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## **Act on Mandatory Working Conditions for Workers Posted Across Borders and for Workers Regularly Employed in Germany**

### **(Arbeitnehmer-Entsendegesetz – AEntG)**

Posted Workers Act of 20 April 2009 (Federal Law Gazette I, p. 799), as last amended by  
Article 1 of the Act of 28 June 2023 (Federal Law Gazette 2023 I No. 172)

#### **Division 1 Purpose**

##### **Section 1 Purpose**

The objectives of this Act are to establish and enforce appropriate minimum working conditions for workers who are posted across borders and for workers who are regularly employed in Germany, as well as to guarantee fair and effective conditions of competition by extending the coverage of the provisions of sector-specific collective agreements. The aim is thus both to preserve jobs which are subject to social security contributions and to safeguard the role which collective bargaining autonomy plays in terms of conflict resolution and structuring relations between the social partners.

#### **Division 2 General working conditions**

##### **Section 2 General working conditions**

(1) The rules in statutory or administrative provisions relating to the following working conditions are also mandatorily applicable to employment relationships between employers established abroad and their workers employed in Germany:

1. remuneration, including overtime rates, though not rules relating to occupational pension schemes,
2. minimum paid annual leave,
3. maximum work periods, minimum rest periods and break periods,
4. conditions for hiring out workers, in particular the supply of workers by temporary work agencies,
5. health, safety and hygiene at work, including requirements made of accommodation provided directly or indirectly, for a fee or free of charge, by an employer to workers who are sent from their regular place of employment,

6. protective measures with regard to the conditions of employment of pregnant women and women who have recently given birth, of children and young people,
  7. gender equality and other provisions on non-discrimination, and
  8. allowances paid or the reimbursement of expenditure to cover travel, board and lodging for workers who are away from home for professional reasons.
- (2) An employer established abroad employs a worker in Germany even if that worker is temporarily supplied to a user enterprise established abroad or in Germany and that user enterprise employs the worker in Germany.
- (3) Subsection (1) no. 8 applies to employers established abroad if their workers
1. have to travel to or from their regular place of employment in Germany, or
  2. are temporarily sent by their employer from their regular place of employment in Germany to another place of employment.

#### **Section 2a Remuneration**

'Remuneration' within the meaning of section 2 (1) no. 1 encompasses all those constituent elements of remuneration, which workers receive from their employer in cash or in kind for work performed. More specifically, remuneration includes basic remuneration, including those constituent elements, which are linked to the type of task performed by workers, their qualifications and work experience, and the region, as well as allowances, bonuses and gratuities, including overtime rates. Remuneration also encompasses rules governing its due date, including exceptions and conditions for their application.

#### **Section 2b Crediting of allowance for posting**

- (1) If workers receive an allowance from an employer established abroad for the period in which they are performing work in Germany (allowance for posting), this may be credited against remuneration as defined in section 2 (1) no. 1. This does not apply to the extent that the allowance for posting is paid in reimbursement of costs, which are actually incurred on account of the posting (costs of posting). Costs of posting in particular include expenditure to cover travel, board and lodging.
- (2) If the working conditions applicable to the employment relationship do not stipulate which constituent elements of an allowance for posting are to be paid in reimbursement of the costs of posting or which constituent elements of an allowance for posting form part of remuneration, it is irrefutably assumed that the entire allowance for posting is paid in reimbursement of the costs of posting.

### **Division 3 Working conditions based on collective agreements**

#### **Section 3 Working conditions based on collective agreements**

Under the conditions of sections 4 to 6, the provisions of a national collective agreement are also mandatorily applicable to employment relationships between employers established abroad and their workers who are employed within the area of application of that collective agreement if

1. the collective agreement has been declared universally applicable, or
2. a statutory instrument has been issued in accordance with section 7 or section 7a.

Section 2 (2) applies accordingly. No national collective agreement is required where working conditions within the meaning of section 5 no. 2, no. 3 or no. 4 which, when taken

together, cover the entire area of application of this Act from the subject matter of collectively agreed regulations.

#### **Section 4 Sectors**

(1) Section 3 sentence 1 no. 2 applies to collective agreements applicable to

1. the main or ancillary building industry within the meaning of the Ordinance Relating to Establishments Engaged in Building Work (*Baubetriebe-Verordnung*) of 28 October 1980 (Federal Law Gazette I, p. 2033), as last amended by the Ordinance of 26 April 2006 (Federal Law Gazette I, p. 1085), as amended, including the provision of assembly services on building sites located outside of the place of business,
2. facility cleaning services,
3. postal services,
4. security services,
5. specialist mining work in hard coal mines,
6. laundering services in the business-to-business sector,
7. the waste industry, including road cleaning and winter road clearance services,
8. education and training services pursuant to Book Two of the Social Code (*Sozialgesetzbuch II*) or Book Three of the Social Code (*Sozialgesetzbuch III*), and
9. slaughtering and meat processing.

(2) Further, section 3 sentence 1 no. 2 applies to collective agreements applicable to all sectors other than those referred to in subsection (1) if coverage of the provisions of the respective collective agreement appears necessary in the public interest in order to achieve the objectives under section 1 and, in particular, to counter predatory competition in respect of wage costs.

#### **Section 5 Working conditions**

A collective agreement as referred to in section 3 may set out

1. minimum pay rates, which may differ depending on the type of task performed by workers and their qualifications and by region, including overtime rates, whereby the types of tasks and qualifications may be grouped into a total of up to three pay grades,
  - 1a. constituent elements of remuneration as referred to in section 2 (1) no. 1 other than those included in no. 1 above,
2. the amount of recreational leave, holiday pay or additional holiday pay,
3. the collection of contributions and granting of benefits in connection with holiday entitlements as set out in no. 2 by a joint facility of the parties to the collective agreement where it is guaranteed that the foreign employer is not simultaneously required to pay contributions towards that joint facility and towards a comparable facility in the state of the employer's establishment and the procedure applied by the joint facility of the parties to the collective agreement involves crediting those benefits which the foreign employer has already extended to workers in the fulfilment of their holiday entitlement as provided by statute, collective agreement or individual agreement,
4. the requirements made of accommodation provided directly or indirectly, for a fee or free of charge, by an employer to workers who are sent from their regular place of employment, and

5. working conditions within the meaning of section 2 no. 3 to no. 8.

Working conditions under sentence 1 no. 1 to no. 3 also encompass rules governing the due date of the relevant entitlements, including any agreed exceptions thereto and the conditions for their application.

## **Section 6** **Special provisions**

(1) In the case of a collective agreement as referred to in section 4 (1) no. 1, this Division applies where an establishment or one of its independent departments predominantly provides building services in accordance with section 101 (2) of Book Three of the Social Code.

(2) In the case of a collective agreement as referred to in section 4 (1) no. 2, this Division applies where an establishment or one of its independent departments predominantly provides facility cleaning services.

(3) In the case of a collective agreement as referred to in section 4 (1) no. 3, this Division applies where an establishment or one of its independent departments predominantly carries mail for third parties on a commercial basis or as a recurring pursuit.

(4) In the case of a collective agreement as referred to in section 4 (1) no. 4, this Division applies where an establishment or one of its independent departments predominantly provides services in the security guard and security sector or inspection and public order services which serve the protection of all types of legal interests, in particular life, health or property.

(5) In the case of a collective agreement as referred to in section 4 (1) no. 5, this Division applies where an establishment or one of its independent departments, on behalf of a third party, predominantly excavates pits in domestic hard coal mines or carries out other special underground mining work.

(6) In the case of a collective agreement as referred to in section 4 (1) no. 6, this Division applies where an establishment or one of its independent departments predominantly launders textiles on a commercial basis for commercial clients as well as for public-sector or church facilities, regardless of whether that laundry is the property of the laundry facility or of the client. This Division does not apply to laundering services provided by workshops for persons with disabilities within the meaning of section 219 of Book Nine of the Social Code (*Sozialgesetzbuch IX*).

(7) In the case of a collective agreement as referred to in section 4 (1) no. 7, this Division applies where an establishment or one of its independent departments predominantly collects, transports, stores, treats, disposes of or recycles waste within the meaning of section 3 (1) sentence 1 of the Circular Economy Act (*Kreislaufwirtschaftsgesetz*) or provides the services of sweeping and cleaning public thoroughfares and the clearing of public thoroughfares of snow and ice, including by gritting and salting.

