

FEDERAL LAW N° 601 OF 17 OCTOBER 1996

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

The *Nationalrat* has decreed the following :

ARTICLE I

Amendments to the Labour Constitution Act

The Labour Constitution Act (*Arbeitsverfassungsgesetz*) published in the Federal Law Gazette (BGBl.) No 22/1974, last amended by Federal Law published in BGBl. No 417/1996, is amended as follows :

1. In § 1 subpara. (2) No 1, the words "of the Agriculture Act (*Landarbeitsgesetz*) published in the Federal Law Gazette (BGBl.) No 140/1948" shall be replaced by the words "of the 1984 Agriculture Act (*Landarbeitsgesetz*) published in the Federal Law Gazette (BGBl.) No 287; in § 105 subpara. (3) No 1 (h), the words "§ 11 of the Safeguarding of Employment Act (*Arbeitsplatzsicherungsgesetz*) published in BGBl. No 154/1956" shall be replaced by the words "§ 12 of the 1991 Safeguarding of Employment Act (*Arbeitsplatzsicherungsgesetz*) published in BGBl. No 683"; in § 129 subpara. (3) No 3, the words "of the Federal Law on the Employment of Children and Juveniles (*Bundesgesetz über die Beschäftigung von Kindern und Jugendlichen*) published in BGBl. No 146/1948" shall be replaced by the words "of the 1987 Federal Law on the Employment of Children and Juveniles (*Bundesgesetz über die Beschäftigung von Kindern und Jugendlichen*) published in BGBl. No 599"; in § 160 subpara. (3), the words "Administrative Penalties Act (*Verwaltungsstrafgesetz*) published in BGBl. No 172/1950" shall be replaced by the words "1991 Administrative Penalties Act (*Verwaltungsstrafgesetz*) published in BGBl. No 52"; in § 169, the words "General Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz*) published in BGBl. No 72/1950" shall be replaced by the words "1991 General Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz*) published in BGBl. No 51".

2. § 21 subpara. (1), first sentence, shall read as follows :

"The declaration that a collective agreement shall constitute a statute shall be published in the Official Gazette (*Amtsblatt zur Wiener Zeitung*)".

3. The following subpara. (4b) shall be inserted after § 40 subpara. (4a) :

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

4. § 49 subpara. (1), first sentence, shall read as follows :

"All employees of the establishment (group) who have reached the age of 18 and who are employees of the firm at the time of such meeting shall, regardless of their nationality, be entitled to vote at the staff meeting (group/general meeting)".

5. § 62c (1) shall read as follows :

"(1) If establishments or parts of establishments are merged to form a new establishment within the meaning of § 34, the works councils (works committees) shall, until the election of a new works council but no later than upon expiry of the period of one year following the merger, form a body representing the workforce (central works council). The central works council shall constitute itself immediately, with § 66 applying *mutatis mutandis*, and shall be convened by the chairman of one of the works councils (works committees); in the case of multiple convening, it shall be deemed to be convened by the chairman of the works council (works committee) which has the largest number of employees. The provisions otherwise applicable to the works council shall apply *mutatis mutandis* with respect to the duration and management of the united works council, and to the membership of the united works council and the introduction of alternate members".

6. In § 70 No 4, the words "shop steward" shall be replaced by the words "chairman of the works council".

7. The full stop of the end of § 105 subpara. (3) No 1(i) shall be replaced by a semi-colon and the following section (j) added :

"j) because of his function as spokesman as provided for in § 177 subpara. (1)".

8. § 110 subpara. (6b) shall read as follows :

"(6b) If a representative body (§ 88a) has been set up in a group of companies within the meaning of subparas. (6) and (6a), then this body shall send the employees' representatives to sit on the supervisory board of the controlling company. The members of the group's representative body who are from the central works council (works council) of the controlling company shall be entitled to nominate as many employees' 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 third sentence of subpara. (6) shall apply *mutatis mutandis*. The other employee representatives shall be nominated from among the members of the group's representative body who are from the central works council (works council) of the controlled company. Subpara. (2) shall apply *mutatis mutandis* with respect to the right of nomination within the respective groups on the representative body"

9. In § 112 subpara. (4), § 141 subparas. (2) and (3) and § 145 subparas. (2) and (5), the words "Austrian Workers' Chamber (*Arbeiterkammertag*)" shall be replaced by the words "Federal Chamber for Manual and Non-Manual Employees (*Bundeskammer für Arbeiter und Angestellte*)" and the words "Federal Chamber of Manufacturing Industry (*Bundeskammer der gewerblichen Wirtschaft*)" shall be replaced by the words "Austrian Chamber of Industry and Commerce (*Wirtschaftskammer Österreich*)".

10. In § 113 subpara. (2) No 5, the full stop shall be replaced by a semi-colon and the following Nos 6 and 7 added :

"6. Appointment of employees' representatives to the special negotiating body (§ 179, § 180) and to the European Works Council (§ 193);

7. Participation in the information and consultation procedure in accordance with the agreements concluded pursuant to § 189, § 190 or § 206".

11. In § 113 subpara. (4) No 3, the full stop shall be replaced by a semi-colon and the following Nos 4 and 5 added :

"4. Appointment of employees' representatives to the special negotiating body (§§ 179, 180) and to the European Works Council (§ 193);

5. Participation in the information and consultation procedure in accordance with the agreements concluded pursuant to § 189, § 190 or § 206".

12. In § 113 subpara. (5) No 4, the full stop shall be replaced by a semi-colon and the following Nos 5 and 6 added :

"5. Appointment of employees' representatives to the special negotiating body (§§ 179, 180) and to the European Works Council (§ 193);

6. Participation in the information and consultation procedure in accordance with the agreements concluded pursuant to § 189, § 190 or § 206".

13. §§ 166 to 168, including headings, shall be deleted.

