

# FEDERAL LAW GAZETTE

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Part I

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**82. Federal Act amending the Labour Constitution Act (*Arbeitsverfassungsgesetz*), the Federal Act on Employee Representation in the Post Office (*Bundesgesetz über die Post-Betriebsverfassung*) and the Labour and Social Security Courts Act (*Arbeits- und Sozialgerichtsgesetz*)**

The *Nationalrat* has decreed the following:

### Article I

#### Amendment of the Labour Constitution Act

The Labour Constitution Act (*Arbeitsverfassungsgesetz – ArbVG*), published in the Federal Law Gazette (*BGBL.*) No 22/1974, last amended by the Federal Act published in *BGBL. I* No 138/2003, is amended as follows:

1. The following subpara. (4c) shall be inserted after § 40 subpara. (4b):

"(4c) In undertakings within the meaning of Part VI, a special negotiating body shall be established in accordance therewith and a European Works Council set up or a procedure created for involving the employees."

2. § 110 subpara. (6) shall read as follows:

"(6) The central works council (works council) of the controlling company and all members of the works councils of all the controlled companies (Nos 1 to 4) shall, provided that the controlling company employs no more than half as many workers as all the controlled companies combined, participate in the appointment of employee representatives to sit on the supervisory board of a stock corporation (*Aktiengesellschaft*) (limited liability company (*Gesellschaft mit beschränkter Haftung – GmbH*), cooperative society (*Genossenschaft*)) which controls

1. stock corporations (including European companies (SEs));
2. limited liability companies in which a supervisory board is mandatory;
3. limited liability companies within the meaning of § 29 subpara. (2) No 1 of the Limited Liability Companies Act (*Gesetz über Gesellschaften mit beschränkter Haftung – GmbHG*);
4. cooperative societies in which a supervisory board is mandatory,

under a single set of arrangements (§ 15 subpara. (1) of the 1965 Stock Corporations Act (*Aktiengesetz 1965*)) or on the basis of a direct holding of more than 50 percent. The central works council (works council) of the controlling company shall appoint as many

employee representatives as corresponds to the ratio of the number of employees of the controlling company to the number working in the controlled companies, but no less than one. The entitlement of the central works council (works council) of the controlling company to appoint one employee representative irrespective of the ratio of the number of employees of the controlling company to the number working in the controlled companies shall lapse where the activities of the controlling company are limited to administering the shares in the controlled companies. The other employee representatives on the supervisory board shall be elected by means of a secret ballot, in accordance with the principles of the law of proportional representation, by the works councils of all the controlled companies (Nos 1 to 4) appointed from among the works council members entitled to vote; the provisions of § 51 subpara. (3), § 54 subpara. (2), § 56 subpara. (1), § 57, § 59, § 60, § 62 Nos 2–5, § 64 subpara. (1) Nos 1–3 and subpara. (4), § 65 subpara. (1), first sentence, and subpara. (2), § 78 subpara. (4), § 81 subpara. (1), second sentence, and subparas. (2) and (4) and § 82 subpara. (1), first sentence, shall apply *mutatis mutandis* with respect to this election. This subparagraph shall not apply to banks (§ 1 of the Banking Act (*Kreditwesengesetz*), *BGBI.* No 63/1979, as amended) or insurance companies."

3. *In § 113 subpara. (2) No 7, the full stop shall be replaced by a semi-colon and the following Nos 8 and 9 added:*

"8. appointment of employee representatives to the special negotiating body (§ 217, § 218), the European Works Council (§ 234) and the supervisory or administrative board of the European company (§ 247);

9. participation in the information and consultation procedure in accordance with the agreements concluded pursuant to § 230 or § 231."

4. *In § 113 subpara. (4) No 6, the full stop shall be replaced by a semi-colon and the following Nos 7 and 8 added:*

"7. appointment of employee representatives to the special negotiating body (§ 217, § 218), the European Works Council (§ 234) and the supervisory or administrative board of the European company (§ 247);

8. participation in the information and consultation procedure in accordance with the agreements concluded pursuant to § 230 or § 231."

5. *In § 113 subpara. (5) No 6, the full stop shall be replaced by a semi-colon and the following Nos 7 and 8 added:*

"7. appointment of employee representatives to the special negotiating body (§ 217, § 218), the European Works Council (§ 234) and the supervisory or administrative board of the European company (§ 247);

8. participation in the information and consultation procedure in accordance with the agreements concluded pursuant to § 230 or § 231."

6. *The following Part VI shall be inserted after § 207:*

# **"Part VI**

## **Participation of employees in the European company**

### **Chapter 1**

#### **General provisions**

##### **Scope**

**§ 208.** The provisions of Part VI shall apply to companies which are covered by Part II and established or managed in accordance with the legal rules provided for in Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company, and which have or will have their registered office within the country.

**§ 209.** Even where the registered office of the European company is not or will not be within the country, the provisions of Part VI shall apply with respect to: the obligation of participating companies within the country to collaborate with the employees' representative bodies as provided for in § 214 No 1; the obligation to disclose information as provided for in § 215 subpara. (3); the ascertainment of the number of persons employed within the country (§ 215 subpara. (4)); the appointment of the Austrian members to the special negotiating body (§ 217, § 218), the European Works Council (§ 234) and the supervisory or administrative board of the European company (§ 247); the ending of their membership of the special negotiating body (§ 223 subpara. (2)), the European Works Council (§ 237 subpara. (5)) and the supervisory or administrative board of the European company (§ 247 subpara. (4)); as well as the duty to maintain confidentiality (§ 250) and the protective clauses (§ 251) to which they are subject.

##### **Definitions**

**§ 210.** (1) For the purposes of Part VI, "participating companies" shall be understood to mean the companies directly participating in the establishment of a European company. These shall be:

1. in the case of a merger: the merging companies;
2. in the case of the establishment of a holding company: the companies establishing it;
3. in the case of the establishment of a subsidiary company: the companies establishing it;
4. in the case of a conversion: the company to be converted.

