FEDERAL LAW GAZETTE
FOR THE REPUBLIC OF AUSTRIA

Year: 2010 **Published on 14 December 2010** **Part I**

Federal Law No 101: Amendment of the *Arbeitsverfassungsgesetz* [Labour Constitution Act], the *Post-Betriebsverfassungsgesetz* [Post Office Employee Representation Act] and the *Landarbeitsgesetz 1984* [Agricultural Labour Act 1984]

(NR GP XXIV RV 901 AB 975, p. 83. BR: AB 8413, p. 790.)
[CELEX No.: 32009L0038]

Federal Law No 101 amending the Labour Constitution Act, the Post Office Employee Representation Act and the Agricultural Labour Act 1984

The *Nationalrat* [Lower House of the Federal Parliament] has decreed the following:

Article 1
Amendment of the Labour Constitution Act

The Labour Constitution Act, published in Federal Law Gazette No 22/1974, last amended by the Federal Law published in Federal Law Gazette I No 58/2010, is hereby amended as follows:

1. § 21(2) shall read:

‘(2) The *Bundeseinigungsamt* [Federal Arbitration Board] shall provide the *Bundesministerium für Arbeit, Soziales und Konsumentenschutz* [Federal Ministry of Labour, Social Affairs and Consumer Protection] and each court of justice with jurisdiction in labour and social affairs-related matters with an official copy of the statute (declaration of the statute and text of the statute) stating the number and date of the announcement in Part II of the Federal Law Gazette and the registration number, and shall notify them when a statute ceases to have effect.’

2. The last sentence of § 49(1) shall be deleted.

3. The second sentence of § 49(3) shall read:

'This provision shall not apply in the cases set out in §§ 40(3) and 42(1)(3), (4) and (8).'

4. The following sentence shall be added to § 49(3):

'The electoral board may be dismissed pursuant to § 42(1)(5) only if at least one third of the employees entitled to vote are present.'

5. The first sentence of § 50(2) shall read:

'The number of members of a works council shall be determined by the number of employees employed in the establishment on the day of the works meeting to elect the electoral board.'

6. The last sentence of § 52(1) shall be deleted.

7. § 53(1) shall read:

'(1) All employees who

1. on the day of the announcement of the election have reached the age of 18; and
2. have been employed in the establishment or the undertaking to which the establishment belongs for at least six months

shall be eligible to stand for election.'

8. § 55(5) shall read:

'(5) If the electoral board fails to comply with or does not comply sufficiently with the obligations laid down in paragraph 1 within a period of eight weeks, it shall be dismissed by the works (group) meeting. In such circumstances, any employee of the establishment, the competent voluntary professional association or the statutory body representing the interests of the employees may convene the works (group) meeting. That meeting shall also appoint a new electoral board.'

9. The following sentence shall be added to § 67(1):

'If a young workers' council is established within the establishment or a person is elected to represent disabled workers, they shall also be invited.'

10. The following paragraph 4 shall be added to§ 68:

‘(4) Resolutions adopted by votes cast in writing shall be permissible only where all the members of the works council agree to that procedure. The same shall apply to resolutions adopted by telephone or by similar means. The chairperson shall be responsible for documenting the adoption of resolutions.’

11. § 96(1)(4) shall read:

‘4. in so far as rules are not laid down in a collective agreement or statute, the introduction of and the rules governing piece-wages, wages for piece-work and piece-work rates as well as bonuses and rewards similar to piece-wages – with the exception of rewards for work carried out at home –, which are based on statistical methods, data collection methods, predetermined motion time systems or similar methods of determining rewards, and the relevant principles (systems and methods) for determining and calculating such wages and rewards.’

12. § 97(1)(16) shall read:

‘16. profit sharing schemes and the introduction of performance or success-related bonuses and rewards not just for individual employees, in so far as such bonuses and rewards are not covered by § 96(1)(4);’

13. § 105, including its heading, shall read:

‘Applications for annulment of notices of dismissal

§ 105. (1) The owner of the establishment shall notify the works council prior to every dismissal of an employee; the works council may submit its opinion on that dismissal within a period of one week.

(2) At the request of the works council, the owner of the establishment shall hold discussions with the works council within the time-limit laid down for the submission of an opinion on the dismissal. A dismissal announced before the expiry of that time-limit shall not have legal effect unless the works council has already submitted an opinion.

