

Section 110 of the Austrian Labour Constitution Act (ArbVG) Participation in the supervisory board

Text of the Act

(Legislation as at: 25 March 2017)

(1) In companies operated in the legal form of a public limited company (*Aktiengesellschaft*), the central works council or, if only one establishment exists, the works council, shall appoint one employee representative to the supervisory board from among the works council members entitled to vote in works council elections, for each two supervisory board members appointed pursuant to the Austrian Stock Corporation Act (*Aktiengesetz*) 1965, Federal Law Gazette No. 98/1965, or the articles of association. If the number of supervisory board members appointed pursuant to the Stock Corporation Act 1965 or the articles of association is odd, an additional employee representative shall be appointed.

(2) The members of the central works council (works council) who were elected on the proposal of a group participating in the election shall have the right to nominate employee representatives for appointment to the supervisory board by majority decision, and to demand their removal from office. The number of employee representatives who can be nominated in this way shall correspond to the ratio between the number of persons entitled to propose candidates and the total number of members of the central works council (works council). The combining of lists is permitted. The nomination proposals shall ensure appropriate representation of blue-collar and white-collar workers and of the company's various establishments. When appointing and removing employee representatives, the central works council (works council) shall be bound by the proposals of the members entitled to make nominations. If the right of nomination is not exercised within three months, the central works council (works council) shall appoint the remaining employee representatives to the supervisory board by majority decision.

(3) The employee representatives on the supervisory board shall perform their duties on a voluntary basis; they shall be entitled to reimbursement of reasonable out-of-pocket expenses. They shall not be subject to the provisions of Section 86 para. 1, Section 87, Section 90 para. 1 second sentence and para. 2 and Section 98 of the Stock Corporation Act 1965, Federal Law Gazette No. 98/1965. Section 95 para. 2 first sentence of the Stock Corporation Act 1965 shall apply with the proviso that two employee representatives on the supervisory board shall also be able to demand a report on the affairs of the company, including its relations with group companies, at any time from the management board. To be valid, a decision by the supervisory board on the appointment and removal of management board members shall require, in addition to the general requirements on decision-making as laid down in the Stock Corporation Act, the consent of a majority of the members appointed pursuant to the Stock Corporation Act 1965 or the articles of association. The same applies to the election of the chairman and first vice-chairman of the supervisory board. In addition, the employee representatives on the supervisory board shall have the same rights and obligations as supervisory board members appointed pursuant to the Stock Corporation Act 1965 or the articles of association. Their membership shall end if they cease to be members of the works council or if they are removed by the body that appointed them. The central works council shall remove and re-appoint employee representatives on the supervisory board if the number of supervisory board members elected by the general meeting changes.

(4) The employee representatives on the supervisory board shall be entitled to nominate members with a seat and a vote to supervisory board committees according to the ratio specified in paragraph 1. This does not apply to committees that deal with relations between the company and members of the management board.

(5) Paragraphs 1 to 4 on the representation of employees on the supervisory board of public limited companies shall apply *mutatis mutandis* to:

1. limited liability companies (*Gesellschaften mit beschränkter Haftung*),
2. mutual insurance companies (*Versicherungsvereine auf Gegenseitigkeit*),
3. the Austrian Postal Savings Bank (*Österreichische Postsparkasse*),
4. cooperatives (*Genossenschaften*) that permanently employ at least 40 employees, and
5. savings banks (*Sparkassen*) within the meaning of the Savings Bank Act (*Sparkassengesetz*), Federal Law Gazette No. 64/1979, as amended.

(6) In the case of a public limited company (limited liability company, cooperative) that exercises uniform management (Section 15 para. 1 of the Stock Corporation Act 1965) over

