

Employment & Benefits - Austria

Do share sales trigger works council's information and consultation rights?

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Introduction

In line with the EU Transfer of Undertakings (Protection of Employment) Directive (2001/23/EC), a business sale that is structured as a share deal (as opposed to an asset deal) does not qualify as a transfer of an undertaking within the meaning of the directive. Consequently, a share sale does not trigger the works council's transfer-related information or consultation rights.

However, the provisions transposing the EU directive into Austrian law are not the only statutory rules that must be observed when it comes to share sales. If, in the course of the share sale, the acquirer wishes to implement certain changes to existing business operations, the works council must be notified and consulted. In some cases a material change in business operations may result in the works council's right to impose a social plan on the employer via a labour court judgment.

Changes to business operations

Section 109 of the Labour Relations Act mandates that employers must inform the works council well in advance of changes to business operations and, on the works council's request, must consult with the council on the changes.

Section 109 contains a non-exhaustive list of common operational changes, including:

- downsizing or closing an operating unit;
- implementing redundancies beyond certain thresholds;
- relocating entire business units or parts of operational units;
- combining operational units;
- changing operating facilities and plants;
- introducing new work methods; and
- introducing automation measures.

The works council must be informed and consulted before any operational change is introduced. Following consultation, the works council can suggest measures to avoid or mitigate detrimental consequences of the planned changes for employees. If an employer fails to inform and consult the council, it can enforce its information and consultation rights by bringing an action before the competent labour court and can apply for a preliminary injunction.

In addition to the council's broad information and consultation rights, it can request that a social plan be imposed if certain criteria are met.

Statutory requirements for social plans

If operational changes to a business unit with at least 20 employees potentially result in substantial disadvantages for all or a significant part of the workforce (ie, at least one-third of employees in the business unit), the employer and works council can conclude a works agreement in order to mitigate the consequences. These social plans commonly include:

- outplacement counselling;
- hardship funds or work foundations;
- occupational retraining; and
- monetary compensation.

If the employer and works council cannot agree on the terms of the social plan, either may bring the

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matter before a special conciliation body, which is established by the competent labour court and presided over by a judge. The conciliation body will first attempt to mediate a settlement; if a settlement cannot be reached, it will render a judgment that operates as a social plan.

More often than not, the conciliation body decides in favour of the works council's proposal – in particular, when redundancies or substantial downsizings in the wake of a share sale serve the new owner's interest in maximising profits, rather than restructuring a business unit that is struggling to survive.

Consequently, share sales that are accompanied by substantial operational changes by the new owner (which need not necessarily be mass redundancies or outsourcings) trigger information and consultation rights that far exceed those that would otherwise apply if the transaction qualified as a business transfer within the meaning of the EU directive.

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