(3) The dismissal may be challenged in court where:

1. the employee has been dismissed

a) as result of him joining or his membership of trade unions;

b) as a result of his trade union activities;

c) as a result of him convening a works meeting;

d) as a result of his activities as a member of the electoral board or of an electoral committee, or in his capacity as witness before such a board or committee;

e) as a result of his application to become a member of the works council or on account of his earlier activities within the works council;

f) as a result of his activities as a member of the arbitration board;

g) as a result of his role as a safety officer, safety expert or occupational physician or as a member of specialist or support staff for safety experts or occupational physicians;

h) as a result of him being called up for military or military training service or being assigned to civilian service duties in the near future (§ 12 of the *Arbeitsplatzsicherungsgesetz 1991* [Job Security Act 1991], Federal Law Gazette No 683);

i) as a result of his clearly not unjustified assertion of claims under the contract of employment which are being questioned by the employer;

j) as a result of his activities as a spokesperson within the meaning of § 177(1);

or

2. the dismissal lacks social justification and the employee dismissed has been employed in the establishment or undertaking to which the establishment belongs for six months. A dismissal lacks social justification where the fundamental interests of the employee are adversely affected, unless the owner of the establishment can prove that the dismissal is justified

a) by reasons which are connected with the person of the employee and prejudicial to the establishment's operational interests, or

b) by operational requirements of the establishment which preclude the employee's continued employment.

(3a) Reasons for the purposes of paragraph 3(2)(a) which are the result of long-term employment as a night worker carrying out hard manual labour (Article VII of the *Nachtschwerarbeitsgesetz* [Law governing hard manual labour at night], 'NSchG') may not

be used as justification for the dismissal if the employee can continue to be employed without any significant detriment to the establishment.

(3b) Reasons under paragraph 3(2)(a) which are the result of the fact that an employee, who has been employed for many years in the establishment or undertaking to which the establishment belongs, is of an older age may be used as justification for the dismissal of the older employee only where his continued employment is seriously prejudicial to the establishment's operational interests. In the case of an older employee, particular account shall be taken of the employee's many years of uninterrupted service in the establishment or undertaking to which the establishment belongs and of the inevitable difficulties associated with his reintegration into working life on account of his age both when considering whether his dismissal lacks social justification and when comparing social factors. The above shall apply to employees who at the time of their recruitment have reached the age of 50 only after the end of their second year of employment in the establishment or undertaking to which the establishment belongs.

(3c) If the works council has expressly objected to a dismissal in accordance with paragraph 3(2)(b), the dismissal of the employee shall lack social justification where a comparison of social factors indicates greater social hardship for the dismissed person than for other employees of the same establishment in the same section whose work the dismissed person is willing and able to do.

(4) The owner of the establishment shall notify the works council of the announcement of the dismissal. At the request of the dismissed employee, the works council may within one week of the notification of the announcement of the dismissal challenge that dismissal in court, provided that the works council has expressly objected to the intention to dismiss the employee concerned. If the works council does not accede to the employee's request, the employee may himself challenge the dismissal in court within a period of two weeks following the expiry of the time-limit applicable to the works council. If the works council has failed to express an opinion within the time-limit laid down in paragraph 1, the employee may himself challenge the dismissal in court within a period of two weeks following the receipt of the notice of dismissal; in these circumstances, a comparison of social factors within the meaning of paragraph 3c shall not be carried out. If the works council withdraws the application for annulment without the consent of the dismissed employee, the withdrawal shall have effect only where the employee notified of the

withdrawal by the court does not intervene in the dispute within a period of 14 days from his notification. If the works council has expressly approved the intended dismissal within the time-limit set out in paragraph 1, the employee may challenge the dismissal in court within a period of two weeks following the receipt of the notice of dismissal, save where paragraph 6 provides otherwise.

(4a) If the employee makes the application for annulment within the time-limit laid down but before a local court which lacks the relevant jurisdiction, that application shall be deemed to have been made in good time.

(5) In so far as the claimant relies on a ground for annulment laid down in paragraph 3(1) in the course of the proceedings, he shall substantiate that ground for annulment. The application for annulment shall be dismissed where, having weighed up all the facts, there is a greater likelihood that the decisive reason for the dismissal was a different reason which the employer has substantiated.

(6) If the works council has expressly approved the intended dismissal within the time-limit set out in paragraph 1, the dismissal cannot be challenged under paragraph 3(2).

(7) If the court grants the application for annulment, the dismissal shall not have legal effect.'

14. § 107, including its heading, shall read:

'Applications for annulment made by employees

§107. In establishments in which works council are meant to be established but they do not exist, the employee concerned may challenge his dismissal or redundancy in court within a period of two weeks following the receipt of the notice of dismissal or redundancy. § 105(4a) shall apply.'