(8) In the case of a collective agreement as referred to in section 4 (1) no. 8, this Division applies where an establishment or one of its independent departments predominantly carries out education and training measures in accordance with Book Two or Book Three of the Social Code. Vocational rehabilitation facilities within the meaning of section 51 (1) sentence 1 of Book Nine of the Social Code are exempted therefrom.

(9) In the case of a collective agreement as referred to in section 4 (1) no. 9, this Division applies in establishments or one of their independent departments in which animals are predominantly slaughtered or meat is predominantly processed (establishments in the meat sector) and in establishments or one of their independent departments which predominantly deploy their workers in establishments in the meat sector. 'Slaughtering' here refers to all the tasks involved in the slaughtering and cutting of animals, except fish. 'Processing' here refers to all the tasks involved in the subsequent processing of meat products resulting from slaughtering to produce food, as well as portioning and packaging. It does not encompass that processing in which the treatment, portioning or packaging of meat products resulting from slaughtering is done on the direct request of the end consumer.

(10) Where a collective agreement as referred to in subsections (1) to (9) defines the term 'establishment' or 'independent department', that definition is definitive.

## **Section 7**

### **Statutory instrument in cases under section 4 (1)**

(1) At the joint request of the parties to a collective agreement within the meaning of section 4 (1) and sections 5 and 6, the Federal Ministry of Labour and Social Affairs may determine, by way of a statutory instrument not requiring the approval of the Bundesrat, that the provisions of that collective agreement apply to all employers and workers included in its scope of application and not bound by it if this appears necessary in the public interest in order to achieve the legislative objectives under section 1. Sentence 1 does not apply to working conditions based on collective agreements under section 5 sentence 1 no. 1a.

(2) Where several collective agreements applicable in a particular sector at least partially overlap in terms of the sector-specific activities to which they apply, the Federal Ministry of Labour and Social Affairs is required, when taking its decision in accordance with subsection (1) as part of its overall assessment, not only to take account of the legislative objectives under section 1 but also of the representativity of the respective collective agreements. When determining such representativity, consideration is primarily to be given to

1. the number of workers covered by the scope of application of the collective agreement who are employed by the respective employers bound by the collective agreement,
2. the number of members of the trade union which concluded the collective agreement who are covered by the scope of application of the respective collective agreement.

(3) Where applications have been made for several collective agreements to be declared universally applicable, the Federal Ministry of Labour and Social Affairs is required to take especial care when weighing up those interests with constitutional status affected by the decision and to strike a careful balance between the competing basic rights.

(4) Before issuing a statutory instrument, the Federal Ministry of Labour and Social Affairs gives those employers and workers covered by the scope of application of that statutory instrument, the parties to the collective agreement and, in the cases referred to in subsection (2), the parties to other collective agreements, as well as commissions constituted on the basis of parity which lay down working conditions under canon law for the remit of church employers covered, at least in part, by the scope of application of the statutory instrument the opportunity to submit a written statement within three weeks, which period begins to run as from the day of publication of the draft of the statutory instrument.

(5) If a request as referred to in subsection (1) is submitted, for the first time, in one of the sectors referred to in section 4 (1), then after the expiry of the time limit under subsection (4), the Committee as referred to in section 5 (1) sentence 1 of the Collective Agreements Act (*Tarifvertragsgesetz*) (Collective Agreements Committee) is involved. If at least four of the members of the Committee vote for the application or the Committee does not submit a statement within a period of two months, a statutory instrument as referred to in subsection (1) may be issued. If two or three members of the Committee vote for the application, a statutory instrument can only be issued by the Federal Government. Sentences 1 to 3 do not apply to collective agreements as referred to in section 4 (1) no. 1 to no. 8.

## **Section 7a**

### **Statutory instrument in cases under section 4 (2)**

(1) At the joint request of the parties to a collective agreement within the meaning of section 4 (2) and section 5, the Federal Ministry of Labour and Social Affairs may determine, by way of a statutory instrument not requiring the approval of the Bundesrat, that the provisions of that collective agreement apply to all employers and workers included in its scope of application and not bound by it if this appears necessary in the public interest in order to

achieve the legislative objectives under section 1 and, in particular, to counter predatory competition in respect of wage costs. Sentence 1 does not apply to collectively agreed working conditions under section 5 sentence 1 no. 1a. The Federal Ministry of Labour and Social Affairs issues a statutory instrument applicable to the care sector (section 10) in consultation with the Federal Ministry of Health without the approval of the Bundesrat. In the case of a statutory instrument issued in accordance with sentence 3, the conditions set out in subsection (1a) are also to be met and consideration is also to be given to the legislative objectives under section 11 (2).

(1a) Before concluding a collective agreement as referred to in subsection (1) which is applicable to the care sector, the Federal Ministry of Labour and Social Affairs gives notice, upon joint notification by the parties to the collective agreement, that negotiations on such a collective agreement have begun. Religious communities within whose remit commissions constituted on the basis of parity which determine working conditions under canon law for the remit of church employers in the care sector have been established may, within three weeks following such notice, designate to the Federal Ministry of Labour and Social Affairs a commission established for its remit which is to be heard by the parties to the collective agreement in respect of the anticipated content of that collective agreement. The hearing is oral if the relevant commission or the parties to the collective agreement so request. The request as referred to in subsection (1) requires the written consent of at least two of the commissions appointed in accordance with sentence 2. These commissions need to have been established within the remits of religious communities within which a total at least two thirds of all workers employed in the care sector within the remits of religious communities are employed. A commission's consent remedies any defects in connection with its hearing.

(2) Section 7 (2) and (3) applies accordingly.

(3) Before issuing the statutory instrument, the Federal Ministry of Labour and Social Affairs gives those employers and workers covered by the scope of application of that statutory instrument and those employers and workers possibly affected by it, the parties to the collective agreement, as well as any trade unions, employers' associations and commissions constituted on the basis of parity which lay down working conditions under canon law for the remit of church employers which are interested in the outcome of the process the opportunity to submit a written statement within three weeks, which period begins to run on the day of publication of the draft of the statutory instrument. The opportunity to submit a statement in particular also encompasses the question of whether the coverage of the provisions of the collective agreement is suited to achieving the legislative objectives under section 1 and, in particular, to countering predatory competition in respect of wage costs. If the statutory instrument is applicable to the care sector, the opportunity to submit a statement in particular also encompasses the issue of the extent to which the provisions of the collective agreement are suited to achieving the legislative objectives under section 11 (2).

(4) If a request is made in accordance with subsection (1), then after the expiry of the time limit under subsection (3) the Committee as referred to in section 5 (1) sentence 1 of the Collective Agreements Act (Collective Agreements Committee) is involved. If at least four of the members of the Committee vote for the application or the Committee does not submit a statement within a period of two months, then a statutory instrument may be issued in accordance with subsection (1). If two or three of the members of the Committee vote for the application, a statutory instrument can only be issued by the Federal Government.

## **Section 8**

### **Employer's obligation to guarantee working conditions**

(1) Employers established in Germany or abroad which are included in the scope of application of a collective agreement as referred to in section 3 sentence 1 no. 1 which has been declared universally applicable or of a statutory instrument as referred to in section 7 or section 7a are obligated to guarantee their workers at least those working conditions which are prescribed under the collective agreement for their place of employment and to pay those contributions to a joint facility of the parties to the collective agreement which are due



under section 5 no. 3. Sentence 1 applies regardless of whether the corresponding obligation exists by dint of coverage under section 3 of the Collective Agreements Act, by dint of declaration of general applicability under section 5 of the Collective Agreements Act or on the basis of a statutory instrument as referred to in section 7 or section 7a.

(2) Employers are obligated to comply with a collective agreement as referred to in section 3 sentence 1 no. 1, to the extent that it sets out working conditions as referred to in section 5 sentence 1 no. 2 to no. 4, as well as a collective agreement which, pursuant to a statutory instrument as referred to in section 7 or section 7a, extends to employers and workers not bound by it even if they are bound by another collective agreement under section 3 of the Collective Agreements Act or by dint of a declaration of general applicability under section 5 of the Collective Agreements Act.