(2) For the purposes of Part VI, a "subsidiary" shall be understood to mean a company over which another company exercises a dominant influence within the meaning of § 176.

(3) A "concerned subsidiary" shall be understood to mean a subsidiary of a participating company which is intended to become a subsidiary of a European company upon the formation of the latter.

(4) A "concerned establishment" shall be understood to mean an establishment of a participating company which is intended to become an establishment of a European company upon the formation of the latter.

## **Employees' representative bodies**

§ 211. In those companies which fulfil the conditions of § 208, a special negotiating body shall be established in accordance with the provisions of Part VI and a European Works Council set up or a procedure created for the involvement of employees.

### **Involvement of employees**

§ 212. (1) The right of employees to become involved in European companies shall include all procedures through which employee representatives may exercise an influence on the decisions taken within a European company. In particular, the right of employees to become involved in European companies shall include the right to information, consultation and, in accordance with the provisions of Part VI, participation.

(2) For the purposes of Part VI, "information" shall be understood to mean the informing of the body representative of the employees or employees' representatives by the competent body of the European company on questions which concern the company itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making bodies in a single Member State at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent body of the European company.

(3) For the purposes of Part VI, "consultation" shall be understood to mean the exchange of views and establishment of a dialogue between the body representative of the employees or the employees' representatives and the competent body of the European company, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent body which may be taken into account in the decision-making process within the European company.

(4) For the purposes of Part VI, "participation" shall be understood to mean the influence of the body representing the employees or the employees' representatives in the affairs of a European company by way of the right to elect or appoint some of the members of the European company's supervisory or administrative board, or the right to recommend or oppose the appointment of some or all of the members of the European company's supervisory or administrative board.

### **Obligations upon management and administrative bodies**

§ 213. The competent management and administrative bodies of the participating companies shall create the necessary conditions and provide the necessary resources

1. for the establishment of a special negotiating body; and
2. for the setting-up of a European Works Council or the creation of a procedure for informing and consulting the employees.

### **Principles of collaboration**

§ 214. The bodies representing the workforce (§ 211) and the competent management and administrative bodies

1. of the participating companies; and
2. of the European company

shall work together with a view to reaching an understanding, having due regard to their respective rights and mutual obligations.

## **Chapter 2**

### **Special negotiating body**

#### **Request for establishment**

**§ 215.** (1) The special negotiating body shall be established in the participating companies, and in the concerned subsidiaries and concerned establishments, upon written request by the competent management and administrative bodies of these companies, which shall be addressed to the employees or employee representatives in line with the applicable legal provisions.

(2) The request as referred to in subpara. (1) shall be made immediately after the merger plan or the plan to establish a holding company is disclosed, or after a plan to establish a subsidiary or convert to a European company is agreed.

(3) The request as referred to in subpara. (1) shall include information on:

1. the planned establishment of a European company and the procedure to be followed up until its entry in the commercial register;
2. the names and structure of the participating companies (including their subsidiaries and establishments) and of the concerned subsidiaries and concerned establishments, in each case including details of their distribution among the Member States;
3. the number of persons employed in each of these companies and establishments, and the total number of persons employed in the participating companies and in the concerned subsidiaries and concerned establishments;
4. the names of the bodies set up within these companies and establishments to represent the employees, and the number of employees represented by these bodies;
5. the names of those companies in which employees participate in management decision-making ("co-determination"), and the number of employees covered by such arrangements in each case; where participation arrangements do not cover all employees of a participating company, the proportion of employees covered in relation to the total number of employees should be indicated;
6. the date of the constituent meeting of the special negotiating body.

(4) The timing of the request as referred to in subpara. (1) shall be definitive for the purposes of ascertaining the number of persons employed.

(5) The relevant voluntary professional association of the employees shall be notified of the request as referred to in subpara. (1) by the body representing the workforce which is responsible for making appointments.

#### **Composition**

**§ 216.** (1) For each 10% share of employees, or fraction thereof, in a given Member State as a proportion of the total number of persons employed throughout the Member States in the participating companies, and in the concerned subsidiaries and concerned

establishments, the Member State concerned shall be entitled to send one member to the special negotiating body.

(2) In the event of a European company being established in the context of a merger, each Member State shall send as many additional members to the special negotiating body as is necessary to ensure that each participating company which has employees in the Member State concerned – and which will cease to exist as a legal entity in its own right as a result of the European company being entered in the commercial register – is represented by at least one member in the special negotiating body.

(3) Where, under the provisions of subpara. (1) in conjunction with the applicable law, participating companies are already represented in the special negotiating body by members who are employees of these participating companies or who have been elected or otherwise appointed exclusively by the employees of these participating companies, no additional members shall be sent pursuant to subpara. (2).

(4) The number of additional members may not exceed 20% of the number of members provided for in subpara. (1). Where the number of these participating companies exceeds the number of additional members to be sent, these additional members shall be allocated to the participating companies in various Member States in descending order of the number of persons employed by them.

(5) Where, during the term of office of the special negotiating body, changes in the structure or number of employees in the participating companies, concerned subsidiaries or concerned establishments occur which alter the composition of the special negotiating body as referred to in subparas. (1) to (4), the special negotiating body shall be reconstituted accordingly. Information regarding such changes shall be provided without delay by the competent management and administrative bodies of the participating companies to the special negotiating body, the employees or employee representatives – in line with the applicable legal provisions – in the participating companies, concerned subsidiaries and concerned establishments not previously represented in the special negotiating body.

### **Appointment of members**

**§ 217.** (1) The Austrian members to be sent to the special negotiating body shall be appointed from among the works council members by a resolution of the employees' representative body with power of appointment pursuant to § 218. An officer or employee of a relevant voluntary professional association may be appointed in place of a works council member.