15. The second and third sentences of § 108(2a) shall read:

'The information shall be provided at such time, in such fashion and with such content as are appropriate and as enables the works council to undertake an in-depth assessment of the possible impact of the planned measure and to express an opinion on that planned measure; at the request of the works council, the owner of the establishment shall hold a discussion on the planned measure with the works council. The information shall include in particular:

1. the reason(s) for the measure in question;
2. the ensuing legal, economic and social consequences for the employees; and
3. the measures planned with regard to the employees.'

16. The first sentence of § 109(1) shall read:

'The owner of the establishment shall be obliged to provide information to the works council relating to planned changes to the establishment at such time, in such fashion and with such content as enables the works council to undertake an in-depth assessment of the possible impact of the planned measure and to express an opinion on that planned measure; at the request of the works council, the owner of the establishment shall hold a discussion on the organisation of the planned measure with the works council.'

17. The first sentence of § 115(3) shall read:

'The members of the works council shall not be restricted in the performance of their activities and or placed at a disadvantage on account of those activities, in particular with regard to remuneration, promotion prospects and in-house training and retraining measures.'

18. § 117(4) shall be deleted.

19. § 123(3) shall read:

'(3) Young workers within the meaning of this chapter shall be understood to be workers, including homeworkers, who have not reached the age of 18, and apprentices who have not reached the age of 21.'

20. The last sentence of § 124(6) shall be deleted.

21. The first sentence of § 125(3) shall read:

'The number of members to be elected to the young workers' council shall be determined by the number of young workers on the day the election is announced.'

22. § 126(4) shall read:

‘(4) All young workers of the establishment who are employed in the establishment on the day the election is announced and on the day of the election shall be entitled to vote.’

23. § 126(5) shall read:

‘(5) All workers who

1. on the day of the announcement of the election have not reached the age of 23; and
2. on the day of the election have been employed in the establishment for at least six months

shall be eligible to stand for election.’

24. The following paragraph 2a shall be inserted after § 144(2):

‘(2a) The chairperson and the members of the arbitration board shall not be bound by instructions. The Federal Minister for Labour, Social Affairs and Consumer Protection shall be entitled to receive information about all matters relating to the management of the arbitration board.’

25. In § 146(2a), the words ‘§ 4(8) of the *Arbeitszeitgesetz* [Working Time Act]’ *shall be replaced by the words* ‘§ 4(6) of the *Arbeitszeitgesetz*’.

26. § 172 shall read:

‘**§ 172.** The provisions of Part V shall apply to the determination of the number of employees employed in Austria (§ 171(5)), the obligations upon the Austrian local management of the undertaking pursuant to § 177(2) and (3) and § 206(2), the appointment of the Austrian members to the special negotiating body (§§ 179, 180) and to the European Works Council (§ 193), the ending of their membership of the special negotiating body pursuant to § 185(2)(2) to (4) and (6) or of the European Works Council pursuant to § 196(4)(2) to (4) and (6), the duty of confidentiality (§ 204) and the protective provisions (§ 205(1)) applicable to them as well as the right to training leave (§ 205(2)), even if the central management is not located within Austria.

27. § 173(2) to (5) shall read:

‘(2) For the purposes of Part V, information shall be understood to mean the transmission of data by the employer to the employees’ representatives in order to enable them to acquaint themselves with the subject matter and to examine it. The information shall be given at such time, in such fashion and with such content as are appropriate and as enables the employees’ representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the undertaking or group of undertakings.

(3) For the purposes of Part V, consultation shall be understood to mean the establishment of dialogue and the exchange of views between the employees’ representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as are appropriate and as enables the employees’ representatives, without prejudice to the responsibilities of the management, within a reasonable time and on the basis of the information provided, to express an opinion about the proposed measures which may be taken into account within the undertaking or group of undertakings.

(4) Information and consultation of employees shall occur at the relevant level of management and representation, according to the subject under discussion. The competence of the European Works Council and the scope of the information and consultation procedure shall be limited to transnational matters.

(5) Transnational matters shall be those which concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two establishments or undertakings of the group of undertakings situated in at least two Member States. The transnational character of a matter shall be determined by taking account of both the scope of its potential effects and the level of management and representation that it involves. In any event, and regardless of the number of Member States involved, matters which are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States shall be transnational matters.’