14. The following Part V is hereby inserted after § 170 :

"Part V

"Employee Representation at European Level

"Chapter 1

"General provisions

Scope

"§ 171.

"(1) The provisions of Part V shall apply to

1. undertakings

a. covered by Part II, whose

b. central management is based in Austria and which

c. employ at least 1 000 persons within the Member States and

- d. have at least 150 employees in at least two Member States;
2. groups of undertakings within the meaning of § 176
 - a. covered by Part II, whose
 - b. central management is based in Austria and which
 - c. employ at least 1 000 persons within the Member States and
 - d. have at least 150 employees in at least two undertakings belonging to the group in different Member States.

"(2) "Member States" within the meaning of Part V shall mean the Member States of the European Union which have signed the Agreement on social policy in the Annex to the Treaty establishing the European Community, and the member countries of the European Economic Area.

"(3) For the purposes of Part V, "central management" shall mean the central management of the undertaking or of the controlling undertaking of a group.

"(4) If the central management is not situated in a Member State, then

1. the central management of the establishment or undertaking named as representative which is located in Austria or, in the absence thereof,
2. the central management of the establishment or undertaking in which the most people are employed in comparison with the other establishments of the undertaking or group undertakings located in the Member States, which is located in Austria shall be deemed the central management within the meaning of subpara. (3).

"(5) For the purposes of determining the definitive number of employees as referred to in subpara. (1), the average number of employees over the previous two years, calculated from the date of the employees' or their representatives' written request or the central management's proposal as provided for in § 177 subpara. (1), shall be taken into account. § 40 subpara. (1) ⁽⁰¹⁾, final sentence, shall apply *mutatis mutandis*.

DIRECTIVE

"(6) The powers and competences of the European Works Council and the procedures for informing and consulting the employees shall extend to all establishments and undertakings located in the Member States and belonging to the undertaking or group within the meaning of Part V. A broader scope may be provided for in the agreement pursuant to § 189 or § 190.

"§ 172.

"For the purposes of determining the number of employees employed in Austria (§ 171 subpara. (5)), the obligations upon the Austrian local management of the undertaking pursuant to § 177 (2) and (3) and § 206 subpara. (2), the appointment of the Austrian members of the special negotiating body (§ 179, § 180) and the European Works Council (§ 193), the ending of their membership of the special negotiating body pursuant to § 185 subpara. (2) Nos 2-4 and 6 or of the European Works Council

pursuant to § 196 subpara. (4) Nos 2-4 and 6, and the duty of confidentiality (§ 204) and protective provisions (§ 205) applicable to them, the provisions of Part V shall apply even if the central management is not situated in Austria.

Employees' representatives

"§ 173.

"(1) In those undertakings and groups which fulfil the conditions of § 171 subpara. (1), in accordance with the provisions of Part V, a special negotiating body is to be established and a European Works Council set up or a procedure for informing and consulting the employees created.

"(2) Consultation, for the purposes of Part V, shall be understood to mean the exchange of opinions and the establishment of a dialogue between the employees' representatives and the central management or another, more appropriate management level.

Obligations upon central management

"§ 174.

"Central management 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 cooperation

"§ 175.

"The representatives of the workforce (§ 173 subpara. (1)) and the central management shall work together with a view to reaching an understanding, having due regard to their respective rights and mutual obligations.

Concept of "group"

"§ 176.

"(1) For the purposes of Part V, a "group" shall be deemed to be any group of undertakings which consists of a controlling undertaking and the undertakings dependent thereon.

"(2) A controlling undertaking shall be understood as meaning an undertaking which, by virtue of ownership, financial participation or other provisions which govern the activity of the undertaking, can exercise a dominant influence over another undertaking.

"(3) The ability to exercise a dominant influence shall be presumed, without prejudice to proof to the contrary, when an undertaking, in relation to another undertaking, directly or indirect

1. can appoint more than half of the members of the other undertaking's administrative, management or supervisory body, or

2. holds a majority of the votes attached to the undertaking's shares, or

3. holds a majority of that undertaking's subscribed capital.

 **DIRECTIVE**

"(4) When two or more undertakings from a group satisfy the criteria laid down in subpara. (3), the undertaking which satisfies the criterion laid down in subpara. (3) No 1 shall be regarded as the controlling undertaking. If none of the undertakings satisfy the criterion laid down in subpara. (3) No 1, the undertaking which satisfies the criterion laid down in subpara. (3) No 2 shall be regarded as the controlling undertaking, or if none of the undertakings satisfy the criterion laid down in subpara. (3) No 2, the undertaking which satisfies the criterion laid down in subpara. (3) No 3 shall be regarded as the controlling undertaking. [\(SEE ALSO\)](#)

 **DIRECTIVE**

"(5) The rights of the controlling undertaking as regards voting and appointment shall include the rights of all dependent undertakings and all natural and legal persons acting in their own name but on behalf of the controlling undertaking or of any other dependent undertaking.

 **DIRECTIVE**

"(6) Credit institutions, other financial institutions and insurance and holding companies within the meaning of Article 3(5)(a) and (c) of Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings ⁽⁰²⁾ shall not be regarded as controlling undertakings.

"(7) A controlling influence shall not be presumed to exist solely by virtue of the fact that an office holder is exercising his functions according to the provisions applicable to liquidation, winding-up, compositions or similar proceedings.

 **DIRECTIVE**

"(8) When determining whether an undertaking is a controlling undertaking, the law of the Member State in which the undertaking has its registered office shall be definitive. If the controlling undertaking is not situated in a Member State, then the law of the Member State in which the undertaking named as representative of the controlling undertaking - or failing this the undertaking with the highest number of employees in the Member States is located shall apply. [\(SEE ALSO\)](#)

 **DIRECTIVE**

"(9) Subparas. (2) and (3) shall not be applicable if an undertaking which is subject to the law of another Member State is regarded under that law as a controlling undertaking because it satisfies a

priority criterion within the meaning of subpara. (4) or furnishes proof that it can otherwise exercise a controlling influence.

