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## Germany: Staff information and consultation on restructuring plans

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Germany

Phase:

Anticipation

Type: Staff information and consultation on restructuring plans

Last modified: 16 May, 2019

Native name:

Betriebsverfassungsgesetz; Kündigungsschutzgesetz

English name:

Works Constitution Act; Employment Protection Act

### Article

102, 111-113 (Works Constitution Act); 117 (Employment Protection Act)

### Description

The Works Constitution Act applies to establishments employing 5 or more employees, while the Employment Protection Act applies to establishments employing at least 21 workers.

In companies employing more than 20 workers holding the right to elect a works council (managerial staff excluded), the employer has to inform and consult the works council in full and with appropriate notice of any proposed changes in the business likely to entail disadvantages for the staff or a considerable share of the staff.

Changes defined as requiring information and consultation of the works council are:

- closure of the establishment or reduction of important departments;
- delocalisation of the establishment or of important departments;
- merger with other establishments or split up of businesses;
- important changes in the organisation, purpose or production plant of the establishment;
- introduction of entirely new forms of work organisation or production processes.

The works council has no co-determination rights with regard to economic and organisational decisions of the proposed alterations, but only with regard to the social aspects involved.

The works council is entitled to make suggestions for securing and stimulating employment, particularly with regard to working time, work organisation, processes, qualification, alternatives to outsourcing work and the production and investment portfolio of the firm. In establishments with over 300 employees the worker representatives may hire a consultant to help and advise the works council on these issues. The employer has to consult on the suggestions of the works council.

The consultation should aim at reaching a balance-of-interests agreement (Interessenausgleich) defining whether, when and at which terms the restructuring shall be implemented. The employer has to pay loss compensation (severance pay) if she/he does not take up consultations or if she/he breaks a settled agreement. The settling of a balance-of-interests agreement is voluntary and cannot be enforced by the works council. In case of a dispute, both parties may apply to the chair of the Federal Employment Agency (Bundesagentur für Arbeit) for arbitration. However, the mediator is not allowed to take a decision. Balance-of-interests agreements do not have to be reached.

In contrast, the employer and the works council are obliged to set out a social plan (Sozialplan) if the restructuring entails disadvantages (dismissals, transfer to new position) for employees. The social plan should compensate for financial loss and suggest training schemes aimed at avoiding unemployment. The Works Constitution Act does not specify the coverage of the social plan, which in practice typically covers standard full-time and part-time workers and excludes workers on fixed-term contracts, trainees and managerial staff. Establishments in place for less than four years do not have to conclude and finance a social plan.

According to the Employment Protection Act, creating a social plan in cases of collective dismissals requires specific information and communication between the employer and the works council. The notification should cover the following information:

- reasons for the projected redundancies,
- the number and occupational groups of the employees affected,
- the number and occupational groups of the employees generally employed by the establishment,

- the period in which the redundancies are to take effect,
- the projected criteria in the choice of the employees to be made redundant, and
- the method used to calculate any redundancy payments.

Under the Works Constitution Act, an employer planning a collective dismissal (if a certain number of employees is to be dismissed within 30 days, that is, at least 6 employees or 20% of the workforce in firms with 21–59 employees; at least 26 employees or 10% of workforce in firms with 60–249 workers; at least 60 employees or 15% of workforce in firms with at least 500 workers) must notify the works council at least two weeks before the public announcement of a collective dismissal. The works council may use experts that are to be paid by the employer. If there are fewer than 299 employees, the employer has to approve this measure; in case of 300 employees and more the works council can consult an external expert without approval.

In case of dispute with regard to the social plan, the conciliation committee (established by the Federal Employment Agency) shall make a decision on the social plan.

## Comments

According to Däubler et al (2012), paragraphs 111-113 of the Works Constitution Act cover companies as well as establishments meaning that all establishments (meeting the threshold) of a company are covered.

### Cost covered by

Not applicable

### Involved actors other than national government

Public employment service  
Works council  
Other

### Involvement others

Expert

### Thresholds

Company size by number of employees:

5

Number of affected employees:

5

### Sources

- ▣ Däubler, W., Kittner, M., Klebe, T. and Wedde, P (eds.) (2012), BetrVG - Betriebsverfassungsgesetz mit Wahlordnung und EBR-Gesetz, 13. ed., Frankfurt Bund Verlag
- ▣ DG Employment, Social Affairs and Equal Opportunities/Héra (2011), Selected companies' legal obligations regarding restructuring
- ▣ [EMCC - Social partner and government agency involvement in the restructuring process](#)
- ▣ [EMCC - Legal framework for restructuring](#)
- ▣ [Works Constitution Act](#)
- ▣ [Betriebsverfassungsgesetz](#)
- ▣ [Kündigungsschutzgesetz](#)
- ▣ [Page, R. \(2011\), Co-determination in Germany - A beginner's guide, Düsseldorf](#)
- ▣ Ius Laboris (2011), Individual Dismissals Across Europe, Brussels
- ▣ Watson Wyatt (2006), Employment Terms and Conditions Report Europe, Volume I, Brussels
- ▣ Ullmann, K. and Bothfeld S. (2008), The German Employment Protection Act - How does it work in company practice? WSI discussion paper No. 261, Duesseldorf

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