28. The text of the former § 174 shall now be numbered as paragraph ‘(1)’; the following paragraph 2 shall be added:

‘(2) Both the management of each undertaking belonging to a group of undertakings and the central management shall be responsible for collecting the information required to commence negotiations and for forwarding that information to the parties to which the Directive applies and to the management of the other undertakings. That information shall include in particular information on:

1. the structure of the undertaking or group of undertakings;
2. the number of employees employed in each of the undertaking’s establishments or in each of the establishments and undertakings of the group of undertakings;
3. the number of employees employed in the individual Member States;
4. the total number of employees employed in the undertaking or in the group of undertakings; and
5. the details of the bodies set up to represent employees in the undertaking’s establishments or in the establishments and undertakings of the group of undertakings, and the number of employees represented by each of those bodies.’

29. § 176(6) shall read:

‘(6) A dominant interest shall not exist in so far as credit institutions, other financial institutions and insurance and holding companies within the meaning of Article 3(5)(a) and (c) of Regulation (EC) No 139/2004 on the control of concentrations between undertakings hold shares in another undertaking.’

30. § 178 shall read:

‘**§ 178.** (1) For each portion of employees employed in a Member State amounting to 10%, or a fraction thereof, of the total number of employees employed in all the Member States by the undertaking or the group of undertakings, one member from that Member State shall be appointed to the special negotiating body.

(2) 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.’

31. The following paragraph 3a shall be inserted after § 180(3):

‘(3a) If a works council has not been established in any Austrian establishment of the undertaking or group of undertakings, the appointment shall be made by the competent statutory body representing the interests of the employees.’

32. The following paragraph 5 shall be inserted after § 181(4):

‘(5) The central management shall inform the competent European workers’ and employers’ organisations and the competent Austrian statutory body representing the interests of the employees of the composition of the special negotiating body and the start of the negotiations without delay after the meeting with the special negotiating body has been convened pursuant to paragraph 4.’

33. § 182, including its heading, shall read:

‘Meetings

§ 182. (1) The special negotiating body shall have the right to convene a meeting before and after any negotiations with the central management.

(2) For the purpose of the negotiations with the central management, the special negotiating body may be assisted by experts of its choice. The experts shall be entitled to attend the negotiations with the central management in an advisory capacity at the request of the special negotiating body.

(3) Experts within the meaning of paragraph 2 shall also be understood to include *inter alia* representatives of the competent European workers’ organisations.’

34. § 186(2) shall read:

‘(2) The administrative expenditure necessarily incurred by the special negotiating body in order that it may perform its duties properly, in particular the costs of organising the principal meetings and any preparatory or ‘wash up’ meetings, including the costs of interpretation facilities and the costs of at least one expert, as well as the accommodation and travel expenses of the members of the special negotiating body and of at least one expert, shall be borne by the central management.’

35. § 188(2) shall read:

‘(2) A new request to convene the special negotiating body may be made at the earliest two years after the decision made pursuant to paragraph 1, unless the central management and the special negotiating body lay down a shorter period.’

36. § 189(2) and (3) shall read:

‘2. the composition of the European Works Council, the number of members, the allocation of seats, taking into account where possible the need for balanced representation of employees with regard to their activities, category and gender, and the term of office, including the effects of substantial changes in the number of people employed in the undertaking or group of undertakings;

3. the functions and the procedure for information and consultation of the European Works Council and the arrangements for linking information and consultation of the European Works Council and national employee representation bodies, in connection with which it must be ensured that the rights of participation of the national employee representation bodies are not curtailed;’

37. § 189(5) to (7) shall read:

‘5. where necessary, the composition, the appointment procedure, the functions and the procedural rules of the select committee set up within the European Works Council;

6. the financial and material resources to be allocated to the European Works Council; and

7. the date of entry into force of the agreement and its duration, the arrangements for amending or terminating the agreement and the cases in which the agreement shall be renegotiated and the procedure for its renegotiation, in particular also where the structure of the undertaking or group of undertakings changes.’

38. § 192, including its heading, shall read:

‘Composition

§ 192. For each portion of employees employed in a Member State amounting to 10%, or a fraction thereof, of the total number of employees employed in all the Member

States by the undertaking or the group of undertakings, one member from that Member State shall be appointed to the European Works Council. § 178(2) shall apply *mutatis mutandis*.'

39. § 194(3)(1) shall read:

'1. the composition and management of the select committee as provided for in § 195;'

40. The first sentence of § 194(4) shall read:

'The European Works Council shall have the right to convene a meeting before and after each meeting with the central management (§ 199).'

