





European Platform
tackling undeclared work

**The Financial Control of Undeclared Work Unit
(Finanzkontrolle Schwarzarbeit, FKS)**

Germany

	<p>Summary</p> <p>The Federal Customs Administration’s Financial Control of Undeclared Work Unit was given extended authority in the 2004 ‘Act to Combat Undeclared Work and Unlawful Employment’. FKS checks company compliance with labour law, taxes and social security contributions as well as with migration law. One important activity is to carry out on-the-spot inspections at enterprise sites and workplaces.</p>
<p>Title of the practice in original language</p>	<p><i>Finanzkontrolle Schwarzarbeit (FKS)</i></p>
<p>Name(s) of authorities/bodies/ organisations involved</p>	<ul style="list-style-type: none"> • The Financial Control of Undeclared Work Unit is part of the German Customs Administration and therefore subordinate to the Federal Ministry of Finance (<i>Bundesministerium der Finanzen</i>).
<p>Sectors</p>	<p>All</p>
<p>Target groups</p>	<ul style="list-style-type: none"> • Employers that infringe work legislation (directly targeted); • Workers involved in undeclared work (indirectly targeted).
<p>Purpose of measure</p>	<ul style="list-style-type: none"> • Changing attitudes: awareness raising; • Deterrence: improve detection; • Prevention.

	<p>Aims and objectives</p> <p>One crucial objective of the FKS is to improve detection of undeclared work and unlawful employment by conducting (on the spot) inspections of employers and employees.</p>
<p>Background context</p>	<p>Prior to the introduction of the FKS in 2004, both the Federal Employment Agency and the Customs Administration shared responsibility to control undeclared work. The ‘Act to Combat Undeclared Work and Unlawful Employment’ (2004) centralised those responsibilities in the FKS. Subsequent reforms extended the range of undeclared work investigations and updated the</p>




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	<p>responsibilities of the FKS. With the introduction of the minimum wage in 2015, the FKS was tasked with monitoring compliance with this regulation and as a result of the most recent reform in 2019ⁱ, the FKS is provided with further responsibilities and increased resources. The FKS cooperates with a number of agencies including the tax office, social security institutions, the Federal Employment Agencies, Foreigners Registration Office, welfare agencies, health and safety agencies.ⁱⁱ</p>
<p>Key objectives of the measure</p>	<p>General Objective:</p> <ul style="list-style-type: none"> • To improve the detection of undeclared work; • To raise awareness about the negative consequences of undeclared work; • To prevent undeclared work. <p>Specific Objectives:ⁱⁱⁱ</p> <ul style="list-style-type: none"> • Combating undeclared work and illegal employment; among others, this includes the review of: <ul style="list-style-type: none"> ○ The compliance with reporting obligations towards social security institutions; ○ The lawful receipt of social benefits; ○ The lawful employment of foreign individuals; ○ The compliance with the minimum working conditions of: The Arbeitnehmer-Entsendegesetz (Posted Workers Act); the Mindestlohngesetz (Minimum Wage Act) and the Arbeitnehmerüberlassungsgesetz (Act on Temporary Employment). • Compliance with tax obligations.
<p>Main activities</p>	<p>The FKS is authorised to conduct unannounced inspections of staff and/or business records. Results of risk analyses and reported complaints or hints can lead to the initiation of targeted inspections, but the FKS is also able to conduct random inspections without specific suspicion.</p> <p>The FKS also carries out inspections on the request of other institutions (e.g. tax office, social security institutions) affected by the consequences of undeclared work and notifies cases of undeclared work to them.</p> <p>Employers, employees, clients, third parties or temporary work agencies present during an inspection of the FKS are legally obliged to allow the FKS to conduct physical inspections and to control compliance with tax and social security regulations. They have to actively participate by providing information (e.g. employment contracts, working time records). Workers in high-risk sectors^{iv} must carry</p>



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	<p>identification and present it to the authorities on request (employers are obliged to inform workers about this in writing and violating this regulation is subject to fines^v).</p> <p>Non-cooperation by employers is regarded as an administrative offence and may be subject to a fine. The inspection can also be enforced by imposing fines until the employer is willing to cooperate.</p> <p>If offences are discovered during an inspection, the FKS conducts further investigations. In the prosecution of crimes and regulatory offences, that are directly connected to one of the aims of the objects of inspection set out in Section 2 (1) of the Act to Combat Undeclared Work and Unlawful Employment, the FKS has the same authority as the police under the Code of Criminal Procedure and the Regulatory Offences Act.^{vi}The FKS will share information in its central investigation database^{vii} with law prosecutors, police enforcement authorities, tax authorities of the federal states, the central office for financial transaction investigations and employment services.</p> <p>The FKS data regulation (adopted in November 2019^{viii}) lists items of information that the FKS is allowed to record and use for the fulfillment of its tasks. Besides information on the company, that is subject to an inspection pursuant to Section 2 (1) of the Act to Combat Undeclared Work and Unlawful Employment, this also includes personal information (on relatives, contact data and addresses, tax data, information on residence permission, working hours and wage, place of work, labour market status, statutory health insurance membership, social benefit receipt, commercial relationships) of employees, self-employed persons, seemingly employed and apparently self-employed persons who are subject to an inspection.</p>
<p>Funding/organisational resources</p>	<p>Funding for the FKS is provided by the customs authorities which in turn is financed by the Federal Ministry of Finance (BMF).</p> <p>The FKS has around 7 000 employees who work for 41 main customs offices at 115 different locations around the country.^{ix}</p>

