

Data protection in the context of audits and the prosecution of administrative and criminal offences by the financial control of undeclared work unit (FKS) of the customs administration

In the following paragraphs we will outline which personal data we collect, who we collect it from and what we do with it. We will also inform you about your rights in data protection matters and to whom you can send questions and complaints.

In carrying out the task set out in the Schwarzarbeitsbekämpfungsgesetz (SchwarzArbG) [*Act to Combat Undeclared Work and Unlawful Employment*], we collect personal data within the meaning of Regulation (EU) 2016/79 - General Data Protection Regulation (GDPR) and Part 3 of the Bundesdatenschutzgesetz (BDSG) [*Federal Data Protection Act*], as well as operational and business secrets within the meaning of section 35(4) Sozialgesetzbuch Erstes Buch (SGB I) [*First Book of the German Social Code*].

"Personal data" refers to any information relating to an identified or identifiable natural person; Pursuant to section 2a(5) Abgabenordnung (AO) [*Fiscal Code of Germany*], this includes data from deceased persons as well as data from corporations and associations of persons with or without legal capacity or assets. Pursuant to section 35(4) SGB I, company and business secrets are treated in the same way as "personal data".

1. Who are we?

"We" are the customs authorities who you encounter as customs offices, main customs offices, federal treasuries and the Generalzolldirektion (GZD) [*Central Customs Authority*].

The customs authorities are responsible, inter alia, for combating undeclared work and illegal employment. They carry out audits, punish administrative offences and prosecute criminal offences.

2. Who can you contact?

If you have any questions regarding data protection, you can address them to the **management of the customs authority** responsible for your matter.

As a rule, the **main customs offices** and, in payment transactions, the federal treasuries are responsible for processing personal data. In certain cases, personal data from companies and citizens is also processed by the **GZD**.

In addition, you can contact the **Data Protection Officers** of the customs authorities that are handling your case.

You will find the corresponding **contact details** at www.zoll.de in the privacy statement.

The Data Protection Officer of the GZD can be contacted at:

Am Propsthof 78 a, 53121 Bonn
Phone: +49 (0)228 303-12200
Email: datenschutz.gzd@zoll.bund.de

3. Controller

Pursuant to Article 4 no. 7 GDPR and section 46 no. 7 BDSG, the controller is always the respective main customs office. If you do not yet have the corresponding contact data, e.g. from previous correspondence, you can look up the applicable customs office on the German Customs website (www.zoll.de) in the main menu under "Contact".

To some extent, the GZD also processes personal data and, accordingly, is itself the controller. For instance, in principle, contact with foreign organisations related to the financial control of undeclared work is uniquely performed by the GZD.

4. Purpose of processing

The processing of personal data serves the performance of the tasks set out in the SchwarzArbG [*Act to Combat Undeclared Work and Unlawful Employment*].

The corresponding authorities (FKS) of the customs administration collect personal data in order to fulfil the inspection and investigation tasks deriving from the SchwarzArbG.

This includes the prosecution of criminal offences and administrative offences, the

punishment of which the authorities of the customs administration are responsible for or offences, which are directly related to one of the matters for inspection mentioned in section 2 SchwarzArbG, pursuant to section 14 SchwarzArbG.

Controllers use data primarily for the purposes, for which it was collected. In some cases, controllers pass on data to other authorities and bodies when they require them to carry out their respective tasks. See also: "Categories of recipients".

5. Collection

Controllers generally collect personal data from the data subjects themselves.

Employers, employees and other persons encountered during an examination are obliged to provide information in accordance with section 5 SchwarzArbG. This includes information on other social security relationships (section 67e SGB X).

Controllers also collect personal data from third parties, in particular from cooperating authorities and bodies as referred to in section 2(4) SchwarzArbG. Data is also collected from the social funds of the construction industry, from public registers (trade registers, central federal registers, central trade registers) and through international administrative and legal assistance.