(3) Where a temporary agency worker is employed by a user enterprise to carry out tasks which are covered by a collective agreement as referred to in section 3 sentence 1 no. 1, to the extent that it sets out working conditions as referred to in section 5 sentence 1 no. 2 to no. 4, or by a statutory instrument as referred to in section 7 or section 7a, the temporary work agency is required to at least guarantee those working conditions which are prescribed under that collective agreement or statutory instrument and to pay the contributions due to the joint facility under that collective agreement; the same applies if the user enterprise's enterprise does not carry out the sector-specific activities to which that collective agreement or statutory instrument applies.

## **Section 9**

### **Waiver, forfeiture**

Waiver of the workers' entitlement under a statutory instrument as referred to in section 7 or section 7a to minimum pay rates in accordance with section 5 sentence 1 no. 1 is only permissible under a court settlement; in all other cases, such waiver is ruled out. Forfeiture of the entitlement referred to in sentence 1 is ruled out. Exclusion periods relating to the assertion of the entitlement referred to in sentence 1 may only be set out in the collective agreement on which the statutory instrument pursuant to section 7 or section 7a is based; the period must be at least six months.

## **Division 4**

### **Working conditions in care sector**

## **Section 10**

### **Scope of application**

The provisions of this Division apply to the care sector. It encompasses enterprises and independent departments which predominantly provide outpatient, day-care or inpatient care services or outpatient nursing services for persons requiring nursing care (care enterprises). 'Persons requiring nursing care' are persons with health-related impairments of their autonomy or capacities on account of which they are temporarily or permanently reliant on the help of others and are unable to independently compensate for or overcome physical, cognitive or mental impairments or health-related stresses or demands. Facilities whose focus is on providing preventive healthcare services, medical rehabilitation services, services relating to participation in working life or life in the community, schooling or the education of sick or disabled persons, as well as hospitals are not 'care enterprises' within the meaning of sentence 2.

## **Section 11**

### **Statutory instrument**

(1) The Federal Ministry of Labour and Social Affairs may determine, by way of a statutory instrument not requiring the approval of the Bundesrat, that the working conditions under section 5 no. 1 and no. 2 proposed by the commission established in accordance with section 12 apply to all employers and workers covered by a recommendation as referred to in section 12a (2).

(2) The Federal Ministry of Labour and Social Affairs is required, when taking its decision in accordance with subsection (1), to give consideration to the legislative objectives under section 1, to ensuring the quality of care services and to the mandate of church and other social welfare organisations pursuant to section 11 (2) of Book Eleven of the Social Code (*Sozialgesetzbuch XI*).

(3) Before issuing a statutory instrument, the Federal Ministry of Labour and Social Affairs gives the employers and workers covered by the scope of application of the statutory instrument, the parties to collective agreements which at least in part cover the sector-specific activities to which the statutory instrument applies, as well as commissions constituted on the basis of parity which lay down working conditions under canon law for the remit of church employers in the care sector the opportunity to submit a written statement within three weeks, which period begins to run on the day of publication of the draft of the statutory instrument.

## **Section 12** **Appointment of Commission**

(1) The Federal Ministry of Labour and Social Affairs appoints a Standing Commission which takes decisions relating to recommendations on laying down working conditions in accordance with section 12a (2).

(2) The Commission is appointed for a five-year period. The Federal Ministry of Labour and Social Affairs may extend the period of the appointment if the Commission has already begun discussions on new recommendations but has not yet adopted a resolution on those recommendations. In such cases, the new Commission is appointed immediately after such resolution is adopted, though no later than three months following the expiry of its five-year appointment.

(3) The Commission comprises eight members. The members of the Commission perform their tasks on an honorary basis. They are not bound by instructions.

(4) The Federal Ministry of Labour and Social Affairs appoints eight suitable persons as ordinary members as well as eight suitable persons as their deputies, taking account of proposals made by bodies entitled to make proposals. 'Bodies entitled to make proposals' are

1. parties to collective agreements in the care sector, whereby
  - a) trade unions or trade union federations responsible for collective bargaining in the care sector,
  - b) employers' associations or federations of employers' associations responsible for collective bargaining in the care sector

are each entitled to propose two ordinary members and two deputies and

2. the employees' side and the employers' side of commissions constituted on the basis of parity which lay down working conditions under canon law for the remit of church employers in the care sector, whereby

- a) the employees' side and
- b) the employers' side

are each entitled to propose two ordinary members and two deputies.

Bodies entitled to make proposals which belong to the same groups as referred to in sentence 2 no. 1 (a) to no. 2 (b) may make joint proposals.

(5) The Federal Ministry of Labour and Social Affairs issues a call for proposals within a time limit which it is to determine. No account is to be taken of any proposals received following the expiry of the time limit. The Federal Ministry of Labour and Social Affairs reviews the proposals and may require that facts relevant to the review be submitted and credibly



substantiated within a time limit which it is to determine. No account is to be taken of any facts submitted and credibly substantiated following the expiry of the time limit.

(6) If the number of proposals submitted exceeds the number of seats on the Commission accorded to one of the groups referred to in subsection (4) sentence 2, it is for the Federal Ministry of Labour and Social Affairs to decide which proposals are to be followed. The following is to be taken into consideration when taking this decision:

1. in the case of several proposals made by trade unions or trade union federations responsible for collective bargaining in the care sector: their representativity,
2. in the case of several proposals made by employers' associations or federations of employers' associations responsible for collective bargaining in the care sector: the mapping of the diversity of charitable, public and private organisations as well as, in equal measure, the representativity of the respective association or federation.

The representativity of a trade union or trade union federation is assessed on the basis of the number of members of the respective trade union or trade union federation employed as workers in the care sector and of the trade unions which are members of that federation. The representativity of an employers' association is assessed on the basis of the number of workers employed in the care sector whose employers are members of the respective employers' association and may be bound by collective agreement depending on their type of membership. The representativity of a federation of employers' associations is assessed on the basis of the number of workers employed in the care sector whose employers

1. are members of the federation and may be bound by collective agreement depending on their type of membership, or
2. are members of employers' associations which are members of that federation and may be bound by collective agreement depending on their type of membership and membership of the respective employers' association.

Where joint proposals are submitted as per subsection (4) sentence 3, the relevant numbers of workers assigned to the bodies entitled to make proposals are to be added together.

(7) If an ordinary member or a deputy retires from the Commission, the Federal Ministry of Labour and Social Affairs appoints another suitable person. If, when appointing that retired ordinary member or deputy, the Federal Ministry of Labour and Social Affairs followed a proposal made by a body entitled to make proposals or, if in the case of a joint proposal having been made as per subsection (4) sentence 3, it followed a proposal made by bodies entitled to make proposals, the new appointment is also made taking account of the proposal made. If the body or bodies do not propose a suitable person within a suitable time limit to be determined by the Federal Ministry of Labour and Social Affairs, the decision on the appointment is taken by the Federal Ministry of Labour and Social Affairs. Subsection (5) sentence 3 and sentence 4 applies accordingly.

(8) Actions against the appointment of members by the Federal Ministry of Labour and Social Affairs do not have suspensive effect.

## **Section 12a**

### **Recommendations on working conditions**

(1) The Commission begins discussions upon application by a body entitled to make proposals pursuant to section 12 (4) sentence 2. If the Federal Ministry of Labour and Social Affairs has given notice that negotiations have begun concerning a collective agreement within the meaning of section 7a (1a) sentence 1, then three quarters of the members of those groups referred to in section 12 (4) sentence 2 no. 2 (a) and (b) may jointly call for discussions on new recommendations to begin or to continue no earlier than four months following expiry of the time limit for the appointment of commissions pursuant to section 7a (1a) sentence 2.

(2) The Commission adopts recommendations on laying down working conditions as set out in section 5 sentence 1 no. 1 or no. 2. In doing so, the Commission takes account of the objectives under section 1 and section 11 (2). Recommended minimum pay rates are generally to be differentiated by type of task performed by workers or their qualifications. Recommendations are generally to apply for a period of at least 24 months. The Commission may recommend an exclusion period which meets the requirements of section 9 sentence 3. Reasons for the recommendations are to be given in writing.

(3) The Commission adopts a resolution if at least three quarters of the members

1. of those groups referred to in section 12 (4) sentence 2 no. 1 (a) and (b),
2. of those groups referred to in section 12 (4) sentence 2 no. 2 (a) and (b),
3. of those groups referred to in section 12 (4) sentence 2 no. 1 (a) and no. 2 (a),  
and
4. of those groups referred to in section 12 (4) sentence 2 no. 1 (b) and no. 2 (b)

are present and in favour. Ordinary members may be represented by their respective deputies.