	<p>Outcomes</p> <p>Roughly 55 000 employers were subject to inspections in 2019. Damages of around EUR 755 Million were detected in that period.</p>
<p>Achievement of objectives</p>	<p>According to the most recent data^x available, the FKS inspected 54 735 employers in 2019.</p>



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	<p>This led to the initiation of 114 942 criminal investigations, 31 354 administrative offences and EUR 36.6 million in fines. The total damage due to social fraud (due to e.g. unpaid social security contributions or unpaid taxes) detected by the FKS amounted to EUR 755.4 million.^{xi} Every four years evaluations on the impact of the 'Act to Combat Undeclared Work and Unlawful Employment' are carried out by the Federal Government – the last one occurred in June 2017^{xii}. The report underlines that a focus on sectors which are more strongly affected by undeclared work has paid off along with close cooperation between all relevant and competent authorities to address undeclared work and collaboration with social partners in the Action Alliances against undeclared work and illegal employment^{xiii}.</p>
<p>Lessons learnt and success factors</p>	<ul style="list-style-type: none"> • The responsibilities of the FKS are updated regularly; • There is wide cooperation between various agencies and institutions; • The need for workers to carry identity cards and for employers to immediately declare the employment of workers with the social security institutions has had positive effects.
<p>Transferability</p>	<p>Carrying out regular controls of compliance with labour law, payment of social security contributions and taxes is a key strategy to detect and combat undeclared work.</p> <p>Having a cooperation network between authorities is vital, especially for sharing data and information on companies, tax and social benefit payments, or employees.</p>

<p>Further information</p>	
<p>Contact</p>	<p>Email: DVII.gzd@zoll.bund.de</p>
<p>Useful sources and resources</p>	<p>Information on FKS</p> <p>https://www.zoll.de/DE/Fachthemen/Arbeit/Bekae mpfung-der-Schwarzarbeit-und-illegalen-Beschaeftigung/Aufgaben-und-Befugnisse/aufgaben-und-befugnisse_node.html#doc304640bodyText3</p> <p>Implementation of FKS</p> <p>Act to Combat Undeclared Work and Unlawful Employment (<i>Gesetz zur Bekämpfung der Schwarzarbeit und illegalen Beschäftigung</i>)</p>



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	<p>https://www.gesetze-im-internet.de/schwarzarbg_2004/BJNR184210004.html</p> <p>In June 2019, the Act to Combat Unlawful Employment and Benefit Fraud (<i>Gesetz gegen illegale Beschäftigung und Sozialleistungsmissbrauch</i>) amended the Act to Combat Undeclared Work and Unlawful Employment</p> <p>http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl119s1066.pdf</p>
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ⁱ See:

<https://www.bundestag.de/dokumente/textarchiv/2019/kw23-de-illegale-beschaeftigung-643310>

ⁱⁱ See: https://www.zoll.de/DE/Fachthemen/Arbeit/Bekaempfung-der-Schwarzarbeit-und-illegalen-Beschaeftigung/Zusammenarbeit/Nationale-Zusammenarbeit/nationale-zusammenarbeit_node.html

ⁱⁱⁱ See: Section 2(1) of the Act to Combat Undeclared Work and Unlawful Employment
https://www.gesetze-im-internet.de/schwarzarbg_2004/_2.html

and

https://www.zoll.de/DE/Fachthemen/Arbeit/Bekaempfung-der-Schwarzarbeit-und-illegalen-Beschaeftigung/Aufgaben-und-Befugnisse/aufgaben-und-befugnisse_node.html#doc304640bodyText3

^{iv} These sectors are construction, catering and accommodation, passenger transport, logistics, exhibitor trade (*Schaustellergewerbe*), forestry, building cleaning, construction and dismantling of trade fairs and exhibitions, meat industry, prostitution, and security.

^v See:

https://www.zoll.de/SharedDocs/Downloads/DE/FormulareMerkblaetter/Arbeit/Bekaempfung-Schwarzarbeit-illegale-Beschaeftigung/mb_sofortmeldepflicht_ausweispaepiere.pdf?__blob=publicationFile&v=4

^{vi} Factsheet on UDW: Germany. Available at:

<https://ec.europa.eu/social/BlobServlet?docId=18163&langId=en>

^{vii} Source: https://www.gesetze-im-internet.de/schwarzarbg_2004/_17.html

^{viii} <https://www.gesetze-im-internet.de/fksdvo/BJNR177800019.html>

^{ix} Factsheet on Undeclared Work – Germany (2017); Online:

<https://ec.europa.eu/social/BlobServlet?docId=18163&langId=en>.

^x See:

https://www.zoll.de/SharedDocs/Downloads/DE/Publikation/Broschuere_Bestandteile/Die-Zollverwaltung/jahresstatistik_2018_5.pdf?__blob=publicationFile&v=3



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^{xi} Jahresstatistik 2019. Available at:

https://www.zoll.de/SharedDocs/Broschueren/DE/Die-Zollverwaltung/jahresstatistik_2019.html;jsessionid=506B579F2ACE90D3EE1A1D309FE2BE84.live4402?nn=287024

^{xii} Bundesregierung (2017):

Dreizehnter Bericht der Bundesregierung über die Auswirkungen des Gesetzes zur Bekämpfung der illegalen Beschäftigung. Online:

https://www.bundesfinanzministerium.de/Content/DE/Pressemitteilungen/Finanzpolitik/2017/06/2017-06-07-pm-schwarzarbeit-anlage.pdf?__blob=publicationFile&v=2

^{xiii} See: <https://ec.europa.eu/social/ajax/BlobServlet?docId=18056&langId=en>