"(10) If a group includes other groups within the meaning of § 171 subpara. (1) No 2, the European Works Council shall be set up at the level of the undertaking controlling the higher-level group.

[\(SEE ALSO\)](#)

"Chapter 2

"Special negotiating body

Establishment and composition

"§ 177.

"(1) The special negotiating body shall be set up at the written request of at least 100 employees or their representatives in at least two establishments or undertakings in at least two different Member States or upon the proposal of the central management addressed to the bodies representing the workforce existing in the establishments of the undertaking or the undertakings of the group. If the request is made by at least 100 employees, the first signatory shall be regarded as the spokesman, unless a spokesman is expressly designated.

"(2) The request pursuant to subpara. (1) may be made to the central management or to the local management of the undertaking (management of an establishment or undertaking in a Member State). The local management of an undertaking shall pass on the request to the central management without delay.



"(3) Those entitled to make a request pursuant to subpara. (1) shall have the right, in connection with verification of whether such a request can be made at all (§ 171 subpara. (1)), to request from the central management or local management of the undertaking information as to the number of persons employed in the establishments or undertakings. They shall also be entitled to request from the central or local management information about whether a request for the establishment of a special negotiating body has already been made. The local management of the undertaking shall be obliged to obtain the necessary information and documents from the central management.



"§ 178.

"(1) The special negotiating body shall consist of one representative from each Member State in which one or more establishments of the undertaking or one or more undertakings of the group are located.

"(2) One supplementary member shall be appointed from a Member State in which at least 25% of the employees of the undertaking or group are employed, two supplementary members from a Member State in which at least 50% of the employees are employed, and three supplementary members from a Member State in which at least 75% of the employees are employed.

"(3) Employees' representatives from non-member countries may also be invited to the negotiations, provided that the central management and the special negotiating body agree to this.

▲ **DIRECTIVE**

Appointment of members

"§ 179.

"(1) The Austrian members to be appointed to the special negotiating body shall be selected by a resolution of the body representing the workforce which is entitled to appoint them pursuant to § 180 from among the members of the works council. Instead of a member of the works council, an official or employee of the competent voluntary professional association or statutory body representing the interests of the employees may also be appointed.

"(2) The adoption of resolutions shall require the presence of at least half the members. Resolutions shall be adopted by simple majority.

"(3) Due consideration shall be given to appropriate representation of the following groups : wage-earning and salaried employees, the individual establishments and undertakings, and female and male workers.

"§180.

"(1) Within establishments, appointment shall be by resolution of the works committee. If no works committee exists, this function shall be undertaken by the works council. If two or more works committees (works councils) exist which do not belong to the same undertaking in Austria, a meeting of the members of the works committees (works councils) appointed in the establishment shall be convened by the chairman of the works committee (works council) of the Austrian establishment which is largest in terms of the number of employees entitled to vote; this meeting shall be responsible for adopting the resolution as to the appointment.

"(2) In undertakings, the members to be appointed to the special negotiating body shall be appointed by resolution of the central works council. If a central works council has not been set up within an undertaking, subpara. (1) shall apply *mutatis mutandis*. If there are two or more central works councils, a meeting of the members of the central works councils appointed in the undertaking shall be convened by the chairman of the central works council of the Austrian undertaking which is largest in terms of the number of employees entitled to vote, and shall be responsible for adopting the resolution regarding the appointment. If, in addition to one or more central works councils, there also exists at least one works committee (works council) which is not represented on any central works council, the chairmen of the works councils and their deputies shall be invited to this meeting, in which case they shall be regarded as members of central works councils.

"(3) In groups, the members to be appointed to the special negotiating body shall be appointed by a resolution of the group representative body. If no group representative body has been set up, subpara. (2) shall apply *mutatis mutandis*. If no central works council is to be set up either, then subpara. (1) shall apply *mutatis mutandis*. If, in addition to the group representative body, a central works council (works committee, works council) also exists which is not represented by that representative body, the chairmen of the central works councils (works councils) and their deputies shall be invited to this meeting, in which case they shall be regarded as members of the group representative body.

▲ **DIRECTIVE**

▲ **DIRECTIVE**

"(4) The names of the appointed members of the special negotiating body shall be notified without delay to the central management and the local management of undertakings.

Constitution

"§ 181.

"(1) Immediately after being notified of the appointed members of the special negotiating body, the central management shall invite them 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 inform the central management and the local managements of undertakings immediately of the ending of the constituent meeting and the result of the election pursuant to subpara. (2).

"(4) Immediately after receiving the notification pursuant to subpara. (3), the central management shall convene a meeting with the special negotiating body in order to conclude an agreement pursuant to § 187. It shall give notice thereof to the local managements of undertakings.

Meetings

"§ 182.

"(1) The special negotiating body shall have the right to convene for a preparatory meeting before any negotiations with the central management. [\(SEE ALSO\)](#)

▲ **DIRECTIVE**

"(2) The special negotiating body may be assisted by experts of its choice for the negotiations with the central management.

▲ **DIRECTIVE**

▲ **DIRECTIVE**

Adoption of resolutions

"§ 183.

"(1) The special negotiating body shall be quorate if at least half the members are present.

"(2) In the absence of any more stringent requirements under this Federal Law, resolutions shall be adopted by a simple majority of the votes cast.

Term of office

"§ 184.

"(1) The term of office of the special negotiating body shall begin upon its constitution.