(4) The meetings of the Commission are chaired by an authorised representative of the Federal Ministry of Labour and Social Affairs, who does not have voting rights. The meetings are not public. The substance of the discussions is confidential. The Commission regularly calls in a representative of the Federal Ministry of Labour and Social Affairs and of the Federal Ministry of Health, who has no voting rights, to participate in its meetings. Further details are to be set out in the Commission's Rules of Procedure.

(5) Participation in meetings of the Commission as well as the adoption of resolutions may, in justified exceptional cases, take place by means of a video conference or telephone conference if

1. no member of the Commission immediately objects to this procedure,
2. the representative of the Federal Ministry of Labour and Social Affairs does not immediately object to this procedure and
3. it is ensured that third parties will have no knowledge of the content of the meeting.

### **Section 13**

#### **Legal consequences**

The regulations of a statutory instrument as referred to in section 7a take precedence over the regulations of a statutory instrument as referred to in section 11 to the extent that the scopes of application of those statutory instruments overlap. Notwithstanding sentence 1, a statutory instrument as referred to in section 11 is equal to a statutory instrument as referred to in section 7 as regards the application of sections 8 and 9 as well as of Divisions 5 and 6.

#### **Division 4a**

#### **Working conditions in trade in cross-border transport of euro cash**

#### **Section 13a**

#### **Equal status**

Regulation (EU) No 1214/2011 of the European Parliament and of the Council of 16 November 2011 on the professional cross-border transport of euro cash by road between euro-area Member States (OJ L 316, 29.11.2011, p. 1) is equal to a statutory instrument as referred to in section 7 as regards the application of sections 8 and 9 as well as of Divisions 5 and 6.

**Division 4b**  
**Additional working conditions for workers employed in Germany for more than 12 months by employers established abroad**

**Section 13b**  
**Additional working conditions**

(1) If a worker is employed in Germany for more than 12 months by an employer established abroad, then after the 12-month period of employment in Germany not only the working conditions under Divisions 2 to 4a apply to the employment relationship but also all those working conditions which are prescribed, at the place of employment, under legal and administrative provisions and under collective agreements with general applicability, though not

1. procedures, formalities and conditions relating to the conclusion or termination of the employment relationship, including post-contractual non-competition clauses, and
2. occupational pension schemes.

Section 2 (2) applies accordingly.

(2) If the employer submits notification before the expiry of a 12-month period of employment in Germany, then the period after the expiry of which the additional working conditions as referred to subsection (1) apply to the workers concerned is extended to 18 months.

Notification must be made in text form as per section 126b of the Civil Code (*Bürgerliches Gesetzbuch*) in German to the competent customs authority and must contain the following particulars:

1. the family name, given names and date of birth of the workers,
2. the place of employment in Germany, in the case of building services the building site,
3. the reasons for exceeding the 12-month period of employment in Germany, and
4. the duration of the employment in Germany as anticipated at the point at which notification is made.

The competent customs authority confirms receipt of such notification.

(3) The Federal Ministry of Finance may, in consultation with the Federal Ministry of Labour and Social Affairs, determine, by way of a statutory instrument not requiring the approval of the Bundesrat,

1. that, in which manner and under which technical and organisational conditions notification may, in derogation from subsection (2) sentence 2, only be made in electronic form,
2. in which manner receipt of notification by the competent authority referred to in subsection (2) sentence 3 may be confirmed.

(4) The Federal Ministry of Finance may determine the competent authority referred to in subsection (2) by way of a statutory instrument not requiring the approval of the Bundesrat.

**Section 13c**  
**Calculating period of employment in Germany**

(1) Where workers are employed in Germany under contracts for work or services, account is taken, when calculating the period of employment in Germany, of all those periods in which they are employed under those contracts in Germany.

(2) Where workers are employed in one of their employer's enterprises in Germany or in a company affiliated to their employer in accordance with section 15 of the Stock Corporation Act (*Aktiengesetz*) in Germany, account is taken, when calculating the period of employment

in Germany, of all those periods in which they are employed in the enterprise in Germany or in the affiliated company in Germany.

(3) Where the employer established abroad, in the capacity as temporary work agency, temporarily supplies a temporary agency worker to a user enterprise in Germany, account is taken, when calculating the period of employment in Germany, of all those periods in which the temporary agency worker is employed in Germany under the supply contract. Where a user enterprise established abroad employs a temporary agency worker in Germany, subsections (1) and (2) apply accordingly.

(4) Any interruption of a worker's or temporary agency worker's activity in Germany is not regarded as termination of the employment in Germany when calculating the period of employment in Germany. No account is taken, when calculating the period of employment, of any periods in which the essential obligations of the parties to the employment contract rest or in which a person is employed abroad.

(5) Where workers were employed in accordance with subsection (1), (2) or (3) and that employment continues in Germany in accordance with subsection (1), (2) or (3) immediately following such a period of employment, the two periods are added together when calculating the period of employment in Germany.

(6) Where workers are employed in Germany and their employment does not constitute employment in accordance with subsection (1), (2) or (3), account is taken, when calculating the period of employment in Germany, of all those periods in which they are employed without interruption in Germany.

(7) Where an employer or the user enterprise established abroad as referred to in subsection (3) sentence 2 replaces a worker employed in Germany with another worker who performs the same tasks at the same place, the period of employment of the replaced worker is added to the period of employment of the replacing worker. A task is 'the same task' within the meaning of sentence 1 if a worker essentially performs the same activities as the worker whom he or she replaces and if these activities

1. are performed under the same contracts for work or services,
2. are, in the case of tasks performed in one of the employer's enterprises or affiliated companies, performed in the same enterprise or affiliated company in Germany, or
3. are performed in the capacity as a temporary agency worker for the same user enterprise established in Germany.

A worker performs the task 'at the same place' within the meaning of sentence 1 if he or she

1. performs the task at the same address or in the immediate vicinity of the same address as the worker whom he or she is replacing, or
2. performs the task at other addresses as set out in those contracts for work or services under the same contracts for work or services as the worker whom he or she is replacing.

(8) Where a worker is employed by an employer established in another Member State of the European Union or the European Economic Area as a driver or co-driver (driver) as referred to in section 36 (1) in Germany, for the purposes of calculating the period of employment in Germany, the periods of this employment

1. in derogation from subsection (5) are not added together with the periods of an employment in Germany that immediately follows,
2. in derogation from subsection (7) are not added together with the periods of employment of the driver replaced.

**Division 5**  
**Enforcement under civil law**

**Section 14**  
**Employer's liability**

An entrepreneur who contracts another entrepreneur with the performance of work or the provision of services is liable for the obligations of that entrepreneur, of a subcontractor or of a temporary work agency contracted by the entrepreneur or subcontractor as regards payment of the minimum pay to workers or of contributions to a joint facility of the parties to a collective agreement under section 8 as a surety who has waived the defence of failure to pursue remedies. 'Minimum pay' within the meaning of sentence 1 only encompasses that amount which is to be paid to workers after deduction of taxes and contributions paid towards social security and the promotion of employment or corresponding social security expenses (net pay).

**Section 15**  
**Legal venue**

Workers who are or were employed within the area of application of this Act by employers established abroad may also file an action in respect of their period of employment within the area of application of this Act for the fulfilment of obligations under section 2, 8, 13b or 14 before a German court with jurisdiction in employment matters. This option is also available to a joint facility of the parties to a collective agreement in accordance with section 5 sentence 1 no. 3 in respect of the contributions due to it.

**Section 15a**  
**User enterprise's information requirements as regards temporary workers posted across borders**

- (1) Before a user enterprise established abroad employs a temporary agency worker in Germany, it informs the temporary work agency thereof in text form as per section 126b of the Civil Code.
- (2) Before a user enterprise established in Germany or abroad employs a temporary agency worker hired by a temporary work agency established abroad in Germany, the user enterprise informs the temporary work agency in text form as per section 126b of the Civil Code about the essential working conditions which apply in the user enterprise's enterprise to the user enterprise's comparable workers, including remuneration. The information requirement does not apply if the preconditions for deviating from the principle of equality under section 8 (2) and (4) sentence 2 of the Act on Temporary Agency Work (*Arbeitnehmerüberlassungsgesetz*) are met. Section 13 of the Act on Temporary Agency Work remains unaffected.