(2) Where a number of Austrian members are to be sent to the special negotiating body, the representative body with power of appointment pursuant to § 218 shall, at the same time as the resolution on the appointment of members, pass a resolution on how many employees are to be represented by each appointed member. It shall be ensured that all employees in Austria are represented by such a member.

(3) With regard to the number of seats to which Austrian employee representatives are entitled, it shall be borne in mind that each participating company shall be represented by at least one member in the special negotiating body.

(4) In order for resolutions to be passed, at least half the members must be present. Resolutions shall be passed by votes representing more than half of the employees in the group of companies, the individual companies and the establishments. The number of

persons employed in the group of companies, the individual companies and the establishments shall be determined on the basis of the information to be provided in connection with the request to establish the special negotiating body, as referred to in § 215 subpara. (3) Nos 3 and 4 and § 216 subpara. (5).

(5) Care should be taken to ensure that both manual and non-manual workers, and both sexes, are properly represented.

**§ 218.** (1) In establishments, resolutions to send representatives shall be passed by the staff representation committee (*Betriebsausschuss*). Where no such committee exists, this task shall be assumed by the works council. Where a number of representative committees (or works councils) exist which are not part of the same company, the chairman of the staff representation committee (or works council) at the largest operating establishment within the country – in terms of number of employees entitled to vote – shall convene a meeting of the staff representation committees (or works councils), which shall be responsible for passing a resolution on the appointment of representatives.

(2) In companies, the members to be sent to the special negotiating body shall be appointed by a resolution passed by the central works council. Where no central works council has been set up, subpara. (1) shall apply accordingly. Where a number of central works councils exist, the chairman of the central works council at the largest company within the country – in terms of number of employees entitled to vote – shall convene a meeting of the central works councils, which shall be responsible for passing a resolution on the appointment of representatives. If, in addition to one or more central works councils, a staff representation committee (or works council) exists which is not represented on any central works council, the chairmen of the works councils and their deputies shall be invited to this meeting, where they shall be treated as members of the central works council.

(3) In groups of companies, the members to be sent to special negotiating body shall be appointed by a resolution passed by the group works council (*Konzernvertretung*). Where no group works council has been set up, subpara. (2) shall apply. Where no central works council has been set up either, subpara. (1) shall apply. Where, in addition to the group works council, a central works council (or staff representation committee or works council) exists which the group works council does not represent, the chairman of the central works council (or works council) and their deputies shall be invited to this meeting, where they shall be treated as members of the group works council.

(4) The competent management or administrative body of the participating companies shall be notified without delay of the members appointed to the special negotiating body.

### **Constitution**

**§ 219.** (1) Immediately after being notified of the appointed members of the special negotiating body, the competent management or administrative body of the participating companies shall issue invitations to its constituent meeting.

(2) The members of the special negotiating body shall be required to elect a chairman and one or more deputies from among their number. The special negotiating body shall adopt rules of procedure.

(3) The chairman shall without delay inform the competent management or administrative body of the participating companies of the ending of the constituent meeting and the result of the election.

(4) Immediately after receiving this notification, the competent management or administrative body of the participating companies shall convene a meeting with the special negotiating body in order to conclude an agreement pursuant to § 225.

### **Meetings**

**§ 220.** (1) The special negotiating body shall be entitled to convene a preparatory meeting prior to any meeting with the competent management or administrative body of the participating companies.

(2) The special negotiating body may draw on the assistance of experts of its choice for the negotiations with the competent management or administrative body of the participating companies. These experts may, where the special negotiating body so requests, be invited to attend the negotiations in an advisory capacity.

### **Adoption of resolutions**

**§ 221.** (1) Unless more stringent requirements are laid down in this Federal Act, resolutions shall be adopted by a simple majority of the votes cast, provided that this majority also represents a simple majority of the employees.

(2) The special negotiating body may, by means of at least two thirds of its votes representing at least two thirds of the employees in at least two Member States, pass a resolution to conclude an agreement leading to a reduction of the employees' participation rights. However, such a majority shall be required only where

1. in the case of a European company to be established by way of merger: the participation covers at least 25% of the overall number of employees of the participating companies;
2. in the case of a European company to be established by way of creating a holding company or forming a subsidiary: the participation covers at least 50% of the overall number of employees of the participating companies.

(3) Where a European company is to be established by way of conversion, no resolution as referred to in subpara. (2) may be passed.

(4) The "reduction of participation rights" as referred to in subpara. (2) shall mean that the proportion of members of the supervisory or administrative board of the European company appointed under one of the procedures referred to in § 212 subpara. (4) is in all events lower than the highest proportion of employee representatives in a supervisory or administrative body of the participating companies.

### **Term of office**

**§ 222.** (1) The special negotiating body's term of office shall begin on the date it is constituted.

(2) The special negotiating body's term of office shall come to an end:

1. if it passes a resolution pursuant to § 227 subpara. (1);
2. if a court declares its establishment (§ 215 subpara. (1)) to be legally invalid; an action shall be filed within one month of the special negotiating body being constituted;
3. upon the conclusion of an agreement pursuant to § 230 or § 231, unless otherwise provided therein;



4. in the event provided for in § 232 subpara. (1) No 1;
5. if, within the applicable period referred to in § 226, no agreement pursuant to § 230 or § 231 is reached.

### **Commencement and lapse of membership**

**§ 223.** (1) Membership of the special negotiating body shall commence when notification of the resolution on the appointment of members is given (§ 218 subpara. (4)).

(2) Membership of the special negotiating body shall lapse:

1. when the special negotiating body's term of office comes to an end;
2. if the member resigns;
3. if the member is recalled by the staff representation body which appointed them to the special negotiating body; the member shall in all events be recalled if their membership of the works council, or of the relevant voluntary professional association, comes to an end;
4. if the establishment or company to which the member belongs withdraws from the company or group of companies involved in the establishment of the European Company, or from the concerned subsidiary;
5. if a court declares the resolution to appoint members (§ 217 subpara. (1)) to be legally invalid; an action shall be filed within one month of the special negotiating body being constituted.