In the course of criminal proceedings, controllers obtain personal data by means of investigative measures pursuant to the Strafprozessordnung [*Code of Criminal Procedure*]. Data from third parties is collected.

6. Categories of recipients

Controllers cooperate by law with other authorities and bodies, see section 2(4) SchwarzArbG. They provide these authorities and bodies with the information necessary for their audits, including personal data and the audit results (section 6 SchwarzArbG). They provide information to law enforcement authorities when there are factual indications of offences and administrative offences related to combatting undeclared work. Furthermore,

controllers will also inform law enforcement and the corresponding authorities where there are factual indications that such information is necessary for the prevention and prosecution of further criminal or administrative offences. They will also inform the relevant authorities if they find evidence of other breaches of law. A list of such infringements can be found in section 6(4) SchwarzArbG.

7. Storage duration

Data from audits is erased at the latest one year after the end of the calendar year in which the audit was completed, in cases where investigation proceedings were not initiated.

Data from fining and criminal proceedings is erased no later than five years after the end of the calendar year in which the investigation was definitively closed or terminated. However, such data is kept at least until the claims (e.g. concerning fines) have been settled (section 19 SchwarzArbG).

8. Your rights as a data subject

- You have the right to **access** whether personal data concerning you is being processed (section 18 SchwarzArbG in conjunction with section 83 SGB X; Article 15 GDPR). In the event of an investigation initiated against you, this right derives from section 57 BDSG.

The request for access should contain information allowing the controller (see point 3) to locate your data (if known: the reference number, otherwise, for instance, the event on the basis of which data was collected). If you have been informed that data relating to you has been stored, then, in principle, you will be provided with a copy of your data and you will receive further information, such as the purpose of its processing, the duration of its storage and information on the source of the data. However, there are situations in which no access is provided, e.g. because the rights of other persons would be prejudiced or the proper performance of the controller's tasks would be jeopardised. If you are refused access, you can contact the Federal Commissioner for Data Protection and

Freedom of Information. You will find their contact details at the end of this document.

In the prosecution of criminal offences, the officials of the customs administration, as investigators of the Public Prosecutor's Office, are subject to the instructions of the Public Prosecutor's Office in accordance with Section 152 Gerichtsverfassungsgesetz [*Courts Constitution Act*], which also decides on information from the case files and file systems.

- If the data is incorrect or no longer accurate, you may request its **correction** pursuant to Article 16 GDPR or in the investigation proceedings pursuant to section 58(1) BDSG. However, if there is ambiguity as to data accuracy, processing is still permitted without correction for the performance of the duties of the controllers, but only provided there is a reference to the ambiguity (section 84(2) SGB X).

- You can request the **erasure** of your data if one of the conditions of Article 17 GDPR or section 57(2) BDSG is met, for example if the data is no longer needed to serve the original purpose, has been unlawfully processed or is subject to a statutory deletion provision (in this case pursuant to section 19 SchwarzArbG).

- Instead of erasure, the **restriction of processing** may be required under certain conditions (Article 18 GDPR or article 58(3) BDSG).

- Pursuant to Article 21 GDPR, you have, in principle, a **right to object** to the processing of your data in the course of an inspection; however, this is not the case if there is an overriding public interest in the processing, that your interest in erasure prevails or that a legal provision requires the processing of the data, pursuant to 84(5) SGB X.

Irrespective of any other possible legal remedies, you have the right to lodge a complaint with the Federal Commissioner for Data Protection and Freedom of Information if you believe that your rights have been infringed upon in the processing of your personal data by the authorities of the customs administration

(Article 77(1) GDPR, section 81(1) SGB X, section 60 BDSG).

Contact details of the Federal Commissioner for Data Protection and Freedom of Information:

Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit

Husarenstraße 30, 53117 Bonn

Phone: +49 (0)228-997799-0

Fax: +49 (0)228-997799-5550

Email: poststelle@bfdi.bund.de