**Division 6**  
**Control and enforcement by governmental agencies**

**Section 16**  
**Competence**

The customs authorities are responsible for examining whether an employer is complying with the obligations under section 8, insofar as these relate to the guarantee of working conditions under section 5 sentence 1 no. 1 to no. 4.

**Section 17**  
**Powers of customs authorities and other authorities**

Sections 2 to 6, 14, 15, 20, 22 and 23 of the Act to Combat Undeclared Work and Unlawful Employment (*Schwarzarbeitsbekämpfungsgesetz*) apply accordingly, with the proviso that

1. the authorities referred to therein are also permitted to inspect employment contracts, records made in accordance with section 2 of the Act on Proof of the Existence of an Employment Relationship (*Nachweisgesetz*) and other business documents which

indirectly or directly provide information about compliance with the working conditions in accordance with section 8,

2. those required to cooperate in accordance with section 5 (1) of the Act to Combat Undeclared Work and Unlawful Employment are required to submit these documents, and
3. the customs authorities are authorised, where there is an imminent danger to public security and order, to enter accommodation provided to workers by an employer at any time of day or night in order to examine whether the working conditions under section 5 sentence 1 no. 4 are being complied with.

Sections 16 to 19 of the Act to Combat Undeclared Work and Unlawful Employment apply. Section 6 (4) of the Act to Combat Undeclared Work and Unlawful Employment applies accordingly. Section 67 (3) no. 4 of Book Ten of the Social Code (*Sozialgesetzbuch X*) does not apply to data processing which serves the purpose referred to in section 16 or cooperation with authorities in the European Economic Area pursuant to section 20 (2). The basic right to inviolability of the home (Article 13 of the Basic Law (*Grundgesetz*)) is restricted on account of sentence 1 no. 3.

### **Section 18** **Notification requirement**

(1) Where working conditions apply to an employment relationship whose compliance is controlled by the customs authorities pursuant to section 16, an employer established abroad who employs a worker or several workers within the area of application of this Act is required, before the start of each work or service, to submit written notification in German to the competent customs authority which contains all the particulars which are essential for the audit. The following particulars are 'essential':

1. the family name, given names and date of birth of those workers employed by the employer within the area of application of this Act,
2. the start and anticipated duration of the employment,
3. the place of employment, in the case of building services the building site,
4. the place in Germany where the documents as required under section 19 are kept available,
5. the family name, given names, date of birth and address in Germany of the person responsible,
6. the sector in which the workers are to be posted, and
7. the family name, given names and address in Germany of an authorised recipient, unless such person is identical to the person responsible referred to in no. 5.

The employer referred to in sentence 1 is required immediately to notify any changes to these particulars.

(2) In derogation from subsection (1), an employer established in another Member State of the European Union or the European Economic Area is required before the employment of a driver for the provision of transport services for goods or passengers in Germany as referred to in section 36 (1) starts to transmit to the competent customs authority a notification in electronic form which contains the following particulars:

1. the identity of the operator, where this is available in the form of the number of the Community licence,
2. the family name and given name as well as address in the State of establishment of an authorised recipient,



3. the family name, given name, date of birth, address and the number of the driving licence of the driver,
4. the start date of the driver's contract of employment and the law applicable to it,
5. the anticipated start and end dates of the driver's employment in Germany,
6. the number plates of the motor vehicles to be used for the employment in Germany,
7. whether the transport services to be performed by the driver are the carriage of goods or passengers and international carriage or cabotage operations;

the notification must be transmitted using the electronic interface of the Internal Market Information System within the meaning of Article 1 in conjunction with Article 5 (a) of Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1) as last amended by Regulation (EU) 2020/1055 (OJ L 249, 31.7.2020, p. 17). Subsection (1) sentence 3 applies accordingly.

(3) Where a temporary work agency established abroad temporarily supplies a worker or several workers to perform work for a user enterprise, the temporary work agency is required, under the conditions of subsection (1) sentence 1, to transmit written notification in German to the competent customs authority before the start of each work or service which contains the following particulars:

1. the family name, given names and date of birth of the workers who are being temporarily supplied,
2. the start and duration of the posting,
3. the place of employment, in the case of building services the building site,
4. the place in Germany where the documents as required under section 19 are kept available,
5. the family name, given names and address in Germany of an authorised recipient for the temporary work agency,
6. the sector in which the workers are to be posted, and
7. the family name, given names or company name, as well as the address of the user enterprise.

Subsection (1) sentence 3 applies accordingly.

(4) The Federal Ministry of Finance may, in consultation with the Federal Ministry of Labour and Social Affairs, determine, by way of a statutory instrument not requiring the approval of the Bundesrat,

1. that, in which manner and under which technical and organisational conditions notification, a notification of changes and an assurance may, in derogation from subsection (1) sentence 1 and sentence 3, subsection (2) and subsection (3) sentence 1 and sentence 2, and subsection (4), be submitted in electronic form,
2. under which conditions no notification of changes need be made by way of exception, and
3. how the notification procedure can be simplified or modified insofar as the posted workers are employed in the context of regularly recurring work or services or other specific features of the work to be performed or the services to be provided so require.

(5) The Federal Ministry of Finance may determine the competent authority as referred to in subsection (1) sentence 1 and subsection (3) sentence 1 by way of a statutory instrument not requiring the approval of the Bundesrat.

## Section 19

### Preparation and keeping available of documents

(1) Where working conditions apply to an employment relationship whose compliance is controlled by the customs authorities pursuant to section 16, the employer is required to record the start, end and length of a worker's daily working time and, insofar as hourly allowances are to be paid, the start, end and length of the working time which establishes an entitlement to the allowance, including information regarding the relevant allowance, and to do so no later than the end of the seventh calendar day following the day on which the work was performed, and to retain these records for at least two years from the effective date applicable to the record. Sentence 1 applies accordingly to a user enterprise to which a temporary work agency temporarily supplies a worker or several workers to perform work.

(2) Each employer is required to keep available, in Germany and in German, those documents which are required for the monitoring of those working conditions whose compliance is monitored by the customs authorities pursuant to section 16 for the entire duration of the workers' actual employment within the area of application of this Act, at least for the duration of the entire work or service, but no longer than two years overall. Upon the request of the audit authority, the documents are also to be kept available at the place of employment, in the case of building services on the building site.

(2a) In derogation from subsection (2), an employer established in another Member State of the European Union or the European Economic Area must ensure that the driver employed to provide transport services for goods or passengers in Germany as referred to in section 36 (1) has at his or her disposal the following documents in paper or electronic form:

1. a copy of the notification transmitted in compliance with section 18 (2),
2. evidence of the transport operations, in particular electronic consignment notes or the evidence mentioned in Article 8 (3) of Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72), as last amended by Regulation (EU) 2020/1055 (OJ L 249, 31.7.2020, p. 17), and
3. all tachograph records and in particular the country symbols mentioned in Article 34 (6) (f) and (7) of Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p. 1), as last amended by Regulation (EU) 2020/1054 (OJ L 249, 31.7.2020, p. 1), of the Member States in which the driver was present when carrying out international road transport operations or cabotage operations or the recordings as referred to in section 1 (6) sentences 1 and 2 of the Vehicle Crew Ordinance (*Fahrpersonalverordnung*) of 27 June 2005 (Federal Law Gazette I, p. 1882), as last amended by Article 1 of the Ordinance of 8 August 2017 (Federal Law Gazette I, p. 3158).

Where employed in Germany as referred to in section 36 (1), the driver must keep the documents placed at his or her disposal in accordance with sentence 1 and produce them to the customs authorities on request in paper or electronic form; if not employed in Germany as referred to in section 36 (1), the obligation under the first half-sentence applies only in the framework of a roadside check in respect of the documents as referred to in sentence 1 nos. 2 and 3.

(2b) After the employment period in Germany of a driver as referred to in section 36 (1) has ended, the employer established in another Member State of the European Union or the

European Economic Area must on request send to the customs authorities via the electronic interface connected to the Internal Market Information System the following documents within eight weeks from the date of the request:

1. copies of the documents as required by subsection (2a) sentence 1 nos. 2 and 3,
2. documentation relating to the remuneration of the driver including proof of payments,
3. the employment contract or an equivalent document within the meaning of Article 3 (1) of Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.10.1991, p. 32) and
4. time-recording documentation relating to the driver's work, in particular tachograph records.

The customs authorities may request the documents as referred to in sentence 1 only for such period of employment as referred to in section 36 (1) which at the date of the request has ended.