(2) The term of office of the special negotiating body shall end

1. if the undertaking or group no longer satisfies the conditions of § 171 subpara. (1);
2. if the special negotiating body adopts a resolution as referred to in § 188 subpara. (1);
3. if a court declares the establishment of the special negotiating body (§ 177 subpara. (1)) to be invalid; a petition shall be lodged no later than one month after the constitution of the special negotiating body;
4. upon conclusion of an agreement pursuant to § 189 or § 190, provided that such agreement contains no provision to the contrary;
5. in the cases covered by § 191 subpara. (1) Nos 1-3.

Beginning and end of membership

"§ 185.

"(1) Membership of the special negotiating body shall begin with the notification of the resolution regarding appointments (§ 180 subpara. (4)).

"(2) Membership of the special negotiating body shall end when

1. the term of office of the special negotiating body ends;
2. the membership of the works council or activity within the competent voluntary professional association or statutory body representing the interests of the employees ends;
3. the member resigns;
4. the employees' representative body which appointed the member to the special negotiating body dismisses him;
5. the establishment or undertaking to which the member belongs leaves the undertaking or group;
6. if a court declares the resolution regarding appointments (§ 179 subpara. (1)) to be invalid; a petition shall be lodged no later than one month after the constitution of the special negotiating body.

"(3) In the circumstances referred to in subpara. (2) Nos 2-6, new members may be appointed to the special negotiating body in accordance with §179 and § 180.

Provision of material necessities, payment of costs

"§ 186.

"(1) The special negotiating body shall be provided by the central management, free of charge, with the material necessities for the proper performance of its duties on a scale appropriate to the size of the undertaking or group and the needs of the special negotiating body.

"(2) The administrative expenses incurred by the special negotiating body for the proper performance of its duties, in particular the costs incurred for arranging meetings and any preparatory meetings, including expenses of at least one expert and interpreters and subsistence and travelling expenses of the members of the special negotiating body, shall be borne by the central management.



Tasks of the special negotiating body

"§ 187.

"The special negotiating body shall have the task of concluding a written agreement with the central management on the establishment of a European Works Council or the arrangements for implementing a procedure for informing and consulting the employees.



Resolution on the ending of negotiations

"§ 188.

"(1) The special negotiating body may decide, by at least two-thirds of its votes, not to open negotiations to conclude an agreement within the meaning of § 187, or to terminate the negotiations already opened.

"(2) A new request to convene the special negotiating body may be made no earlier than two years after the resolution referred to in subpara. (1), unless the central management and the special negotiating body lay down a shorter period or substantial changes take place in the structure of the undertaking or group. Substantial changes shall include in particular the closure, retrenchment or relocation of undertakings or establishments and mergers with other groups, undertakings or establishments to the extent that these exercise a dominant influence on the overall structure of the undertaking or group.

"(3) If the special negotiating body adopts a resolution within the meaning of subpara. (1), the

provisions of Chapter 3 shall not apply.



Agreement on a European Works Council

"§ 189.

"If the special negotiating body and the central management agree to set up a European Works Council, they shall specify in this agreement at least the following :

1. the establishments and undertakings which are covered by the agreement, including any establishments and/or undertakings located in non-member countries where these are included in the area of application;
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 substantial changes in the structure of the undertaking or group (§ 188 subpara. (2)) and of substantial changes in the number of people employed in the undertaking or group;
3. the functions and the procedure for information and consultation of the European Works Council;
4. the venue, frequency and duration of meetings of the European Works Council;
5. the financial and material resources to be allocated to the European Works Council, and
6. the duration of the agreement and the procedure for its renegotiation.



Agreement on a procedure for information and consultation of employees

"§ 190.

"(1) If the special negotiating body and the central management agree to create one or more procedures for information and consultation of employees, they shall in such agreement specify at least the conditions under which the employees' representatives shall have the right to convene for an exchange of opinions on the information disclosed to them.

"(2) The agreement shall furthermore regulate in detail the obligation upon central management to inform the employees' representatives, in particular, of all transnational matters which have significant effects on the interests of the workforce.



"Chapter 3

"European Works Council by act of law

Establishment

"§ 191.

"(1) If

1. central management and the special negotiating body adopt an appropriate resolution or
2. the central management refuses to open negotiations or fails to do so within six months of first being so requested pursuant to § 177 subpara. (1) or
3. no agreement is reached pursuant to § 189 or § 190 within three years after this request or after the proposal by the central management pursuant to § 177 subpara. (1) and the special negotiating body has not adopted a resolution pursuant to § 188 subpara. (1),

then a European Works Council shall be set up in accordance with the provisions of this Chapter.



"(2) Unless the agreements pursuant to § 189 or § 190 provide otherwise, the provisions of this Chapter shall not apply to those agreements.

Composition

"§ 192.

"(1) The European Works Council shall consist of at least three and at most thirty members; it shall comprise one representative from each Member State in which one or more establishments of the undertaking or one or more undertakings of the group are situated. § 177 subpara. (3) shall apply *mutatis mutandis*.



"(2) A Member State in which at least 20% of the employees of the undertaking or group are employed shall appoint one supplementary member, a Member State in which at least 30% of the employees are employed shall appoint three supplementary members, a Member State in which at least 40% of the employees are employed shall appoint five supplementary members, a Member State in which at least 50% of the employees are employed shall appoint seven supplementary members, a Member State in which at least 60% of the employees are employed shall appoint nine supplementary members, a Member State in which at least 70% of the employees are employed shall appoint eleven supplementary members, a Member State in which at least 80% of the employees are employed shall appoint thirteen supplementary members.

Appointment of the members

"§ 193.

"Austrian members of the European Works Council shall be appointed in accordance with § 179 and § 180, subject to the proviso that the appointment of representatives of the competent voluntary professional association or statutory body representing the workers' interests is only admissible if these are works council members as referred to in § 53 subpara. (4) ⁽⁰³⁾.