41. § 195, including its heading, shall read:

'Select committee

§ 195. The European Works Council shall elect a select committee from among its members, which may comprise one chairperson and a maximum of four further members. The select committee shall conduct the day-to-day business of the European Works Council; it shall adopt its own rules of procedure. § 194(4) shall apply to the select committee.'

42. § 199(2) shall read:

'(2) The information shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the undertaking or group of undertakings. The information and consultation shall relate in particular to the situation and probable trend of employment, investments, and substantial changes concerning organisation, the introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.'

43. The following paragraph 3 shall be inserted after § 199(2):

'(3) The consultation shall be conducted at such time, in such fashion and with such content as enables the employees' representatives to express an opinion on the basis of the information provided about the proposed measures, without prejudice to the responsibilities

of the management and within a reasonable time, and to obtain a response, and the reasons for that response, to its opinion.'

44. The previous § 203 shall be renumbered as '§ 201*'; the following heading shall be inserted after the new § 201:*

'Chapter 4

Miscellaneous provisions'

45. The previous § 201 shall be renumbered as '§ 202*'; together with its heading, it shall read as follows:*

'Special-purpose undertakings

§ 202. (1) §§ 199 and 200 shall not apply to undertakings which directly serve the purposes stated in § 132(2) in so far as the matters in question influence the political orientation of those undertakings.

(2) §§ 199 and 200 shall however apply in all circumstances to undertakings within the meaning of paragraph 1 in so far as the information relates to substantial changes concerning organisation, the introduction of new working methods or production processes, or collective redundancies. § 199(2) shall apply in all circumstances to undertakings within the meaning of paragraph 1 in so far as the information relates to the structure of the undertaking or its economic and financial situation.'

46. The previous § 202 shall be renumbered as '§ 203*'; together with its heading, it shall read as follows:*

'Provision of information to the local employees' representatives

§ 203. (1) Without prejudice to § 204, the members of the European Works Council shall inform the employees' representatives of the establishments or undertakings or, in the absence of such representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure carried out pursuant to the provisions of this chapter.

(2) The central management shall provide the European Works Council with the resources required for it to perform its duties under paragraph 1. After providing information to the local management of the establishment or undertaking, the European Works Council shall be granted access to the establishments and undertakings.'

47. The heading 'Chapter 4 Legal position of the employees' representatives' *following § 203 shall be deleted; the following § 203a, together with its heading, shall be inserted after § 203:*

'Significant changes to the structure of the undertaking or group of undertakings

§ 203a. (1) In the event of significant changes to the structure of the undertaking or group of undertakings, the central management shall initiate negotiations for the conclusion of an agreement pursuant to § 187 on its own initiative or 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 in so far as provisions to that effect are not laid down in the agreements in force or where conflicts exist between two or more applicable agreements. §§ 177 and 178 shall apply to the establishment and composition of the special negotiating body; in that connection, at least three members of each existing European Works Council shall also be members of the special negotiating body. Furthermore, the provisions laid down in Chapter 2 shall apply to the negotiations.

(2) The acquisition, closure, limitation or relocation of undertakings or establishments and the merger with other groups of undertakings, undertakings or establishments shall be regarded as significant changes, provided that they have a significant influence on the overall structure of the undertaking or group of undertakings, as shall significant changes to the number of people employed in the undertaking or group of undertakings.

(3) During the negotiations, the existing European Works Council(s) shall continue to operate in accordance with the agreements applicable in the undertaking or group of undertakings.

(4) If an agreement has not been concluded within the period provided for the negotiations (§ 191(1)(3)), the provisions laid down in Chapter 3 shall apply, provided that the scope of the rights of participation of the employees are determined according to the structure of the undertaking or group of undertakings at the time the negotiations broke down.

Where under an agreement previously in force more favourable rules existed as compared with the provisions of Chapter 3, the scope of the rights of participation of the employees shall be determined in accordance with that agreement.'

48. In § 204(2), the reference to '§ 202*' shall be replaced by a reference to* '§ 203*'.*

49. The text of the former § 205 shall now be numbered as paragraph '(1)*'; the following paragraph 2 shall be added:*

'(2) Without prejudice to § 118, each Austrian member of the special negotiating body and of the European Works Council shall be entitled to leave from their employment to attend the training and educational events necessary to enable them to carry out their duties of representation on the international stage whilst continuing to be paid.'