If, notwithstanding employment in Germany within the meaning of section 36 (1), a notification as required by section 18 (2) was not transmitted, the employer established in another Member State of the European Union or the European Economic Area must on request send to the customs authorities the documents as referred to in sentence 1, outside of the electronic interface connected to the Internal Market Information System, in paper or electronic form.

(3) The Federal Ministry of Labour and Social Affairs may, by way of a statutory instrument not requiring the approval of the Bundesrat, restrict the employer's, the temporary work agency's or a user enterprise's obligations under section 18 and subsections (1) and (2) in respect of individual sectors or groups of workers.

(4) The Federal Ministry of Finance may, in consultation with the Federal Ministry of Labour and Social Affairs, determine, by way of a statutory instrument not requiring the approval of the Bundesrat, how the employer's obligation to record the actual and allowance-related working time of those workers whom that employer employs and to retain those records can may be simplified or modified insofar as the specific features of the work to be performed or service to be provided or the specific features of the sector so require.

## **Section 20**

### **Cooperation between domestic and foreign authorities**

(1) The customs authorities notify the competent local *Land* financial authorities of notifications submitted in accordance with section 18 (1) and (3). The *Land* financial authorities may access using the Internal Market Information System information related to the notifications submitted in accordance with section 18 (2).

(2) The customs authorities and other authorities referred to in section 2 of the Act to Combat Undeclared Work and Unlawful Employment may, in accordance with data protection regulations, also cooperate with authorities in other Contracting States to the Agreement on the European Economic Area which are responsible for carrying out tasks corresponding to those under this Act or for combating illegal employment or which can provide information about whether an employer is fulfilling the obligations under section 8. Rules governing international mutual assistance in criminal matters remain unaffected thereby.

(3) The customs authorities notify the Central Trade and Industry Register of any decisions on regulatory fines in accordance with section 23 (1) to (3) once they have become final if the fine amounts to more than 200 euros.

(4) (repealed)

## **Section 21**

### **Exclusion from public procurement procedures**

- (1) Applicants on whom a fine of at least 2,500 euros has been imposed on account of a breach of section 23 (1) nos. 1 to 9 and 11 or (2) are generally to be excluded from participating in a tender for a delivery, construction or service contract of one of the contracting authorities referred to in sections 99 and 100 of the Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*) for an appropriate period until their reliability has been proven to be re-established. The same applies even before regulatory fines proceedings are conducted where, in an individual case, the body of evidence leaves no reasonable doubt as to serious misconduct within the meaning of sentence 1.
- (2) The authorities responsible for prosecuting or punishing the regulatory offences referred to in section 23 (1) nos. 1 to 9 and 11 or (2) may, upon request, provide the information required to the public contracting authorities referred to in section 99 of the Act against Restraints of Competition and to those agencies which keep pre-qualification directories or directories of entrepreneurs and suppliers admitted by public contracting authorities.
- (3) Within the framework of their activities, the public contracting authorities referred to in subsection (2) request information from the Competition Register regarding final decisions on regulatory fines imposed on account of one of the regulatory offences referred to in section 23 (1) nos. 1 to 9 and 11 or (2) or request applicants to make a declaration stating that the conditions for exclusion referred to in subsection (1) are not met. Where an applicant makes a declaration, the public contracting authorities referred to in subsection (2) may at any time request additional information from the Competition Register.
- (4) In the case of contracts worth more than 30,000 euros, a public contracting authority as referred to in subsection (2) requests information from the Competition Register concerning the applicant who is to be awarded the contract.
- (5) Applicants are to be heard before a decision is taken on their exclusion.

## **Section 22 (repealed)**

## **Section 23**

### **Regulatory fines provisions**

- (1) Whoever intentionally or negligently,
1. contrary to section 8 (1) sentence 1 or (3), does not guarantee a working condition whose compliance is checked by the customs authorities pursuant to section 16, or does not do so in good time, or does not pay a contribution or does not do so in good time,
  2. contrary to section 17 sentence 1, in conjunction with section 5 (1) sentence 1 no. 1 or no. 3 of the Act to Combat Undeclared Work and Unlawful Employment, does not acquiesce to or does not cooperate with an audit,
  3. contrary to section 17 sentence 1, in conjunction with section 5 (1) sentence 1 no. 2 of the Act to Combat Undeclared Work and Unlawful Employment, does not acquiesce to entry into property or business premises,
  4. contrary to section 17 sentence 1, in conjunction with section 5 (5) sentence 1 of the Act to Combat Undeclared Work and Unlawful Employment, does not transmit data, does not do so correctly, in full, in the prescribed manner or in good time,
  5. contrary to section 18 (1) sentence 1, (2) sentence 1 or (3) sentence 1, does not submit notification, does not do so correctly, in full, in the prescribed manner or in good time, or does not transmit notification, does not do so correctly, in full, in the prescribed manner or in good time,

6. contrary to section 18 (1) sentence 3, also in conjunction with (2) sentence 2 or (3) sentence 2, does not give notification of changes, does not do so correctly, in full, in the prescribed manner or in good time,

7. contrary to section 19 (1) sentence 1, also in conjunction with sentence 2, does not prepare records, does not do so correctly, in full or in good time, or does not retain them or does not do so for at least two years,

8. contrary to section 19 (2), does not keep available a document, does not do so correctly, in full or in the prescribed manner,

9. contrary to section 19 (2a) sentence 1, does not ensure that the documents mentioned therein are available,

10. contrary to section 19 (2a) sentence 2, does not produce a document, does not do so correctly, in full, in the prescribed manner or in good time, or

11. contrary to section 19 (2b) sentence 1 or 3, does not submit a document, does not do so correctly, in full, in the prescribed manner or in good time,

is deemed to have committed a regulatory offence.

(2) Whoever has a significant amount of work performed or services provided by contracting, in the capacity as entrepreneur, another entrepreneur and knows or negligently does not know that that entrepreneur, in fulfilling that contract,

1. contrary to section 8 (1) sentence 1 or (3), does not guarantee a working condition whose compliance is checked by the customs authorities pursuant to section 16, does not do so in good time, or does not pay a contribution or does not do so in good time, or

2. uses a subcontractor or permits a subcontractor to act who, contrary to section 8 (1) sentence 1 or (3), does not guarantee a working condition whose compliance is checked by the customs authorities pursuant to section 16, or does not do so in good time, or does not pay a contribution or does not do so in good time,

is deemed to have committed a regulatory offence.

(3) In the cases referred to in subsection (1) no. 1 and subsection (2), a fine of up to 500,000 euros, in all other cases a fine of up to 30,000 euros, may be imposed for the regulatory offence.

(4) 'Administrative authorities' within the meaning of section 36 (1) no. 1 of the Act on Regulatory Offences (*Gesetz über Ordnungswidrigkeiten*) are those authorities referred to in section 16, each in respect of their remit.

(5) The Federal Administrative Enforcement Act (*Verwaltungs-Vollstreckungsgesetz des Bundes*) applies to enforcement, by the authorities referred to in section 16, in favour of federal authorities and legal entities under public law directly under Federal Government control, as well as to enforcement, by the authorities referred to in section 16, of asset seizure in accordance with section 111e of the Code of Criminal Procedure (*Strafprozeßordnung*) in conjunction with section 46 of the Act on Regulatory Offences.

## **Division 7**

### **Cross-border enforcement**

#### **Section 24**

##### **Scope**

This Division governs the handling of requests from or to another Member State of the European Union or the European Economic Area in accordance with Chapter VI 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) for

1. the service of documents or the enforcement of financial administrative penalties or fines including fees and surcharges imposed on an employer established in Germany for failure to comply with the applicable rules on the posting of workers from one Member State of the European Union or the European Economic Area to another Member State of the European Union or the European Economic Area (incoming requests),
2. the service of documents or the enforcement of fines imposed on an employer established in another Member State of the European Union or the European Economic Area for failure to comply with the applicable rules on the posting of workers in Germany (outgoing requests).

Rules on the handling of requests for the service of documents or the enforcement of financial administrative penalties or fines set out in other laws or international agreements take precedence.

#### **Section 25 Competence**

- (1) The central authority for the purposes of this Division is the Federal Office for Enforcement by Customs in the Main Customs Office Hannover.
- (2) The competent authorities for service and enforcement in Germany (enforcement authorities) for the purposes of this Division are in relation to incoming requests the authorities that are competent in accordance with section 23 (4). In relation to outgoing requests the prevailing competence applies.
- (3) The central authority and the enforcement authorities must provide each other without delay with the information necessary for the processing of incoming and outgoing requests.