▲ **DIRECTIVE**

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

"§ 194.

"(1) Invitations to attend the constituent meeting of the European Works Council shall be issued in accordance with § 181 subpara. (1). The members of the European Works Council shall elect a chairman and one or more deputies from among their number. The chairman shall inform the central management and the local managements of undertakings immediately of the ending of the constituent meeting and the result of this election.

▲ **DIRECTIVE**

"(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 central management and third parties. The European Works Council 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 § 195;
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.

▲ **DIRECTIVE**

"(4) The European Works Council shall have the right to convene for a preparatory meeting before any meeting with the central management (§ 199). Otherwise, § 182 subpara. (2) shall apply to the meetings of the European Works Council and § 183 to its adoption of resolutions.

▲ **DIRECTIVE**

Select committee

"§ 195.

"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 at most 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 § 194 subpara. (4).



Term of office, duration of membership

"§ 196.

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

"(2) The term of office of the European Works Council shall end

1. if the undertaking or group no longer satisfies the conditions of § 171 subpara. (1);
2. if the European Works Council resolves to resign;
3. if a court declares the establishment of the European Works Council (§ 191 subpara. (1)) to be invalid; a petition shall be lodged not more than one month after the constitution of the European Works Council;
4. if the European Works Council and central management conclude an agreement pursuant to § 189 or § 190.

"(3) Membership of the European Works Council shall begin with the notification of the resolution relating to appointments (§ 193).

"(4) Membership of the European Works Council shall end when

1. the term of office of the European Works Council ends;
2. membership of the Works Council ends;
3. the member resigns;
4. the body representing the workforce which appointed the member to the European Works Council dismisses him;
5. the establishment or undertaking to which the member belongs leaves the undertaking or group.
6. a court declares the resolution regarding appointments (§ 193) to be invalid; a petition shall be lodged not more than one month after the constitution of the European Works Council.

"(5) In the cases covered by subpara. (4) Nos 2-6, § 185 subpara. (3) shall apply.

Provision of material necessities, payment of costs

"§ 197.

"The costs incurred in connection with the activities of the European Works Council and of the select committee shall be borne by the central management in accordance with § 186. [\(SEE ALSO\)](#)



Powers of the European Works Council

"§ 198.

"(1) 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 at least two establishments belonging to the undertaking or at least two undertakings belonging to the group in different Member States.

"(2) In the case of undertakings or groups whose central management is not situated in a Member State (§ 171 subpara. (4)), the right of information and consultation of the European Works Council shall be confined to those matters within the meaning of subpara. (1) which affect at least two establishments belonging to the undertaking or at least two undertakings belonging to the group in the Member States.

"§ 199.

"(1) Notwithstanding the powers referred to in § 200 and any agreements with the central management which provide otherwise, the European Works Council shall have the right to meet with the central management at least once a year for the purposes of information and consultation, on the basis of a report presented by the central management on the development of the business situation and the future prospects of the undertaking or group. The local managements of undertakings shall be notified hereof.



"(2) Information shall relate in particular to the structure of the undertaking, 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 changes in the organisation, the introduction of new working and manufacturing methods, relocation of production operations, mergers, retrenchments or closures of undertakings, establishments or important parts of such units, and mass dismissals.



Powers of the select committee

"§ 200.

"(1) If unusual circumstances arise which have substantial effects on the interests of the employees, especially in the event of relocation or closure of undertakings or establishments or in the event of mass dismissals, the select committee shall have the right to be informed thereof at the first possible opportunity. It shall have the right, on request, to meet with the central management or other, more appropriate levels of management vested with decision-making powers within the undertaking or group in order to be informed and consulted regarding the measures having substantial effects on the interests of the employees. If no select committee is established, this right shall be vested in the European Works Council.

"(2) The members of the European Works Council who have been appointed by the establishments or undertakings which are immediately affected by these measures may also take part in the meeting with the select committee.

"(3) The meeting for the purposes of information and consultation shall take place immediately on the basis of a report by the central management or other appropriate management level within the undertaking or group, on which the European Works Council may give its opinion within an appropriate period. This meeting shall be without prejudice to the privileges of the central management.



Special-purpose undertakings

"§ 201.

"(1) Undertakings which

1. directly serve the purposes stated in § 132 subpara. (1) ⁽⁰⁴⁾ shall be subject to § 199 and § 200 only insofar as their special purpose is not affected thereby;
2. directly serve the purposes stated in § 132 subpara. (2) ⁽⁰⁵⁾ shall not be subject to § 199 and § 200 insofar as the matters concerned influence the political orientation of those undertakings;
3. directly serve the purposes stated in § 132 subpara. (4) ⁽⁰⁶⁾ shall not be subject to § 199 and § 200 insofar as the unique nature of the undertaking is not compatible therewith.

"(2) However, § 199 and § 200 shall in all events apply to undertakings referred to in Nos 1 to 3 insofar as the information relates to fundamental changes in the organisation, to the introduction of new working and manufacturing methods or to mass dismissals. § 199 subpara. (2) shall in all events apply to undertakings referred to in No 2 insofar as the information relates to the structure of the undertaking and its economic and financial position.



Notification of the local employees' representatives

"§ 202.

"Notwithstanding § 204, the members of the European Works Council shall inform the representatives of the employees of the establishments or undertakings as to 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

"§ 203.

"(1) Four years after its constituent meeting, the European Works Council shall adopt a resolution on whether an agreement pursuant to § 189 or § 190 is to be negotiated or whether the provisions of this chapter shall continue to apply.

"(2) If the European Works Council adopts the resolution that such an agreement be negotiated, §187, § 189 and § 190 shall apply with the proviso that the European Works Council shall negotiate this agreement in place of the special negotiating body.



"Chapter 4

"Legal position of the employees' representatives

Obligation of secrecy

"§ 204.

