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# EMCC

European Monitoring Centre on Change

## Austria: Staff information and consultation on restructuring plans

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Austria

Phase:

Anticipation

Type:

Staff information and consultation on restructuring plans

Last modified: 29 August, 2017

Native name: **Arbeitsverfassungsgesetz (ArbVG)**

English name: **Labour Constitution Act (ArbVG)**

### Article

108, 109, 111

### Description

Employers have to inform the works council about planned changes regarding the business operation. This has to be done in a way, at a time and with providing sufficient information to allow the works council to assess the potential consequences of the planned measures and comment on them. On demand of the works council the employer has to enter into consultations on the planned measures.

Changes of the business operation include ([ArbVG, § 109](#)):

- reducing or shutting down company activities;
- relocation;
- merger;
- change of the purpose of the organisation, of existing infrastructure or of the work organisation;
- introduction of new work methods, rationalisation or automatisisation measures of considerable importance;
- change of the legal form or ownership structures; and,
- planned collective dismissals (see [definition](#)).

The owner of a dependent company must inform employees about any important measures planned in the controlling company.

The employer is obliged to provide written information on the details of the planned restructuring process, including the reasons for the restructuring, the total number of employees in the company and their function, the number of potentially affected employees, their qualification and tenure as well as selection criteria to be applied for dismissals, the timing of the planned restructuring and the planned measures to avoid negative consequences for employees.

The works council may consult external experts if needed.

The works council has the right to make a proposal to avoid, reduce or remove negative consequences for employees, taking into account the economic situation of the firm.

If the planned changes bring about negative consequences (understood as reduction of income, longer commuting obligations and job loss) for all or a considerable number of employees in companies continuously employing at least 20 staff members, a social plan can be agreed to avoid, mitigate or eradicate disadvantages for employees. If the employer and the employees' representatives fail to agree on a social plan, the works council may refer the case to a public mediation and arbitration board (local labour and social court) consisting of a professional judge, two representatives of the company to be nominated by the employer, the works council and two other members from a list of people nominated to such boards. The board has to decide as quickly as possible, taking into account the interest of the company as well as of the employees. The decision of the board has to be implemented.

In companies continuously employing more than 200 people the works council can lodge an appeal against changes in business operations listed in § 109 (as indicated above) as well as other economic measures if they entail negative effects for employees within three days after notification has been given ([ArbVG, § 111](#)). In cases of shutting down company activities, objections of the works councils will postpone the closure for four weeks. If within four weeks no agreement between the employer and the works council is achieved the case may be referred to a public mediation and arbitration board.

### Comments

Regarding the understanding of a 'considerable number of employees' in relation to the necessity to establish a social plan, the court decided in 1986 that 8% of the staff is not a sufficiently high share.

In practice, the employer generally informs the works council, but often only after having decided upon the planned measure and shortly before implementing it. In these cases it is difficult for the works council to insist on changing the plan without being blamed for delays (Hofmann et al, 2011).

The ArbVG does not include regulations for cases where there is no works council at the company in question. There is an obligation to inform employees in the Employment Law Harmonisation Act ([AVRAG](#)) in the case of a business transfer; including information on the legal, economic and social consequences of the transfer for the employees (for further details see '[Staff information and consultation on business transfers](#)').

#### Cost covered by

Not applicable

#### Involved actors other than national government

Trade union  
Works council  
Other

#### Involvement others

Public mediation and arbitration board, experts

#### Thresholds

Company size by number of employees:

5

#### Sources

-  DG Employment, Social Affairs and Equal Opportunities/Héra (2011), Selected companies' legal obligations regarding restructuring
-  Ius Laboris (2009), Collective Redundancies Guide, Brussels
-  [EMCC - Social partner and government agency involvement in the restructuring process](#)
-  Alpha Consulting (2003), Anticipating and Managing Change - A dynamic approach to the social aspects of corporate restructuring, European Commission, Brussels
-  Hofmann, I., Leitsmüller, H. and Samsinger, R. (2011), Umstrukturierung. Fusion, Outsourcing, Ausgliederung. 'Arbeitsplätze in Bewegung', Arbeiterkammer Wien, Wien
-  [Arbeitsverfassungsgesetz § 108](#)
-  [Arbeitsverfassungsgesetz § 109](#)
-  [Arbeitsverfassungsgesetz § 111](#)
-  Decision of the Higher Administrative Court regarding the 'considerable number of employees'
-  [Wirtschaftskammer Österreich \(Austrian Federal Economic Chamber\) - Sozialplan](#)
-  [Arbeiterkammer Österreich \(Chamber of Labour\) - Informations-, Interventions- und Beratungsrechte des Betriebsrates](#)

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