#### **Section 26 Internal Market Information System**

For the cross-border processing of incoming and outgoing requests the central authority uses the Internal Market Information System established under Regulation (EU) No 1024/2012.

#### **Section 27 Content of outgoing requests**

Outgoing requests must include at least the following particulars:

1. the name and known address of the enforcement debtor or addressee and further data to the extent necessary for the identification of the enforcement debtor or addressee,
2. a summary of the facts and circumstances of the infringement, the nature of the offence and the relevant applicable rules,
3. the decision to be enforced, the service or enforcement of which is requested, in the original or a certified copy thereof and all other relevant information or documents, including those of a judicial nature, concerning the underlying fine,
4. the name, address and other contact details
  - a) regarding the competent authority responsible for the fining decision and
  - b) the competent body where further information can be obtained concerning the fine or the possibilities for contesting the payment obligation or decision imposing it, if this body is different to the authority mentioned in letter (a),



5. in the case of a request for the service of documents, the purpose of the service and the period within which it must be effected,
6. in the case of a request for the enforcement of an administrative penalty or fine
  - a) the date when the decision has become final,
  - b) an indication of the nature and amount of the administrative penalty or fine,
  - c) any dates relevant to the enforcement process, including whether, and if so how, the decision was served on the person or persons concerned and whether the decision was given in default of appearance,
  - d) a confirmation from the requesting authority that the administrative penalty or fine is not subject to any further appeal, and
  - e) the underlying claim in respect of which the request is made and its different components.

### **Section 28**

#### **Handling of outgoing requests**

- (1) Outgoing requests are drawn up by the enforcement authority after verifying that the requirements as referred to in subsections (2) and (3) are fulfilled. They are forwarded by the central authority to the competent authority of another Member State of the European Union or the European Economic Area.
- (2) The competent authority of another Member State of the European Union or the European Economic Area may be requested to serve any documents that are necessary for the determination of a fine for failure to comply with the applicable rules on the posting of workers in Germany or the enforcement thereof. A request for service as referred to in sentence 1 may only be made if the German enforcement authority itself is unable to serve the relevant document.
- (3) The competent authority of another Member State of the European Union or the European Economic Area may be requested to enforce a fine for failure to comply with the applicable rules on the posting of workers in Germany where
  1. the requirements for enforcement in Germany would be satisfied,
  2. enforcement in Germany is not possible and
  3. the fine to be enforced has not been challenged or is no longer subject to challenge.
- (4) The central authority notifies without delay the competent authority of another Member State of the European Union or the European Economic Area where
  1. a request for an extraordinary remedy is filed challenging the fining decision to be enforced or in relation to the fining procedure that has become final by virtue of the decision or
  2. the German enforcement authority amends or withdraws the outgoing request.
- (5) Where a request for enforcement has been made to the competent authority of another Member State of the European Union or the European Economic Area, enforcement in Germany is no longer permitted unless the request has been withdrawn or the requested authority has refused the enforcement.

### **Section 29**

#### **Handling of incoming requests**

- (1) The central authority forwards incoming requests without delay to the enforcement authority. The central authority notifies the requesting authority without delay on each

occasion when one of the measures mentioned in subsections (2) to (4) has been executed. The notification must include in particular the date of any service effected in accordance with subsection (3).

(2) The enforcement authority takes the measures necessary for the service or enforcement of the request forwarded in accordance with subsection (1) sentence 1 and notifies the central authority of this on each occasion without delay. The decision imposing a financial administrative penalty or fine, the service or enforcement of which is requested, must be served and enforced in the same way as a fining decision taken by a public authority as referred to in section 23 (1) to (3). The Federal Republic of Germany waives in relation to the requesting Member State of the European Union or the European Economic Area any entitlement to the reimbursement of the costs for the assistance in service and enforcement provided in accordance with this Act.

(3) The enforcement authority takes without delay and at the latest within one month of receipt of the request by the central authority all measures necessary to serve on the employer established in Germany all the documents connected with a decision imposing a financial administrative penalty or fine or the enforcement thereof.

(4) Where it comes to the enforcement authority's attention that in the requesting Member State of the European Union or the European Economic Area a request for an extraordinary remedy has been filed by the employer concerned or by an interested party challenging the decision to be enforced or in relation to the fining procedure that has become final by virtue of the decision, the enforcement authority suspends the enforcement procedure pending the decision in relation to the extraordinary remedy.

(5) Claims are enforced in euros. Where a different currency is the basis for the financial administrative penalty or fine, the exchange rate of the European Central Bank applicable on the date that the financial administrative penalty or fine was determined is decisive. The enforcement proceeds are credited to the Federal Cash Office where a Federal authority acts as enforcement authority, otherwise to the *Land* cash office concerned.

(6) Appeals challenging the service or enforcement of a financial administrative penalty or a fine are governed by the German rules on service and enforcement. Appeals against the decision underlying the service or enforcement requested are governed by the legislation of the requesting Member State of the European Union or the European Economic Area.

### **Section 30** **Refusal of incoming requests**

(1) The requested enforcement authority or the central authority may refuse an incoming request where

1. the request does not contain the information required for outgoing requests in accordance with section 27 or
2. the request manifestly does not correspond to the underlying decision.

(2) The requested enforcement authority or the central authority may refuse an incoming request for enforcement in addition where

1. the envisaged costs or resources required for the enforcement are disproportionate in relation to the amount of the administrative penalty or fine to be enforced,
2. the administrative penalty or the fine to be enforced or its equivalent in euros amounts to less than 350 euros or
3. the enforcement would not be compatible with the fundamental rights of the person or persons concerned or with other constitutional legal principles for the protection of the person or persons concerned.

(3) The enforcement authority notifies the refusal of an incoming request including the reasoning thereof to the central authority without delay. The central authority informs the

requesting authority without delay. Before refusing an incoming request in accordance with subsection (1) no. 1 or 2, the central authority gives the requesting authority a period of one month within which it may transmit the missing information or complete the request.

## **Division 8 Labour and social law advisory services**

### **Section 31 Entitlement**

(1) The German Trade Union Federation (DGB) is entitled to up to 3.996 million euros per calendar year in federal funding to establish and operate centres to provide advice on labour and social law matters as well as to develop and deliver training courses and information material linked to those advisory services.

(2) This entitlement only exists if the advisory services

1. are geared towards EU citizens who are employed, are to be employed or were employed in Germany within the framework of the freedom of movement for workers or as workers posted across borders,
2. are free of charge to those receiving advice, and
3. do not require those receiving advice to be a member of a trade union.

(3) The advisory centres referred to in subsection (1) provide employees from third countries with information about suitable and available services provided by other competent advisory centres and refer such third-country nationals to those advisory centres. Posted third-country nationals may be involved in the provision of advisory services if there is a direct factual link to a case already handled by one of the advisory services as referred to in subsections (1) and (2). A direct factual link in particular exists where third-country nationals and EU citizens are posted by the same employer.

(4) Entitlement to the full amount only exists if the German Trade Union Federation also contributes own funding towards financing the advisory centres in the amount of one ninth of the amount of the approved funding. The beneficiary identifies the amount of the own funding in its application and uses it directly to fund the advisory centres. If the own contribution is not paid in full, previously approved funding is reduced to the ninefold amount of the own contribution paid.

(5) The Federal Ministry of Labour and Social Affairs is the authority competent for granting the funding. It takes a decision on the beneficiary's application by way of an administrative act.

(6) For the purposes of a numerical check, the Federal Ministry of Labour and Social Affairs each year conducts at least two sample audits and one detailed audit relating to the use of the funding. For the purposes of a factual check, the German Trade Union Federation no later than three months after the end of the funding period submits a report on measures and activities carried out in the funding period.

(7) Upon request and after the prior consent of the Federal Ministry of Labour and Social Affairs, the funding received may be passed on to third parties on the basis of a contract under private law. The beneficiary remains responsible and accountable for the appropriate use of the funding.

(8) The entitlement arises for the first time in respect of the calendar year 2021.

(9) The Federal Ministry of Labour and Social Affairs will, by 31 December 2025, conduct an evaluation of the range of advisory services and information provided.

