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***The Continental Approach: Dealing with Workers,
Works Councils and Unions in Austria***

Trade Unions - Works Councils

Trade Unions:

- Principle of voluntary membership
- Competent for bargaining collective labor agreements
- Supplemented by Chambers of Labor: Representative bodies of the blue and white collar workers with compulsory membership
- Mainly competent for:
Bargaining collective labor agreements, strikes, individual advice of members in labor law matters, representation before the courts

Works Councils

Obligation to set up works councils if at minimum five persons are employed, but:

- The law does not provide for sanctions in case no works council bodies are set up.
- Works councils have various participation rights, from the right to give advice and information to co-decision rights in practically all areas of the individual and collective labor law.

Collective bargaining agreements and works agreements

- Collective bargaining agreements: Agreements between trade union and employer associations on an interworks level
- Principle of the normative effect: Collective bargaining agreements have the same effect as laws and therefore are immediately enforceable by the individual employee who is within their scope of application

- No need for an individual agreement
- Principle of the outsider effect: Collective bargaining agreements are also valid for employees who are not trade union members
- Duty to maintain industrial peace: Employer associations and employee associations must not violate the regulations of collective bargaining agreements while such agreements are in force

Works agreements

- Agreements on in-plant level between works council and employer
- They are either voluntary or may be enforced in court
- Wide variety of matters to be regulated, from the use of computers to bans on smoking, to working time regulations, premium regulations, personnel appraisal systems, disciplinary regulations, etc., ...
- On an in-plant level, works agreements have the same effect as laws

Role of the Employees' representatives in transfers of enterprises and in reorganizations

Trade unions: Their role is restricted to a political function within the legislation, the support of specific enterprises by the trade union is rare

Works councils: Requirement to timely inform the works councils of reorganizations which have negative consequences for the employees, possibility of enforcing a social compensation plan: If no agreement is reached, an arbitration body set up with the competent court will decide the issue

In case of transfers of enterprises: Principle of automatic takeover, *i.e.* the employment relations continue without any change and pass on to the new owner

Courts and other forms of dispute settlement

- Principle of the dominance of dispute settlement by court: Labor law disputes are often taken to courts having competence for all kinds of disputes, be they of an individual-right or collective-right nature, as labor and social courts
- Both employees and employers may be represented by their own representative bodies or by attorneys at law or may represent themselves
- Time-consuming form of dispute settlement

Courts and other forms of dispute settlement

- In the field of collective right: Dominance of out-of-court, in-plant dispute settlement.
- Alternative forms of dispute settlement such as arbitration tribunals or mediation hardly play any part.
- The unlawful termination of employment relations may optionally be fought against with actions for damages or actions for reemployment.