(3) In the events provided for in subpara. (2) Nos 2 to 5, new members shall be appointed to the special negotiating body in accordance with the provisions of § 217 and § 218.

### **Costs**

**§ 224.** (1) The competent management or administrative body of the participating companies shall provide the special negotiating body, free of charge, with the material necessities for the proper performance of its duties on a scale appropriate to the size of the European company.

(2) The administrative expenses incurred by the special negotiating body for the proper performance of its duties, in particular the costs of arranging meetings and any preparatory meetings, including expenses of interpreters and experts as well as subsistence and travel expenses of the members of the special negotiating body, shall be borne by the participating companies.

### **Tasks of the special negotiating body**

**§ 225.** (1) The special negotiating body shall have the task of concluding a written agreement with the competent body of the participating companies on the participation of workers in the European company.

(2) To this end, the competent body of the participating companies shall, immediately after the constitution of the special negotiating body, inform the latter about the planned establishment of a European company and the procedure to be followed up until its entry in the commercial register.

### **Duration of negotiations**

**§ 226.** (1) Negotiations on the conclusion of an agreement pursuant to § 230 or § 231 shall be completed within six months following the constitution of the special negotiating body.

(2) The special negotiating body and the competent body of the participating companies may, by mutual consent, agree to extend the negotiations on the conclusion of an agreement pursuant to § 230 or § 231 for a period of up to one year as from the point in time referred to in subpara. (1).

### **Resolution on the ending of negotiations**

**§ 227.** (1) The special negotiating body may, by means of at least two thirds of its votes representing at least two thirds of the employees in at least two Member States, resolve not to enter into negotiations on the conclusion of an agreement as referred to in § 226 subpara. (1) or to break off negotiations already under way.

(2) Where a European company is to be established by way of conversion, the special negotiating body may not pass any resolution as referred to in subpara. (1) where rules on employee participation are already in place in the company to be converted.

(3) The special negotiating body shall be reconvened at the written request of at least 10% of the employees of the European company, its subsidiaries and establishments, or their representatives, no earlier than two years after the resolution referred to in subpara. (1), unless the special negotiating body and the competent body of the European company agree on a shorter period. For the purpose of the negotiations, the European company or its competent body shall assume all obligations incumbent upon the participating companies or their competent bodies in connection with the establishment of a European company.

(4) Where a resolution as referred to in subpara. (1) is passed, or where no agreement can be reached within the period (§ 226) provided for the negotiations as referred to in subpara. (3), the provisions of Chapter 3 shall not apply.

### **Structural changes**

**§ 228.** (1) The special negotiating body shall be convened

1. in response to a written request from the competent body of the European company; or
2. at the written request of at least 10% of the employees of the European company, its subsidiaries and establishments, or their representatives; or
3. at the written request of the European Works Council (§243 subpara. (1) No 2),

where significant changes in the structure of the European company occur which have a bearing on the interests of the employees in relation to their participation rights.

(2) "Significant changes in the structure of the European company" shall in particular include the transfer of the registered office of the European company, changes in the European company's administrative arrangements, the closure or cutting-back or transfer of undertakings or establishments of the European company, the merger of establishments or undertakings of the European company, and the acquisition by the European company of substantial holdings in other companies in so far as this has a

significant effect on the its overall structure, as well as significant changes in the number of persons employed by the European company and its subsidiaries.

(3) For the purpose of the negotiations on the conclusion of an agreement pursuant to § 230 or § 231, the special negotiating body and/or the European Works Council shall be reconstituted in line with the changes in the structure or number of employees of the European company, its subsidiaries and establishments ( 216 subpara. (5), § 233 subpara. (2)). For the purpose of the negotiations, the European company or its competent body shall assume all obligations incumbent upon the participating companies or their competent bodies in connection with the establishment of a European company.

(4) Where an already existing agreement pursuant to § 230 or § 231 contains a provision on the conditions and procedures for its renegotiation, this shall take precedence provided that the requirements of subparas. (1) to (3) are met.

(5) Where no agreement can be reached within the period provided for negotiations (§ 226), the provisions of Chapter 3 shall apply with the proviso that the scope of the employees' participation rights shall be determined according to the structure of the European company, its subsidiaries and establishments at the time of the failure of negotiations.

### **Misuse of procedures**

**§ 229.** (1) A European company may not be misused for the purpose of depriving employees of participation rights or withholding such rights. Misuse shall in particular be deemed to exist where changes in the structure of the European company take place which are likely to lead to employees being deprived of participation rights, or to such rights being withheld. In the event of such changes, new negotiations shall be conducted in accordance with the provisions of § 228.

(2) In the absence of proof to the contrary, "changes" within the meaning of subpara. (1) shall be understood to mean all changes in the structure of the European company, as referred to in § 228, in so far as these occur within one year following its entry in the commercial register.

### **Agreement on the involvement of employees in the European company**

**§ 230.** (1) Where the special negotiating body and the competent body of the participating companies conclude an agreement on the involvement of employees in the European company, they shall in all events specify the following in the agreement:

1. the European company, its subsidiaries and establishments which are covered by the agreement;
2. the composition of the European Works Council, the number of members, the allocation of seats and the term of office, including the effects of significant changes in the structure of the European company and of substantial changes in the number of persons employed in the European company and its subsidiaries (§ 228 subpara. (2));
3. the functions and the procedure for information and consultation of the European Works Council;
4. the frequency of meetings of the European Works Council;
5. the financial and material resources to be made available to the European Works Council;

6. the date of entry into force and the duration of the agreement, the circumstances in which the agreement should be renegotiated, and the procedure to be used for its renegotiation.