### **Section 32 Authorisation to issue statutory instrument**

The Federal Ministry of Labour and Social Affairs determines, by way of a statutory instrument not requiring the approval of the Bundesrat,

1. further details concerning the granting of the funding,
2. the application procedure,
3. the conditions and procedure for passing the funding made available on to third parties,
4. further details concerning checks regarding the use of funds.

### **Section 33**

#### **Duty to provide information in cases of recruitment from abroad**

Employers established in Germany that conclude a contract of employment with a Union citizen in accordance with section 31 (2) no. 1 with residence or habitual abode abroad for the purpose of performing work in Germany are to inform that person in writing no later than on the first day of performing work of the possibility of making use of the services of the advisory centres in accordance with section 31 and are to provide the current contact details of the advisory centre. If the worker has been placed with the employer and the placement agent has a duty to provide information to the worker in accordance with section 299 of the Third Book of the Social Code, the obligation to provide information does not apply.

### **Division 9**

#### **Special rules and transitional provisions**

#### **Subdivision 1**

#### **Special rules for certain activities performed by workers employed by employers established abroad**

### **Section 34**

#### **Initial assembly and installation work**

The working conditions as referred to in section 2 (1) no. 1 and no. 2, section 5 sentence 1 no. 1 to no. 3 and section 13b of this Act and as referred to in section 20 of the Minimum Wage Act (*Mindestlohngesetz*) do not apply to workers employed in Germany by employers established abroad if

1. those workers perform initial assembly or installation work which
  - a) forms part of a supply contract,
  - b) is essential in order to be able to bring the delivered items into service, and
  - c) is carried out by the supplier company's skilled or semi-skilled workers, and
2. the period of employment in Germany does not exceed eight days within the space of one year.

Sentence 1 does not apply to building services within the meaning of section 101 (2) of Book Three of the Social Code.

### **Section 35**

#### **Specific activities without a recipient of services in Germany**

The working conditions as referred to in section 2 (1) no. 1 and no. 2, section 5 sentence 1 no. 1 to no. 4 and section 13b of this Act and as referred to in section 20 of the Minimum Wage Act do not apply to workers and temporary agency workers who are temporarily employed in Germany by employers or user enterprises established abroad and who, whilst not performing work or providing services to third parties in Germany on behalf of their employer,

1. hold meetings or conduct negotiations in Germany, draw up contractual offers or conclude contracts on behalf of their employer,

2. attend as a visitor a trade fair, specialist conference or symposium without performing any of the activities referred to in section 2a (1) no. 8 of the Act to Combat Undeclared Work and Unlawful Employment,
3. establish a business unit in Germany on behalf of their employer, or
4. 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 the space of 12 months.

## **Subdivision 2 Special rules for the road transport sector**

### **Section 36**

#### **Drivers employed in Germany by employers established abroad**

(1) The working conditions as referred to in sections 2, 5 and 13b of this Act and as referred to in section 20 of the Minimum Wage Act apply to those drivers who are employed by employers established abroad to provide transport services for goods or passengers in Germany in the framework of a posting as referred to in Article 1 (3) (a) of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1), as last amended by Directive (EU) 2018/957 (OJ L 173, 9.7.2018, p. 16; OJ L 91, 29.3.2019, p. 77). Drivers are considered to be employed in Germany within the meaning of sentence 1 in particular where they

1. on the basis of a transport contract perform national transport operations in relation to goods or passengers in accordance with Regulation (EC) No 1072/2009 or Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (OJ L 300, 14.11.2009, p. 88), as last amended by Regulation (EU) No 517/2013 (OJ L 158, 10.6.2013, p. 1), (cabotage) or
2. on the basis of a transport contract perform a transport operation in relation to goods or to passengers from a State other than the employer's State of establishment across a border to a State other than the employer's State of establishment (trilateral operations) and either the departure point or destination is located in Germany.

(2) Sections 37 to 40 do not apply where the employer is established in a third country. Employers established in a State which has entered into an international agreement with effect for the Federal Republic of Germany providing for the application of posting rules to the road transport sector are treated in accordance with those rules provided for in the international agreement.

### **Section 37**

#### **Bilateral transport operations in relation to goods**

(1) Drivers are not considered to be employed in Germany within the meaning of section 36 (1) where they exclusively perform bilateral transport operations in relation to goods.

(2) A bilateral transport operation in relation to goods is the transport of goods on the basis of a transport contract

1. from the Member State where the employer is established to another Member State of the European Union or the European Economic Area or to a third country or
2. from another Member State of the European Union or the European Economic Area or from a third country to the Member State where the employer is established.

(3) Drivers are not considered to be employed in Germany, in derogation from section 36 (1) sentence 2 no. 2, when performing the first trilateral transport operation in relation to goods

within the framework of a bilateral transport operation as referred to in subsection (2). In derogation from sentence 1, drivers are also not considered to be employed in Germany when performing the second trilateral transport operation in relation to goods within the framework of a bilateral transport operation where this bilateral transport operation

1. is an operation which ends in the Member State of establishment and
2. follows, without the performance of any transport operations in the intervening period, a bilateral transport operation which started in the Member State of establishment and during which no trilateral transport operation was performed.

(4) From the date on which smart tachographs are required to be fitted in the vehicles registered in a Member State of the European Union or the European Economic Area for the first time, as provided for in the fourth subparagraph of Article 8 (1) of Regulation (EU) No 165/2014, the exemptions set out in subsection (3) apply solely to drivers using motor vehicles fitted with smart tachographs as provided for in Articles 8 to 10 of Regulation (EU) No 165/2014.

### **Section 38**

#### **Bilateral transport operations in relation to passengers**

(1) Drivers are not considered to be employed in Germany within the meaning of section 36 (1) where they perform exclusively bilateral transport operations in relation to passengers.

(2) A bilateral transport operation in relation to passengers is a transport operation in which the driver

1. picks up passengers in the Member State where the employer is established and sets them down in another Member State of the European Union or the European Economic Area or a third country,
2. picks up passengers in another Member State of the European Union or the European Economic Area or a third country and sets them down in the Member State where the employer is established or
3. picks up and sets down passengers in the Member State where the employer is established for the purpose of carrying out local excursions in another Member State of the European Union or the European Economic Area or a third country.

(3) In derogation from section 36 (1) sentence 2 no. 2, drivers are not considered to be employed in Germany when

1. performing the first trilateral transport operation in the framework of a bilateral transport operation as referred to in subsection (2) and
2. they do not offer passenger transport services between two locations within the Member State crossed.

(4) From the date on which smart tachographs are required to be fitted in the vehicles registered in a Member State of the European Union or the European Economic Area for the first time, as provided for in the fourth subparagraph of Article 8 (1) of Regulation (EU) No 165/2014, the exemptions set out in subsection (3) apply solely to drivers using motor vehicles fitted with smart tachographs as provided for in Articles 8 to 10 of Regulation (EU) No 165/2014.

### **Section 39**

#### **Combined transport operations**

Drivers are not considered to be employed in Germany within the meaning of section 36 (1) when performing the initial or final road leg of a combined transport operation as defined in Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ L 368, 17.12.1992, p. 38), as last amended by Directive 2013/22/EU (OJ L 158, 10.6.2013, p. 356),



if on the road leg exclusively bilateral transport operations and additional transport operations in relation to goods as referred to in section 37 are performed.

#### **Section 40**

##### **Transit**

Drivers employed by an employer established in another Member State of the European Union or the European Economic Area are not considered to be employed in Germany within the meaning of section 36 (1) where they transit through Germany without loading or unloading freight and without picking up or setting down passengers (transit).

#### **Subdivision 3**

##### **Transitional provisions**

#### **Section 41**

##### **Transitional provisions concerning long-term posting**

(1) The working conditions provided for under section 13b (1) apply as of 30 July 2020 at the earliest.

(2) Periods of employment in Germany before 30 July 2020 are included when calculating the period of employment in accordance with section 13b (1). If the employment in Germany began before 30 July 2020, notification as referred to in section 13b (2) is deemed to have been made.

#### **Section 42**

##### **Transitional provisions concerning the building industry**

Any declaration of general applicability of a collective agreement in the building industry in accordance with section 4 (1) no. 1 and section 6 (2) which was made before 30 July 2020 is equal, as regards the application of sections 8 and 9 and Division 5, to a statutory instrument as referred to in section 7 insofar as that collective agreement lays down working conditions as referred to in section 5 sentence 1 no. 1.