"(1) The members of the special negotiating body and of the European Works Council and any experts that assist them, and the employees' representatives who participate in an information and consultation procedure pursuant to § 190, shall be subject to § 115 subpara. (4) ⁽⁰²⁾, with the proviso that the obligation arising out of that provision shall continue to apply even after the expiry of the term of office.

"(2) The obligation pursuant to subpara. (1) shall not apply in respect of the local employees' representatives if the latter are to be informed on the basis of an agreement (§ 189, § 190) or pursuant to § 202 of the content of the information and the results of the consultations.



Rights of employees' representatives

"§ 205.

"With regard to the personal rights and obligations of the Austrian members of the special negotiating body and the European Works Council, of the employees' representatives who participate in an information and consultation procedure pursuant to § 190, and of the spokesman as referred to in § 177 subpara. (1), the provisions of § 115 subparas. (1), first sentence, (2), first sentence and (3), § 116 and §§ 120 to 122 ⁽⁰⁸⁾ shall apply.



"Chapter 5

"Final and transitional provisions

Applicable agreements

"§ 206.

"(1) The provisions of Part V shall not apply to undertakings or groups in which, before 22 September 1996, an agreement has been concluded which is applicable to all employees working within the undertaking or group in the Member States and provides for transnational information and consultation of employees.

"(2) The central management shall be obliged to notify all employees' representatives existing in the undertaking or group of the conclusion and the full wording of the agreement within three months following the date referred to in subpara. (1). The local managements of undertakings shall be obliged, within three days of such date, to make the agreement available for inspection at a location accessible to all employees, or in any other suitable form.

"(3) If an agreement pursuant to subpara. (1) is not applicable to all employees working in the undertaking or group in the Member States, the parties may remedy this by incorporating those employees within a period of six months calculated from the reference date mentioned in subpara. (1). Such incorporation shall require the consent of the majority of the representatives of the employees concerned.

"(4) Agreements as referred to in subpara. (1) which were concluded with the participation of employees' representatives from non-member countries shall be valid.

"(5) If an agreement has been concluded subject to the time limit mentioned in subpara. (1), the parties may resolve upon its further applicability after the period of validity has expired. Otherwise, the provisions of Part V shall apply.

"(6) § 205 shall apply to those employees' representatives who participate in an information and consultation procedure pursuant to subpara. (1).



Sanctions

"§ 207.

"(1) Non-compliance with the provisions of § 174 Nos 1 and 2, § 177 subparas. (2) and (3), § 181 subparas. (1) and (4), § 190 subpara. (2), § 204 subpara. (1) and § 206 subpara. (2) 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 an administrative offence and be punished by the district administrative authority with a fine of up to 30 000 Austrian schillings.

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

1. the employees' representative bodies existing in the undertaking or group in the circumstances provided for in § 174 No 1, § 181 subpara. (1) and § 206 subpara. (2),
2. the employees or employees' representatives entitled to lodge a complaint pursuant to § 177 subpara. (1) in the circumstances provided for in § 177 subparas. (2) and (3),
3. the special negotiating body in the circumstances provided for in § 174 No 2 and § 181 subpara. (4),
4. the competent employee representative body under the agreement pursuant to § 190 subpara. (1) in the circumstances provided for in § 190 subpara. (2),
5. the central management in the circumstances provided for in § 204 subpara. (1).

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

15. *The previous § 171 shall be renumbered § 208 and preceded by the heading "Part VI".*
16. *In what is now § 208, the following subpara. (7) shall be inserted after subpara. (6) :*

"(7) § 1 subpara. (2) No 1, § 21 subpara. (1), first sentence, § 49 subpara. (1), first sentence, 62c subpara. (1), § 70 No 4, § 105 subpara. (3) No 1(h), § 110 subpara. (6b), § 112 subpara. (4), § 129 subpara. (3) No 3, § 141 subparas. (2) and (3), § 145 subparas. (2) and (5), § 160 subpara. (3) and § 169 as amended by the Federal Law published in *BGBL*. No 601/1996 shall enter into force as of 1 October 1996. §§ 166 to 168 shall cease to apply after 30 September 1996. § 40 subpara. (4b), § 105 subpara. (3) No 1(j), § 113 subparas. (2) Nos 6 and 7, (4) Nos 4 and 5, and (5) Nos 5 and 6 and the provisions of Part V as amended by the Federal Law published in *BGBL*. No 601/1996 shall enter into force with effect from 22 September 1996".

ARTICLE 2

Amendments to the Labour and Social Courts Act

The Labour and Social Courts Act (*Arbeits- und Sozialgerichtsgesetz*) published in *BGBL*. No 104/1985, last amended by the Federal Law published in the Federal Law Gazette (*BGBL*.) No 201/1996, is amended as follows :

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

"§ 5b.

"(1) In the event of any legal disputes relating to the special negotiating body (§§ 177 to 188 of the Labour Constitution Act (*Arbeitsverfassungsgesetz - ArbVG*)), the European Works Council (§ 189 and §§ 191 to 203 *ArbVG*), the procedure for information and consultation of employees (§ 190 *ArbVG*) or agreements as referred to in § 206 *ArbVG*, local jurisdiction shall lie exclusively with those courts within whose district an undertaking has its registered office. If no undertaking has its registered office in Austria, local jurisdiction shall lie exclusively with those courts in whose district an establishment is located.

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

1. the central management (§ 171 subparas. (3) or (4) *ArbVG*) is situated in Austria or

2. the dispute relates to matters pursuant to § 172 *ArbVG*."

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

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



3. The following subpara. (5) shall be added after § 98 subpara. (4) :

"(5) § 5b and § 50 subpara. (2) as amended by the Federal Law published in *BGBL*. No 601/1996 shall enter into force with effect from 22 September 1996."