(2) Where the parties decide to introduce a procedure for employee participation, they shall in all events specify the following in the agreement:

1. the number of members of the supervisory or administrative board whom the employees may elect or appoint, or whose appointment they may recommend or oppose;
2. the procedure by which the employees may elect or appoint these members, or recommend or oppose their appointment;
3. the rights of these members.

(3) Where a European company is to be established by way of conversion, the agreement shall safeguard the rights of the employees to information, consultation and participation to at least the same extent as these are provided for in the company to be converted.

#### **Agreement on a procedure for information and consultation of employees**

**§ 231.** (1) Where the special negotiating body and the competent body of the participating companies set up one or more procedures for information and consultation of employees, they shall in all events specify the following in the agreement:

1. the European company, its subsidiaries and establishments which are covered by the agreement;
2. the effects of significant changes in the structure of the European company and of substantial changes in the number of persons employed in the European company and its subsidiaries (§ 228 subpara. (2));
3. the functions and the procedure for information and consultation of the European Works Council;
4. the conditions under which the employee representatives are entitled to meet for an exchange of views on the information provided to them;
5. the financial and material resources to be made available to the European Works Council;
6. the date of entry into force and the duration of the agreement, the circumstances in which the agreement should be renegotiated, and the procedure to be used for its renegotiation.

(2) The agreement shall also make detailed provision for the obligation on the competent body of the European company to inform the employee representatives in particular about all matters which relate to the European company itself or its subsidiaries and establishments in another Member State, or which go beyond the powers of the decision-making bodies at the level of the individual Member States.

(3) § 230 subpara. (3) shall apply.

**Chapter 3**  
**Involvement of employees in the European company**  
**by operation of law**

**Section 1**  
**European Works Council by operation of law**

**Establishment**

§ 232. (1) A European Works Council shall be established in accordance with the provisions of this Chapter where

1. the competent bodies of the participating companies and the special negotiating body so agree; or
2. no agreement pursuant to § 230 or § 231 is reached within the period provided for negotiations as referred to in § 226, and the special negotiating body has not adopted a resolution pursuant to § 227 subpara. (1).

(2) Unless otherwise specified in the agreements pursuant to § 230 or § 231, the provisions of this Chapter shall not apply to these agreements.

**Composition**

§ 233. (1) For each 10% share of employees, or fraction thereof, in a given Member State as a proportion of the total number of persons employed throughout the Member States in the European company, its subsidiaries and establishments, the Member State concerned shall be entitled to send one member to the European Works Council. § 215 subparas. (3) to (5) shall apply.

(2) Where, during the term of office of the European Works Council, changes in the structure or number of employees in the European company, its subsidiaries and establishments occur which alter the composition of the European Works Council as referred to in subpara. (1), the European Works Council shall be reconstituted accordingly. § 216 subpara. (5) shall apply.

**Appointment**

§ 234. (1) The Austrian members of the European Works Council shall be appointed in accordance with § 217 and § 218, subject to the proviso that representatives of the voluntary professional association may be appointed only where they are members of the works council as referred to in § 53 subpara. (4).

(2) § 218 subpara. (4) shall apply subject to the proviso that notification of the members appointed to the European Works Council shall be given to the competent body of the European company.

**Constitution, management, rules of procedure,  
meetings, adoption of resolutions**

§ 235. (1) Invitations to attend the constituent meeting of the European Works Council shall be issued by the board of management or administrative board of the European company without delay following notification of the members appointed to the European Works Council. Where the board of management or administrative board of the European

company fails to fulfil this obligation, any member of the European Works Council may issue the invitations. The members of the European Works Council shall elect a chairman and one or more deputies from among their number. The chairman shall without delay inform the management or administrative board of the European company of the ending of the constituent meeting and the result of the election.

(2) Unless otherwise provided in the rules of procedure (subpara. (3)), the chairman or, if he is unavailable, his deputy shall represent the European Works Council in dealings with the European company and with third parties. The European Works may, in individual instances, also appoint other members to represent it in dealings with third parties.

(3) The European Works Council shall adopt rules of procedure by a majority vote of its members. The rules of procedure may in particular lay down rules concerning:

1. the establishment, composition and management of the select committee as referred to in § 236;
2. matters with regard to which the right to adopt resolutions independently is conferred upon the select committee;
3. the nature and scope of the representative authority of the chairman of the select committee.

(4) The European Works Council shall have the right to convene for a preparatory meeting before any meeting with the management or administrative board of the European company (§ 240). The European Works Council may draw on the assistance of experts of its choice. The European Works Council shall have a quorum where at least half its members are present. Resolutions shall be passed by a simple majority of the votes cast.

### **Select committee**

**§ 236.** Where the number of its members justifies it, the European Works Council shall elect a select committee from among its number, which may consist of a chairman and no more than two additional members. The select committee shall manage the day-to-day business of the European Works Council, and shall be subject to the provisions of § 235 subpara. (4), with the proviso that, in the instances referred to in § 241 subpara. (2), the select committee shall also be entitled to convene for the preparatory meeting with the composition specified therein.

### **Term of office, duration of membership**

**§ 237.** (1) The term of office of the European Works Council shall be four years. It shall begin on the date on which it was constituted, or upon expiry of the term of office of the previous European Works Council where constitution took place before such time.