50. The following paragraph 9 shall be added to § 206:

'(9) With the exception of § 173(2) to (5) and § 203a, the provisions of Part V shall not apply to undertakings or groups of undertakings:

1. in which an agreement pursuant to paragraph 1 or 7 has been concluded; or
2. in which, between 5 June 2009 and 5 June 2011, an agreement was concluded or revised which provides for the transnational information and consultation of employees; even after 5 June 2011, the provisions of Chapter V in the version applicable on 5 June 2011 shall apply to such agreements.'

51. § 207(1) and (2) shall read:

'(1) Non-compliance with the provisions of §§ 174, 177(2) and (3), 181(1) and (4), 190(2), 204(1) and 206(2) shall, unless the act in question constitutes a criminal offence falling within the jurisdiction of the courts or is subject to more severe penalties under other administrative provisions, be deemed an administrative offence which shall be punishable by the district administrative authority by a fine of up to EUR 20 000, or of up to EUR 40 000 where the offence is repeated.

(2) Administrative offences under paragraph 1 shall be the subject of prosecutions and punished only where

1. in the case of §§ 174(1)(1) and 174(2), 181(1) and 206(2), the employees representation bodies which exist in the undertaking or group of undertakings;
2. in the case of § 177(2) and (3), the employees or employees' representatives authorised to bring an action pursuant to § 177(1);
3. in the case of §§ 174(1)(2) and 181(4), the special negotiating body;
4. in the case of § 190(2), the competent employee representation body under the agreement provided for in § 190(1); and
5. in the case of § 204(1), the central management

initiates criminal proceedings before the competent district administrative authority (private prosecution) within six weeks of learning of the offence and of the identity of the offender.'

52. The following paragraphs 23 and 24 shall be added to § 264:

'(23) § 21(2), § 49(3), the first sentence of § 50(2), § 53(1), § 55(5), § 67(1), § 68(4), § 96(1)(4), § 97(1)(16), § 105, § 107, the second and third sentences of § 108(2a), the first sentence of § 109(1), the first sentence of § 115(3), § 123(3), the first sentence of § 125(3), § 126(4) and (5), § 144(2a) and § 146(2a) in the version of the Federal Law published in Federal Law Gazette I No 101/2010 shall enter into force on 1 January 2011. The last sentence of § 49(1), the last sentence of § 52(1), § 117(4) and the last sentence of § 124(6) shall be repealed following 31 December 2010. § 172, § 173(2) to (5), § 174, § 176(6), § 178, § 180(3a), §181(5), §182, § 186(2), § 188(2), § 189(2) and (3) and (5) to (7), § 192, § 194(3)(1) and the first sentence of § 194(4), § 195, § 199(2) and (3), §§ 201 to 203a, § 204(2), § 205, § 206(9), § 207(1) and (2) and the heading of Chapter 4 in the version of the Federal Law published in Federal Law Gazette I No 101/2010 shall enter into force on 6 June 2011. The heading of Chapter 5 shall be repealed following 5 June 2011.

(24) The extension of the time-limit for challenging notices of dismissals pursuant to § 105(4) and § 107 in the version of the Federal Law published in Federal Law Gazette I No 101/2010 shall apply to notices of dismissal received after 31 December 2010.'

Article 2

Amendment of the Post Office Employee Representation Act

The Post Office Employee Representation Act, published in Federal Law Gazette No 326/1996, last amended by the Federal Law published in Federal Law Gazette I No 135/2009, is hereby amended as follows:

1. § 26(1) shall read:

‘(1) All employees who

1. on the day of the election have reached the age of 18; and
2. have been employed in the establishment or the undertaking to which the establishment belongs for at least six months

shall be eligible to stand for election.’

2. The following sentence shall be added to § 42(1):

‘If a young workers’ council is established within the establishment or a person is elected to represent disabled workers, they shall also be invited.’

3. The following paragraph 4 shall be added to§ 43:

‘(4) Resolutions adopted by votes cast in writing shall be permissible only where all the members of the body which represents personnel agree to that procedure. The same shall apply to resolutions adopted by telephone or by similar means. The chairperson shall be responsible for documenting the adoption of resolutions.’

4. § 54(4) shall read:

‘(4) Young workers within the meaning of this chapter shall be workers who have not reached the age of 18 and apprentices who have not reached the age of 21.’

5. The first sentence of § 57(4) shall read:

‘All young workers of the establishment who are employed in the establishment on the day the election is announced and on the day of the election shall be entitled to vote.’

6. *§ 57(5) shall read:*

‘(5) All workers falling within the scope of the body which represents young workers who

1. on the day of the election have not reached the age of 23; and
2. on the day of the election have been employed in the establishment or in the undertaking for at least six months

shall be eligible to stand for election.'