ARTICLE 3

Amendments to the Federal Law on Employment Representation in the Post Office

The Federal Law on Employment Representation in the Post Office (*Bundesgesetz über die Post-Betriebsverfassung - PBVG*) published in *BGBL*. No 326/1996 is amended as follows :

1. In § 24 subpara. (2), final sentence, the words "§ 20 subpara. (2)" shall be replaced by the words "§ 20 subpara. (3)".

2. § 28 subpara. (5), first sentence, shall read as follows :

"If an election committee fails to fulfil, or does not adequately fulfil, its obligations under subparas. (1) and (2), then it may be relieved of its duties by the staff representation body responsible for the appointment."

3. In § 49 subpara. (9), fourth sentence, the words "§ 48 subpara. (2), third sentence" shall be replaced by the words "§ 48 subpara. (2), second sentence".

4. § 49 subpara. (10), first sentence, shall read as follows :

"If parts of an establishment or undertaking are separated off as independent entities in law, then a proportion of the total assets shall be assigned on a *pro rata* basis to the staff representation bodies and/or works councils set up in the separated-off parts of such establishment or undertakings following completion of these measures, with due consideration being given to the number of employees prior to such measures in relation to their number on the date such measures acquire full legal effect."

5. In § 51 subpara. (1), first sentence, the final half-sentence shall read as follows :

"a group representative body to represent the common interests of the employees working in this group may be set up."

6. In § 53 subpara. (1), first sentence, the final half-sentence shall read as follows :

"who shall represent the mediator if the latter is indisposed."

7. The following subpara. (4) shall be inserted after § 76 subpara. (3) :

"(4) The provisions of Part V of the Labour Constitution Act (*Arbeitsverfassungsgesetz ArbVG*) shall apply to undertakings subject to this Federal Law 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."

8. In § 77 and § 82 subpara. (2), the words "State Holdings, Nationalised Industries and Communications (*für öffentliche Wirtschaft und Verkehr*)" shall be replaced by the words "Science, Communications and the Arts (*für Wissenschaft, Verkehr und Kunst*)".

9. § 80 subparas. (1) and (2) shall read as follows :

"(1) Non-compliance with the provisions of § 28 subpara. (3), § 65 subpara. (4), § 67 subpara. (1), § 72 subpara. (1) (in conjunction with § 89 No 3, § 99 subparas. (3), (4) and (5), § 103, § 104 subpara. (1), § 108 subpara. (3), § 109 subpara. (1) No 1(a) and subpara. (1a) *ArbVG*) and subparas. (2) and (4) Nos 4 and 5 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 punished by the district administrative authority with a fine of up to 30 000 Austrian schillings.

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

1. the election committee in the circumstances provided for in § 28 subpara. (3),
2. the owner of the establishment in the circumstances provided for in § 65 subpara. (4),
3. the relevant staff representation body referred to in § 73 and § 74 in the circumstances provided for in the other provisions."

10. In § 80 subpara. (3), the words "of the Administrative Penalties Act (*Verwaltungsstrafgesetz*) published in *BGBL*. No 172/1950" shall be replaced by the words "of the 1991 Administrative Penalties Act (*Verwaltungsstrafgesetz*) published in *BGBL*. No 52".

11. The following subpara. (3) shall be inserted after § 81 subpara. (2) :

"(3) § 24 subpara. (2), final sentence, § 28 subpara. (5), first sentence, § 49 subpara. (9), fourth sentence and subpara. (10), first sentence, § 51 subpara. (1), first sentence, § 53 subpara. (1), first sentence, § 77, § 80 and § 82 subpara. (1) No 2 and subpara. (2), as amended by the Federal Law published in *BGBL*. No 601/1996, shall enter into force with effect from 1 October 1996. § 76 subpara. (4), as amended by the Federal Law published in *BGBL*. No 601/1996, shall enter into force with effect from 22 September 1996."

12. In § 82 subpara. (1) No 2, the words "election boards" shall be replaced by the words "election committees".

⁽⁰¹⁾ "No account shall be taken, in calculating this number, of homeworkers or members of the occupier's family who are not entitled to stand for election to the works council in accordance with clause 1 of subsection (3) of section 53."

⁽⁰²⁾ " A concentration shall not be deemed to arise where :

a) credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the sale of all part of that undertaking or of its assets or the sale of those securities and that any such sale takes place within one year of the date of acquisition; that period may be extended by the Commission on request where such institutions or companies justify the fact that the sale was not reasonably possible within the period set; (...)

c) the operations (direct or indirect acquisition) carried out by the financial holding companies (...), provided however that the voting rights in respect of the holding are exercised, in particular in relation to the appointment of members of the management and supervisory bodies of the undertakings in which they have holdings, only to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of those undertakings."

⁽⁰³⁾ "Where at least four works council members are to be elected, the members of the executive committee and salaried employees of an appropriate voluntary occupational organisation of workers shall also have the right to stand for election. At least three-quarters of the works council members must be workers employed in the establishment. A member of the executive committee or a salaried employee of an appropriate voluntary occupational organisation of workers may not belong to more than one works council at any given time."

⁽⁰⁴⁾ "The provisions of sections 108 to 112 shall not apply to undertakings and establishments directly devoted to political, denominational, scientific, educational or charitable purposes or purposes of trade union policy, to the administrative offices of public corporations or to the Austrian National Bank. Sections 108 and subsection 1 and 2 of section 109 shall apply in so far as the special purposes are not concerned. Section 109 shall in any event apply in so far as an alteration to the establishment according to clause 1 a, 5 and 6 of subsection 1 of section 109 takes place."