(2) The term of office of the European Works Council shall end before the expiry of the period referred to in subpara. (1) where

1. the European company's entry in the commercial register is cancelled;
2. the European Works Council resolves by a majority vote to resign;
3. a court declares the establishment of the European Works Council (§ 232 subpara. (1)) to be legally invalid; an action shall be brought no later than one month after the constitution of the European Works Council;

4. the European Works Council and the competent body of the European company conclude an agreement pursuant to § 230 or § 231.
- (3) In the instances referred to in subpara. (2) Nos 2 and 3, a new European Works Council shall be set up as provided for in § 233 and § 234.
- (4) Membership of the European Works Council shall begin with the notification of the resolution concerning appointments (§ 234).
- (5) Membership of the European Works Council shall end when:
  1. the term of office of the European Works Council comes to an end;
  2. the member resigns;
  3. the body representing the workforce which appointed the member to the European Works Council dismisses him; the member shall in all events be recalled if his membership of the works council comes to an end
  4. the establishment or undertaking to which the member belongs leaves the European company;
  5. a court declares the resolution concerning appointments (§ 234) to be legally invalid; an action shall be brought no later than one month after the constitution of the European Works Council.
- (6) In the instances referred to in subpara. (4) Nos 2 to 5, § 223 subpara. (3) shall apply.

#### **Provision of material necessities, costs**

**§ 238.** The costs incurred in connection with the activities of the European Works Council and the select committee shall be borne by the European company in accordance with § 224.

## **Section 2**

### **Powers of the European Works Council and the select committee**

#### **Information and consultation**

**§ 239.** The European Works Council shall have the right to be informed and consulted regarding matters which affect the economic, social, health and cultural interests of the employees of the European company itself or its subsidiaries and establishments in another Member State, or which go beyond the powers of the decision-making bodies at the level of the individual Member States.

**§ 240.** (1) Notwithstanding the powers referred to in § 241 and without prejudice to any agreements with the management or administrative board of the European company which provide otherwise, the European Works Council shall have the right to meet with the competent body of the European company at least once a year for the purposes of information and consultation, on the basis of regular reports presented by the competent body of the European company concerning the development of the business situation and the future prospects of the European company. The local managements of companies shall be notified thereof.

(2) Information and consultation shall relate in particular to the structure of the European company, its economic and financial situation, the likely development of the business,

production and sales situations, the employment situation and its likely development, capital expenditure, fundamental organisational changes, the introduction of new working and manufacturing methods, relocation of production operations, mergers, retrenchments or closures of companies, establishments or important parts of such units, and mass dismissals.

(3) The competent body of the European company shall provide the European Works Council with the agendas of all meetings of the board of management and the supervisory or administrative board, and with copies of all documents distributed at the general meeting of shareholders.

**§ 241.** (1) Where unusual circumstances arise which have substantial effects on the interests of the employees – particularly in the case of transfers, relocations or closures of companies or establishments, or in the event of mass dismissals –, the European Works Council shall have the right to be notified thereof at the earliest possible opportunity. The European Works Council or – where the European Works Council so decides especially in view of the urgency of the matter – the select committee shall have the right, on request, to meet with the competent body of the European company or with the representatives of other, more appropriate levels of managements vested with decision-making powers within the European company in order to be informed and consulted about the measures having substantial effects on the interests of the employees. The meeting shall be without prejudice to the privileges of the competent body of the European company.

(2) The members of the European Works Council who represent the employees directly affected by these measures may also take part in meetings with the select committee.

(3) Where the competent body of the European company decides on action which is not in line with European Work Council's position, the European Works Council shall be entitled to again meet with the competent body of the European company in order to reach an settlement.

#### **Notification of the local employee representatives**

**§ 242.** Notwithstanding § 250, the members of the European Works Council shall inform the representatives of the employees of the European company, its subsidiaries and establishments about the content and results of the information and consultation procedure followed in accordance with the provisions of this Chapter.

#### **Resolution on the opening of negotiations**

**§ 243.** (1) The European Works Council shall

1. four years after its constituent meeting or
2. without delay in the event of significant changes in the structure of the European company (§ 228 subpara. (2)),

adopt a resolution on whether an agreement pursuant to § 230 or § 231 is to be negotiated or whether the provisions of this Chapter shall continue to apply.

(2) Where the European Works Council adopts a resolution to negotiate such an agreement, § 225, § 230 and § 231 shall apply with the proviso that the European Works Council shall negotiate the agreement in place of the special negotiating body. Where no agreement can be reached within the period provided for negotiations (§ 226), the provisions of this Chapter shall continue to apply.



## **Section 3**

### **Participation by operation of law**

#### **Applicability**

**§ 244.** (1) The provisions of this Chapter concerning employee participation shall apply where

1. the competent bodies of the participating companies and the special negotiating body so agree; or
2. no agreement pursuant to § 230 or § 231 is reached within the period provided for negotiations as referred to in § 226, and the special negotiating body has not adopted a resolution pursuant to § 227 subpara. (1).

(2) The provisions of this Chapter concerning employee participation

1. shall apply to a European company to be established by way of conversion only where rules on participation have existed in the company to be converted;
2. shall apply to a European company to be established by way of merger only
  - a) where participation arrangements exist in at least one of the participating companies and cover at least 25% of the overall number of employees in all participating companies; or
  - b) where the special negotiating body passes an appropriate resolution, participation arrangements exist in at least one of the participating companies and cover less than 25% of the overall number of employees in all participating companies;
3. shall apply to a European company to be established by way of creating a holding company or forming a subsidiary only
  - a) where participation arrangements exist in at least one of the participating companies and cover at least 50% of the overall number of employees in all participating companies; or
  - b) where the special negotiating body passes an appropriate resolution, participation arrangements exist in at least one of the participating companies and cover less than 50% of the overall number of employees in all participating companies.

(3) Where more than one form of employee participation exists in the participating companies, the special negotiating body shall decide which of these shall be introduced into the European company.

(4) The special negotiating body shall notify the competent bodies of the participating companies about the decisions taken by it as referred to in subparas. (2) and (3).

(5) Where the special negotiating body does not take any decision as referred to in subpara. (3), the form of employee participation used shall be that which covers the highest number of employees in the participating companies.