7. The following paragraph 12 shall be added to § 81:

'(12) § 26(1), § 42(1), § 43(4), § 54(4), the first sentence of § 57(4) and § 57(5) in the version of the Federal Law published in Federal Law Gazette I No 101/2010 shall enter into force on 1 January 2011.'

Article 3
Amendment of the Agricultural Labour Act 1984

The Agricultural Labour Act 1984, published in Federal Law Gazette No 287, last amended by the Federal Law published in Federal Law Gazette I No 93/2010, is hereby amended as follows:

*1. **(Basic provision)** The second sentence of § 154(3) shall read:*
'This provision shall not apply in the cases set out in §§ 145(5) and 147(1)(3), (4) and (8).'

*2. **(Basic provision)** The following sentence shall be added to § 154(3):*
'The electoral board may be dismissed pursuant to § 147(1)(5) only if at least one third of the employees entitled to vote are present.'

*3. **(Basic provision)** In § 158(1), the word* 'and' *in point 2 shall be replaced with a full stop. Point 3 shall be deleted.*

*4. **(Basic provision)** § 160(5) shall read:*

'(5) If the electoral board fails to comply with or does not comply sufficiently with the obligations laid down in paragraph 1 within a period of eight weeks, it shall be dismissed by the works (group) meeting. In such circumstances, any employee of the establishment, the competent voluntary professional association or the statutory body representing the interests

of the employees may convene the works (group) meeting. That meeting shall also appoint a new electoral board.'

5. ***(Basic provision)*** *The following sentence shall be added to § 172(1):*
'If a person is elected to represent disabled workers in the establishment, he shall also be invited.'

6. ***(Basic provision)*** *The following paragraph 4 shall be added to§ 173:*

'(4) Resolutions adopted by votes cast in writing shall be permissible only where all the members of the works council agree to that procedure. The same shall apply to resolutions adopted by telephone or by similar means. The chairperson shall be responsible for documenting the adoption of resolutions.'

7. ***(Basic provision)*** *§ 201(1)(4) shall read:*

'4. in so far as rules are not laid down in a collective agreement or statute, the introduction of and the rules governing piece-wages, wages for piece-work and piece-work rates as well as bonuses and rewards similar to piece-wages which are based on statistical methods, data collection methods, predetermined motion time systems or similar methods of determining rewards, and the relevant principles (systems and methods) for determining and calculating such wages and rewards.'

8. ***(Basic provision)*** *§ 202(1)(16) shall read:*

'16. profit sharing schemes and the introduction of performance or success-related bonuses and rewards not just for individual employees, in so far as such bonuses and rewards are not covered by § 201(1)(4);'

9. ***(Basic provision)*** *§ 210, including its heading, shall read:*

'Applications for annulment of notices of dismissal

§ 210. (1) The owner of the establishment shall notify the works council prior to every dismissal of an employee; the works council may submit its opinion on that dismissal within a period of eight days.

(2) At the request of the works council, the owner of the establishment shall hold discussions with the works council within the time-limit laid down for the submission of an opinion on the dismissal. A dismissal announced before the expiry of that time-limit shall not have legal effect unless the works council has already submitted an opinion.

(3) The dismissal may be challenged in court where:

1. the employee has been dismissed

a) as result of him joining or his membership of trade unions;

b) as a result of his trade union activities;

c) as a result of him convening a works meeting;

d) as a result of his activities as a member of the electoral board or of an electoral committee, or in his capacity as witness before such a board or committee;

e) as a result of his application to become a member of the works council or on account of his earlier activities within the works council;

f) as a result of his activities as a member of the agriculture and forestry arbitration board;

g) as a result of him being called up for military or military training service or being assigned to civilian service duties in the near future (§ 3 of the *Arbeitsplatz-Sicherungsgesetz 1991* [Job Security Act 1991], Federal Law Gazette No 683);

h) as a result of his clearly not unjustified assertion of claims under the contract of employment which are being questioned by the employer;

i) as a result of his role as a safety officer, safety expert or occupational physician or as a member of specialist or support staff for safety experts or occupational physicians;

or

2. the dismissal lacks social justification and the employee dismissed has been employed in the establishment or undertaking to which the establishment belongs for six months. A dismissal lacks social justification where the fundamental interests of the employee are adversely affected, unless the owner of the establishment can prove that the dismissal is justified

a) by reasons which are connected with the person of the employee and prejudicial to the establishment’s operational interests, or

b) by operational requirements of the establishment which preclude the employee's continued employment.

