



[Login](#)

EMCC

European Monitoring Centre on Change

Austria: Employment protection in relation to business transfers

[Go to list page](#)

Austria

Phase:

Management

Type:

Employment protection in relation to business transfers

Last modified: 11 April, 2019

Native name:

Arbeitsvertragsrechtsanpassungsgesetz (AVRAG)

English name:

Employment Law Harmonisation Act

Article

3, 4, 5

Description

Transfer of business functions ('Funktionsnachfolge') do not qualify under this legislation, as the law only applies to the change of ownership ('Betriebsübergang') of an undertaking, business or part of a business. This is usually distinguished by the transfer of licences, patents, copyright, logistics systems, specific software or the transfer of more than 10% of employees.

Austrian courts have interpreted the meaning of transfer of undertakings in accordance with the European Court of Justice and use the following indicators:

- the transfer covers an economic entity;
- the undertaking retains its identity as an economic entity following the transaction;
- tangible and/or intangible assets are transferred;
- customers are transferred;
- a significant number of employees (in number or expertise) are taken over.

According to [AVRAG §3](#), the new employer must take over all rights and obligations contained in each individual employment contract (including temporary and fixed-term contracts), if not indicated otherwise due to changes in the affiliation of the collective agreement ([AVRAG § 4](#)), the occupational pension schemes ([AVRAG § 5](#)) or work agreements ([ArbVG, §§ 32, 33](#)). Any changes to an employment contract can only be enacted by mutual agreement. However, this rule is not applicable in the case of compensation, which cannot be decreased under the new contract. Any liabilities resulting from the contract are also transferred. Obligations which arise during the period prior to transfer, the transferor and the transferee are jointly responsible for. If the transferee is subject to a collective agreement, this agreement tends to take precedence over agreements to which the transferor is subject, however, if the transferee is not subject to any collective agreement, the former agreement remains applicable. If the affiliation of collective agreements is changing, the favourability principle ('Günstigkeitsprinzip') does not apply except for wages for normal working hours. If the collective or work agreement after the transfer deteriorates working conditions substantially, employees are entitled to terminate the contract within one month without losing entitlements to benefits.

If dismissals occur within 6 to 9 months of the transfer, and the employee has some evidence that the dismissal was carried out in relation to the transfer, they can bring an action for declaratory judgement that the dismissal was based on the transfer and is therefore void.

All employees are covered by the act, including apprentices and executive staff members. All government employees are excluded.

Employees can object against the transfer in two cases ([AVRAG §3 \(4\)](#)). First, if the new owner refuses to agree to special protection against dismissal as detailed in a collective agreement that applied at the time of the transfer. Second, if the new owner refuses to take over the occupational pension fund. The employee must raise an objection within one month of such a refusal. In this case, the contract with the transferor remains intact.

The employer may refuse to take over a company pension commitment in some cases, for instance if the deal was an assets deal and not a case of universal succession. The employee is then entitled to object, and their employment contract is, in effect, not transferred.

Comments

According to [AVRAG §3 \(2\)](#), regulations for changes of ownership do not apply in cases of reorganisation procedures without self-administration ('Sanierungsverfahren ohne Eigenverwaltung') as well as bankruptcy proceedings.

Areas of legal uncertainty regarding transfers of undertakings in Austria include:

- whether certain circumstances and procedures are deemed to be transfers of undertakings which are subject to the Employment Law Harmonisation Act,
- what kinds of agreements are considered void because they bypass mandatory protection provisions.

Cost covered by

Not applicable

Involved actors other than national government

National government only

Thresholds

No, applicable in all circumstances

Sources

- [Arbeitsvertragsrechtsanpassungsgesetz \(AVRAG\) - § 3](#)
- [Arbeitsvertragsrechtsanpassungsgesetz \(AVRAG\) - § 4](#)
- [Arbeitsvertragsrechtsanpassungsgesetz \(AVRAG\) - § 5](#)
- [Brodil, W., Risak, M. and Wolf, C. \(2016\), Arbeitsrecht in Grundzügen, Ed. 9, Wien: LexisNexis](#)
- [Ius Laboris \(2009\), Transfers of Undertakings Guide, Brussels](#)
- [Austrian Chamber of Labour \(Arbeiterkammer Österreich\): Eigentüumberwechsel \(Betriebsübergang\)](#)
- [Austrian Economic Chamber \(Wirtschaftskammer Österreich\): Betriebsübergang](#)

Useful? Interesting? Tell us what you think. 

Eurofound welcomes feedback and updates on this regulation

Your name *

E-mail *

More information?

Homepage

Subject

Comment *

Save

Preview

European Restructuring Monitor

- › [About the European Restructuring Monitor](#)
- › [Restructuring events database](#)
- › [Restructuring support instruments](#)
- › [Restructuring related legislation](#)
- › [Restructuring case studies](#)
- › [ERM publications](#)

European Jobs Monitor

Labour market research

Case studies

Future of Manufacturing in Europe (FOME)

European Observatory on Quality of Life - EurLIFE

European Observatory of Working Life - EurWORK

Quick links

- Legal information
- Data protection
- Environmental policy
- Cookies
- Subscriptions
- Multilingualism
- Templates for Eurofound reports
- Eurofound style guide
- Management Board extranet
- Map - how to get to Eurofound
- FAQ
- Sitemap



Contact us

Eurofound, Wyattville Road, Loughlinstown, Co. Dublin, D18 KP65, Ireland

Phone: (00) 353 1 2043100

E-Mail: information@eurofound.europa.eu

Press: media@eurofound.europa.eu



MEMBER OF THE NETWORK OF EU AGENCIES



EUROFOUND ACHIEVES EMAS REGISTRATION



EUROFOUND IS AN AGENCY OF THE EUROPEAN UNION



[Access to internal documents](#) | [Financial information](#) | [Archives](#) | [Information centre](#) | [RSS feeds](#)

© EUROFOUND 2023