1. public limited companies,
2. limited liability companies required to have a supervisory board,
3. limited liability companies within the meaning of Section 29 para. 2 no. 1 of the Limited Liability Companies Act (GmbHG),
4. cooperatives required to have a supervisory board,
5. European Companies,
6. European Cooperative Societies,

or that controls any of the aforementioned on the basis of a direct holding of more than 50%, the central works council (works council) of the controlling company and all members of all works councils appointed in the controlled companies (no. 1 to 4) shall participate in the appointment of employee representatives to the supervisory board in so far as the controlling company employs no more than half as many employees as all the controlled companies combined. The number of employee representatives appointed by the central works council (works council) of the

controlling company shall correspond to the ratio between the number of employees employed in the controlling company and the number of employees employed in the controlled companies, with a minimum of one employee representative. This right of the central works council (works council) of the controlling company to appoint an employee representative, regardless of the ratio between the number of employees employed in the controlling company and the number of employees employed in the controlled companies, shall not apply if the activity of the controlling company is limited to management of holdings in the controlled companies. The other employee representatives on the supervisory board shall be elected by secret ballot by all the works councils appointed in the controlled companies (no. 1 to 4) from among the works council members entitled to vote in works council elections, according to the principles of proportional representation; the provisions of Section 51 para. 3, Section 54 para. 2, Section 56 para. 1, Section 57, Section 59, Section 60, Section 62 no. 2 to 5, Section 64 para. 1 no. 1 to 3 and para. 4, Section 65 para. 1 first sentence and para. 2, Section 78 para. 4, Section 81 para. 1 second sentence, para. 2 and para. 4 and Section 82 para. 1 first sentence shall apply mutatis mutandis to this election. This paragraph does not apply to banks (Section 1 of the Banking Act (*Bankwesengesetz*), Federal Law Gazette No. 532/1993) and insurance companies.

(6a) Paragraph 6 shall also apply to controlling companies that are not required to establish a works council if the activity of said companies is not limited solely to the management of holdings in the controlled companies. The employee representatives on the supervisory board shall be elected by all the works councils appointed in the controlled companies subject to the provisions of the penultimate sentence of paragraph 6.

(6b) If a group representative body (Section 88a) has been set up in a group within the meaning of paragraphs 6 and 6a, said body shall appoint employee representatives to the supervisory board of the controlling company. The members of the group representative body who were supplied by the central works council (works council) of the controlling company shall be entitled to propose a number of employee representatives corresponding to the ratio between the number of employees employed in the controlling company and the number of employees employed in the controlled companies, with a minimum of one employee representative. Paragraph 6 third sentence shall apply mutatis mutandis. The other employee representatives shall be proposed by the members of the group representative body who were supplied by the central works councils (works councils) of the controlled companies. Paragraph 2 shall apply mutatis mutandis to exercise of the right of proposal within the respective group of group representative body members.

(7) If the law or articles of association require a supervisory board to be appointed within a limited liability company that is a personally liable partner in a limited partnership (*Kommanditgesellschaft*), the employee representatives on the supervisory board of the limited liability company shall be elected in a secret ballot by all members of all the works councils set up in companies belonging to the limited liability company and the limited partnership, from among the works council members entitled to vote in works council elections, according to the principles of proportional representation. The provisions of Section 51 para. 3, Section 54 para. 2, Section 56 para. 1, Section 57, Section 59, Section 60, Section 62 no. 2 to 5, Section 64 para. 1, no. 1 to 3 and para. 4, Section 65 para. 1 first sentence and para. 2, Section 78 para. 4, Section 81 para. 1 second sentence, para. 2 and para. 4 as well as Section 82 para. 1 first sentence shall apply mutatis mutandis.

(8) Employee participation in the Board of Trustees of the Austrian Broadcasting Corporation (ORF) shall be governed by the provisions of the Federal Act on the Austrian Broadcasting Corporation (*ORF-Gesetz*).

(Note.: Paragraph 9 repealed by Article IV para. 1, Federal Law Gazette No. 321/1987)

Decisions concerning Section 110 ArbVG

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- [Decisions of the Austrian Supreme Court](#) (since 09/1905)
- [Decisions of the Austrian Constitutional Court](#) (since 01/1980)

Decisions concerning Section 110 para. 1 ArbVG

- [Decisions of the Austrian Supreme Court](#) (since 09/1905)

Decisions concerning Section 110 para. 2 ArbVG

- [Decisions of the Austrian Constitutional Court](#) (since 01/1980)

Decisions concerning Section 110 para. 3 ArbVG

- [Decisions of the Austrian Supreme Court](#) (since 09/1905)
- [Decisions of the Austrian Supreme Administrative Court](#) (since 02/1948)

Decisions concerning Section 110 para. 5 ArbVG

- [Decisions of the Austrian Supreme Court](#) (since 09/1905)