(3a) Reasons under paragraph 3(2)(a) which are the result of the fact that an employee, who has been employed for many years in the establishment or undertaking to which the establishment belongs, is of an older age may be used as justification for the dismissal of the older employee only where his continued employment is seriously prejudicial to the establishment's operational interests. In the case of an older employee, particular account shall be taken of the employee's many years of uninterrupted service in the establishment or undertaking to which the establishment belongs and of the inevitable difficulties associated with his reintegration into working life on account of his age both when considering whether his dismissal lacks social justification and when comparing social factors. The above shall apply to employees who at the time of their recruitment have reached the age of 50 only after the end of their second year of employment in the establishment or undertaking to which the establishment belongs.

(3c) If the works council has expressly objected to a dismissal in accordance with paragraph 3(2)(b), the dismissal of the employee shall lack social justification where a comparison of social factors indicates greater social hardship for the dismissed person than for other employees of the same establishment in the same section whose work the dismissed person is willing and able to do.

(4) The owner of the establishment shall notify the works council of the announcement of the dismissal. At the request of the dismissed employee, the works council may within two weeks of the notification of the announcement of the dismissal challenge that dismissal in court, provided that the works council has expressly objected to the intention to dismiss the employee concerned. If the works council does not accede to the employee's request, the employee may himself challenge the dismissal in court within a period of two weeks following the expiry of the time-limit applicable to the works council. If the works council has failed to express an opinion within the time-limit laid down in paragraph 1, the employee may himself challenge the dismissal in court within a period of two weeks following the receipt of the notice of dismissal; in these circumstances, a comparison of social factors within the meaning of paragraph 3b shall not be carried out. If the works council has expressly approved the intended dismissal within the time-limit set out in

paragraph 1, the employee may challenge the dismissal in court within a period of two weeks following the receipt of the notice of dismissal, save where paragraph 6 provides otherwise.

(4a) If the employee makes the application for annulment within the time-limit laid down but before a local court which lacks the relevant jurisdiction, that application shall be deemed to have been made in good time.

(5) In so far as the claimant relies on a ground for annulment laid down in paragraph 3(1) in the course of the proceedings for annulment, he shall substantiate that ground for annulment. The application for annulment shall be dismissed where, having weighed up all the facts, there is a greater likelihood that the decisive reason for the dismissal was a different reason which the employer has substantiated.

(6) If the works council has expressly approved the intended dismissal within the time-limit set out in paragraph 1, the dismissal cannot be challenged under paragraph 3(2).

(7) If the court grants the application for annulment, the dismissal shall not have legal effect.'

10. ***(Basic provision)*** *§ 212(1) shall read:*

'In establishments in which works council are meant to be established but they do not exist, the employee concerned may challenge his dismissal or redundancy within a period of two weeks following the receipt of the notice of dismissal or redundancy. § 210(4a) shall apply.'

11. ***(Basic provision)*** *The second and third sentences of § 213(1a) shall read:*

'The information shall be provided at such time, in such fashion and with such content as are appropriate and as enables the works council to undertake an in-depth assessment of the possible impact of the planned measure and to express an opinion on that planned measure; at the request of the works council, the owner of the establishment shall hold a discussion on the planned measure with the works council. The information shall include in particular:

1. the reason(s) for the measure in question;
2. the ensuing legal, economic and social consequences for the employees; and
3. the measures planned with regard to the employees.'

12. ***(Basic provision)*** *The first sentence of § 214(1) shall read:*

‘The owner of the establishment shall be obliged to provide information to the works council relating to planned changes to the establishment at such time, in such fashion and with such content as enables the works council to undertake an in-depth assessment of the possible impact of the planned measure and to express an opinion on that planned measure; at the request of the works council, the owner of the establishment shall hold a discussion on the organisation of the planned measure with the works council.’

13. ***(Basic provision)*** *The first sentence of § 218(3) shall read:*

‘The members of the works council shall not be restricted in the performance of their activities and or placed at a disadvantage on account of those activities, in particular with regard to remuneration, promotion prospects and in-house training and retraining measures.’

14. ***(directly applicable Federal law)*** *The following paragraph 45 shall be added to § 285:*

‘(45) **(directly applicable Federal law)** The legislation at Federal State level to implement § 154(3), § 158(1), § 160(5), § 172(1), § 173(4), § 201(1)(4), § 202(1)(16), § 210 including its heading, § 212(1), § 213(1a), § 214(1) and § 218(3) in the version of the Federal Law published in Federal Law Gazette I No 101/2010 shall be enacted within six months of the day following announcement.’

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