in Germany for a company in this member state for a period not exceeding three months within a 12-month period.

Further information

- www.zoll.de
- Customs information centre
  - https://www.zoll.de/EN/Contact/Enquiries/enquiries_node.html

Thank you for your attention!