#### **Right of participation**

**§ 245.** (1) The bodies representing employees or the employee representatives in the European company, its subsidiaries and establishments shall be entitled to elect or

appoint a portion of the members of the European company's supervisory or administrative board, or to recommend or oppose their appointment. The number of these members shall be determined according to the highest proportion of employee representatives within a supervisory or administrative body of any of the participating companies prior to the entry of the European company in the commercial register.

(2) In the case of a European company to be established by way of conversion, the provisions on employee participation to which the company to be converted is subject shall apply in accordance with §§ 246–248.

### **Allocation of seats on the supervisory or administrative board**

**§ 246.** (1) The European Works Council shall decide on the allocation of seats on the supervisory or administrative board of the European company to the employee representatives from various Member States in proportion to each individual Member State's share of the total number of persons employed in the European company, its subsidiaries and establishments.

(2) Where this results in a number of seats being allocated to employee representatives from the same Member State and would at the same time mean that one or more Member States would be disregarded, then the European Works Council shall reallocate the seats as provided for in subpara. (1), with one seat not being included in the procedure. This seat shall be allocated to an employee representative from one of the unrepresented Member States. The procedure shall be to allocate this seat to an employee representative from the Member State in which the European company has its registered office. Where this Member State has already been allocated seats on the supervisory or administrative board under the arrangements referred to in subpara. (1), the seat shall be allocated to the employee representatives from the unrepresented Member State with the highest proportion of employees.

(3) Where a change occurs in the number of supervisory or administrative board members appointed by the competent body of the European company, the European Works Council shall reallocate the employee representatives' seats in accordance with the principles set out in subparas. (1) and (2), whereby surplus employee representatives shall be dismissed and additional seats allocated to employee representatives from the respective Member States.

### **Appointment of members**

**§ 247.** (1) The Austrian members to be sent to the supervisory or administrative board of the European company shall be appointed in accordance with the resolution of the European Works Council concerning the allocation of seats as referred to in § 234.

(2) Members from Member States which make no provision for the competent national body representing the workforce to send representatives shall be appointed by the European Works Council to the supervisory or administrative boards of European companies with their registered offices in Austria.

(3) The European Works Council and the competent body of the European company shall be notified of the members appointed to the supervisory or administrative board of the European company.

(4) The Austrian representatives' membership of the supervisory or administrative board of the European company shall begin when notification is given of the resolution on the

appointment of members (subpara. (2)) and shall end in the instances referred to in § 237 subpara. (5) Nos 2–5 and § 246 subpara. (3).

### **Rights of the employee representatives on the supervisory or administrative board**

**§ 248.** (1) § 110 subpara. (3), third and fourth sentences, shall apply with regard to resolutions on the appointment and dismissal of members of the board of management, the election of the chairman of the supervisory board and his senior deputy chairman, the election of the chairman of the administrative board and his senior deputy chairman, and the appointment and dismissal of executive directors. The employee representatives on the supervisory or administrative board shall otherwise have the same rights (including voting rights) and obligations as the members appointed by the competent body of the European company or pursuant to its statute.

(2) § 110 subpara. (4) shall apply with regard to the right of employee representatives to sit and vote in committees of the supervisory or administrative board, subject to the proviso that this right shall not apply with respect to committees of the administrative board dealing with relations between the company and the executive directors, with the exception of resolutions on the appointment and dismissal of executive directors and the granting of options on company shares.

### **Special-purpose European companies**

**§ 249.** (1) European companies which directly serve the purposes referred to in § 132 subpara. (2) shall not be subject to § 240 and § 241 and the provisions of Section 3 of this Chapter in so far as the matters concerned influence the political orientation of those companies.

(2) However, § 240 and § 241 shall in all events apply to companies as referred to in subpara. (1) in so far as the information relates to fundamental organisational changes, the introduction of new working and manufacturing methods or to mass dismissals. § 240 subpara. (2) shall in all events apply to companies as referred to in subpara. (1) in so far as the information relates to the structure of the company and its economic and financial position.

## **Chapter 4**

### **Legal position of employee representatives**

#### **Duty of confidentiality**

**§ 250.** (1) The members of the special negotiating body and of the European Works Council and any experts who assist them, and the employee representatives who participate in an information and consultation procedure pursuant to § 231, shall be subject to § 115 subpara. (4) with the proviso that the obligation arising out of that provision shall continue to apply after the expiry of the term of office.

(2) The obligation pursuant to subpara. (1) shall not apply to the local employee representatives where the latter are to be informed on the basis of an agreement (§ 230, § 231) or pursuant to § 242 about the content of the information and the results of the consultations.

## **Rights of employee representatives**

**§ 251.** (1) With regard to the personal rights and obligations of the Austrian members of the special negotiating body and the European Works Council, of the employee representatives who participate in an information and consultation procedure pursuant to § 231, and of employee representatives on the supervisory or administrative board of the European company, § 115 subpara. (2), first sentence, and subpara. (3), § 116 and §§ 120–122 shall apply in so far as these persons are employees of the European company, its subsidiaries or establishments, or of the participating companies or the concerned subsidiaries.

(2) Without prejudice to § 118 subpara. (1), each Austrian member of the European Works Council shall be entitled, for training and further-education purposes, to leave of absence from work for a period of up to one week during a term of office, and without any loss of remuneration.

## **Chapter 5**

### **Final and transitional provisions**

#### **Link with other legal provisions**

**§ 252.** (1) European companies and their subsidiaries which are companies or groups of companies within the meaning of § 171, shall not be covered by the provisions of Part V of this Act unless

1. the European companies and their subsidiaries are merely part of a company or group of companies within the meaning of § 171; or
2. the special negotiating body passes a resolution as referred to in § 227 subpara. (1).

(2) Unless otherwise provided in this Part, § 110 shall not apply to European companies. § 110 shall, however, apply to European companies' subsidiaries which are located within the country.