⁽⁰⁵⁾ " The provisions of sections 108 to 112 shall not apply to undertakings and establishments directly devoted to the preparation of reports or the expression of opinions, in so far as the questions involved affect the political tendency of such undertakings and establishments. Section 109 shall in any event apply in so far as an alteration to the establishment according to clauses 1 a, 5 and 6 of subsection 1 of section 109 takes place. Subsection (3) of section 99 shall not apply to the appointment of journalists, as defined in the Journalists Act („Staatsgesetzblatt", Text 88 of 1920) in so far as any such appointment affects the political tendency of the undertaking or establishment concerned."

⁽⁰⁶⁾ " The provisions of Part II shall not apply to undertakings and establishments serving the denominational purposes of a legally recognised church or religious community, in so far as the nature of the undertaking or establishment is incompatible with the application of that Part. The provisions as to works agreements on questions covered by clauses 1, 2 and 4 of subsection (1) of section 96 and the provisions of sections 108 to 112 shall not in any event apply to establishments and administrative offices whose purpose is to deal with the internal affairs of legally recognised churches and religious communities, except section 109 in so far as an alteration to an establishment according to clauses 1a, 5 and 6 of subsection 1 of section 109 takes place."

⁽⁰⁷⁾ " A works council member or substitute member shall not reveal any business or trade secrets coming to his knowledge in the course of his activities in that capacity, especially as regards any technical installations, processes or features of the establishment whose secret character has been drawn to his attention. Where, in the course of his participation in personnel questions, he becomes aware of any worker's personal circumstances or affairs whose importance or nature is such that they require confidential treatment, he shall not reveal them."

⁽⁰⁸⁾ § 115: " (1) A works council member shall hold office in an honorary capacity and, save as provided to the contrary hereinafter, shall do so in addition to the duties of his occupation. (...)

(2) A works council member shall not be bound, in his activities in that capacity, by instructions of any kind. (...)

(3) A works council member shall not be hampered in his activities in that capacity and shall not suffer any prejudice, particularly as regards his remuneration and promotion opportunities, on account of such activities. The principle of non-discrimination also applies to the transfer of a works council member."

§ 116: "A works council member shall be granted the necessary time off with full pay to discharge his duties, without prejudice to any period for which he is released from his work for educational purposes under section 118."

§ 120: " (1) A works council member shall not be given notice of dismissal or instantly dismissed without the prior consent of the court; otherwise the notice or dismissal shall be void. In reaching its decision the court shall guarantee the protection afforded to works council members by subsection (3) of section 115. In cases covered by clause 3 of section 121 and the first part of clause 3, the first part of clause 4 and clause 5 of subsection (1) of section 122 the court shall refuse its consent if the application is based on conduct by a works council member that the said member was obliged to adopt in his activities in that capacity and was excusable, having regard to all the circumstances.

(2) The works council member shall be a party to the proceedings according to subsection 1.

(3) The protection afforded by sections 120 to 122 shall commence from the date on which the works council member accepts his election and shall end three months after his membership ceases or, where the establishment is permanently closed down, on the cessation of the works council's term of office.

(4) Sections 120 to 122 shall apply, mutatis mutandis, to -

1. substitute members who have served continuously for at least two weeks in the place of works council members who have been prevented from performing their duties in that capacity, until three months have elapsed since the cessation of such service, on condition that the occupier of the establishment was informed without unnecessary delay of the date on which such service began and ended;

2. members of election committees and candidates for election, from the date of their appointment or nomination and until the expiry of the time limit allowed for challenging the elections; The protection of the candidates for election starts when after nomination of the election committee his intention to candidate becomes obvious. The protection against notice of dismissal and instant dismissal stops with the expiration of the time limit for nomination if the candidate does not appear as candidate on a list of nominations.

3. members of a works council which continues to serve after the expiry of its term of office (subsection (2) of section 61), until three months have elapsed since the cessation of such service."

§ 121: *" The court shall consent to notice of dismissal, subject to the provisions of section 120, only if:*

1 .in the event of the permanent closure of the establishment or a reduction of its activities or the closure of particular departments, the occupier produces evidence that he cannot without appreciable loss continue to employ the works council member concerned, despite the latter's request, at some other workplace in the establishment or in another establishment belonging to the undertaking;

2 the works council member concerned is unable to perform the work agreed to in his contract of employment, and in so far as he cannot be expected to recover his capacity for work in the foreseeable future and the occupier of the establishment cannot reasonably be expected to continue to employ him or to agree to his performance of other services that he has declared himself ready to perform;

3 .the works council member concerned persistently disregards his obligations under his employment relationship and the occupier of the establishment cannot reasonably be expected, for reasons of discipline at work, to continue to employ him."

§ 122: *" (1) The court shall consent to instant dismissal, subject to the provisions of section 120, only if the works council member concerned:*

1. deliberately deceived the occupier of the establishment as to circumstances that were essential to the conclusion of the contract or the performance of the prospective employment relationship;

2. has been guilty of a crime, threatened by an imprisonment term of more than one year or a misdemeanour or petty offence committed for purposes of gain, in so far as a prosecution follows automatically or on application by the occupier;

3. is disloyal in his services or improperly obtains benefits from third parties in the course of his activities without the knowledge of the occupier;

4. discloses a business or trade secret or carries on an outside activity that is detrimental to his work in the establishment without the occupier's consent;

5. is guilty of assault upon, or serious insults to, the occupier, members of the occupier's family who are working or present in the establishment or workers employed in the establishment, in so far as such conduct precludes any further meaningful co-operation between the works council member and the occupier.

(2) The court shall not agree to instant dismissal if the occupier of the establishment can reasonably be expected, in the light of the special circumstances of the case, to continue to employ the works council member concerned.

(3) In cases covered by clauses 2 and 5 of subsection (1) the subsequent consent of the court may be sought for the instant dismissal of the works council member concerned. Where the court does not give such consent, the dismissal shall be without effect.