(3) The provisions of Part II shall otherwise remain unaffected by the provisions of this Part.

(4) The bodies representing the workforce in the participating companies within the country which cease to have legal personality when the European company is entered in the commercial register shall remain in existence. The board of management or administrative board of the European company shall ensure that these bodies continue to be able to exercise the powers of employee representation in accordance with the provisions of Part II Chapters 3 and 5.

(5) The employee representatives appointed to the administrative board of a European company under the provisions of this Part shall not be subject to those provisions of supervisory legislation which stipulate that members of administrative boards must have special competence or special qualifications or meet similar requirements, unless the employee representatives are appointed as executive directors of the administrative board pursuant to § 59 subpara. (1) of the European Companies Act (*SE-Gesetz*), *BGBI.* I No 67/2004.

## **Penalties**

§ 253. (1) Failure to comply with the provisions of § 213 Nos 1 and 2, § 215 subpara. (3), § 216 subpara. (5), § 219 subparas. (1) and (4), § 225 subpara. (2), § 227 subpara. (3), § 228 subpara. (3), § 231 subpara. (2), § 235 subpara. (1), § 250 subpara. (1) and § 252 subpara. (4) shall, unless such act constitutes an offence falling within the jurisdiction of the courts or is subject to more severe penalties under other administrative regulations, be deemed to constitute an administrative offence and be punished by the district administrative authority by means of a fine of up to €2 180.

(2) Administrative offences as referred to in subpara. (1) shall be the subject of prosecutions and be penalised only where a complaint (private prosecution) is lodged with the competent district authority within six weeks of the offence and the identity of the offender becoming known by

1. the employees' representative bodies existing in the participating companies, concerned subsidiaries, concerned establishments or the European company in the circumstances provided for in § 213 Nos 1 and 2, § 215 subpara. (3), § 216 subpara. (5), § 219 subpara. (1), § 227 subpara. (3), § 228 subpara. (3), § 235 subpara. (1) and § 252 subpara. (4);
2. the special negotiating body in the circumstances provided for in § 219 subpara. (4) and § 225 subpara. (2);
3. the competent employee representation body under the agreement pursuant to § 231 subpara. (1) in the circumstances provided for in § 231 subpara. (2);
4. the competent management or administrative body in the participating companies, concerned subsidiaries, concerned establishments, or the board of management or supervisory board of the European company in the circumstances provided for in § 250 subpara. (1).

(3) § 56 subparas. (2) to (4) of the 1991 Administrative Penalties Act (*Verwaltungsstrafgesetz 1991*), *BGBl.* No 52, shall apply to the criminal proceedings."

7. *The previous § 208 shall be renumbered "§ 254" and preceded by the heading "Part VII".*

8. *In what is now § 254, the following subpara. (16) shall be inserted after subpara. (15):*

"(16) § 40 subpara. (4c), § 110 subpara. (6), § 113 subpara. (2) Nos 8 and 9, subpara. (4) Nos 7 and 8, subpara. (5) Nos 7 and 8 as well as the provisions of Part VI, as amended by the Federal Act published in *BGBl.* I No 82/2004, shall enter into force on 8 October 2004."

## **Article II**

### **Amendment of the Federal Act on Employee Representation in the Post Office**

The Federal Act on Employee Representation in the Post Office (*Bundesgesetz über die Post-Betriebsverfassung*), published in the Federal Law Gazette (*BGBl.*) No 326/1996, last amended by the Federal Act published in *BGBl.* I No 98/2001, is amended as follows:

1. § 76 subpara. (4) shall read as follows:

"(4) The provisions of Parts V and VI of the Labour Constitution Act (*Arbeitsverfassungsgesetz – ArbVG*) shall apply to companies subject to this Federal Act, with the proviso that the tasks for which the bodies provided for under the *ArbVG* are responsible shall be carried out by the bodies set up hereunder."

2. *The following subpara. (8) shall be inserted after § 81 subpara. (7):*

"(8) § 76 subpara. (4), as amended by the Federal Act published in *BGBL. I* No 82/2004, shall enter into force on 8 October 2004."

## **Article III**

### **Amendment of the Labour and Social Security Courts Act**

The Labour and Social Security Courts Act (*Arbeits- und Sozialgerichtsgesetz*), published in the Federal Law Gazette (*BGBL.*) No 104/1985, last amended by the Federal Act published in *BGBL. I* No 118/2002, is amended as follows:

1. *The following § 5c shall be inserted after § 5b:*

"§ 5c. (1) In the event of any legal disputes relating to the special negotiating body (§§ 215–229 of the Labour Constitution Act (*Arbeitsverfassungsgesetz – ArbVG*)), the European Works Council (§ 230, §§ 232–243 and § 249 *ArbVG*), the procedure for information and consultation of employees (§ 231 *ArbVG*) or employee participation pursuant to §§ 244–248 *ArbVG*, local jurisdiction shall lie exclusively with the court within whose district the European company has, or is to have, its registered office. In the event of any legal disputes relating to § 209 *ArbVG*, local jurisdiction shall lie exclusively with the court within whose district the participating company has or had its registered office.

(2) Austrian jurisdiction over the legal disputes referred to in subpara. (1) shall exist only where

1. the European company has, or is to have, its registered office within the country;  
or
2. the dispute relates to matters referred to in § 209 *ArbVG*."

2. *§ 50 subpara. (2) shall read as follows:*

"(2) Disputes relating to rights or legal relationships arising from Part II, V or VI *ArbVG* published in *BGBL. No 22/1974* (disputes under employee representation law) or from similar provisions of federal law shall likewise be deemed matters of labour law."

3. *The following subpara. (10) shall be inserted after § 98 subpara. (9):*

"(10) § 5c and § 50 subpara. (2), as amended by the Federal Act published in *BGBL. I* No 82/2004, shall enter into force on 8 October 2004."

**Fischer**

**Schüssel**