

## Gesetz über Sprecherausschüsse der leitenden Angestellten (Sprecherausschussgesetz – SprAuG) Executives' Committee Act

### A General View

#### 1. Scope

The law applies to establishments and companies in the private sector of the economy with at least ten executives as a rule. This law does not apply to federal, state-owned and municipal administrative authorities and establishments as well as other corporations, institutions and foundations under public law. Similarly, the law does not apply to religious communities and their charitable and educational institutions.

#### 2. Organizational structures for the executives' committee

The **executives' committee at the establishment level** represents the normal legal case. Executives of an establishment where an executive committee cannot be formed (with less than ten executives employed by the company) are assigned to the executives' committee of the nearest establishment.

Several executives' committees within the same company mandatorily form a **joint executives' committee**, which is responsible for the handling of issues at the company level.

Instead of several executives' committees at the establishment level executive employees may also elect a **company-level executives' committee** for the company as a whole. This requires a resolution passed by a majority of the companies' executive staff.

Within (industrial) conglomerates – however this is optional - an **executives' committee for the whole conglomerate** may be formed, which consists of representatives from the executives' committees in the respective individual companies.

The number of establishment executives' committee members or, alternately, of company executives' committee members, depends on the number of executives in the establishment or, respectively, in the company. The size of the executives'

committee is between one and seven members (maximum) depending on the number of executives in the company.

### 3. Periodical elections and term of office

As a rule elections of the executives' committees take place every four years, between March 1st and 31. May. They are to be initiated simultaneously with the elections of the works councils. The electoral rhythm of 1994, 1998, 2002 and so on results from the first ever elections resulting from the Executives' Committee Act in Spring 1990.

The election of the executives' committee may also take place at dates other than those mentioned above, for example if no executives' committee yet exists or in case the executives' committee decides to resign by a majority decision of its members. In these cases a term of office may be shorter or longer than four years. This depends on the fact whether a new election would already be due at the next election date or the election date following the next regular election (see above).

### 4. First time election of the executives' committee

If an executives' committee is elected for the first time (e.g. in a newly founded company), a **preliminary voting procedure** among the executive staff precedes the actual election. In this preliminary voting procedure a majority of the establishment's executive staff (and correspondingly, in the case of a company executives' committee, the majority of the company's executive staff) has to declare themselves in favour of the election of an executives' committee. The preliminary voting procedure is lead by the election committee, which must be elected beforehand in an assembly of the executive staff. Hence, the first time election of the executives' committee takes place in the following steps:

- a) At least three executives call an **assembly** in order to elect the **election committee**. The right to attend the assembly is restricted to those executives, who have been classified as executive staff members, either on the occasion of the last election of the works council, or, alternately, on the occasion of the last election of the supervisory board or also by court decision.
- b) The assembly elects an election committee by a majority of the attending executives.
- c) The election committee conducts a **vote** by the executives on whether an executives' committee is to be elected or not.

The group of employees (the executive staff) entitled to vote is identical with the group according to a).

- d) If the vote on the executives' committee is positive, the election committee initiates the **election of the executives' committee**. In case the voter's reply is negative, the duty of the election committee ends here.

## 5. Principles of cooperation

The executives' committee cooperates with the employer in a mutually trusting relationship, to the good of the executive staff and the establishment. This obligation concerns both sides. Before a works agreement or other agreements that may concern the legal interests of the executive staff are signed with the works council, the executives' committee is to be heard in time by the employer.

The executives' committee and the works council may invite each other to their respective meetings. This also applies to individual members of the executives' committee and the works council. Once a year a joint meeting of the executives' committee and the works council should take place.

## 6. Legal position of the executives' committee's members

The members of the executives' committee perform their office duties in an honorary capacity. The regular term of office is four years. Members of the executives' committee must not be disturbed or obstructed in the execution of their duties. Likewise, they must neither be put at a disadvantage nor be favoured because of their function. The executives' committee has the right to hold its meetings during working hours as a rule.

## 7. Responsibilities and right of participation of the executives' committee

The most important areas of responsibility of the executives' committee are:

a) The executives' committee is in charge of **matters of common interest** to the executive staff and has to be informed comprehensively and promptly by the employer in order to perform its duties. This applies especially in cases when changes in the salary structure and other general working conditions are intended. The employer is expected to discuss such measures with the executives' committee. The executives' committee and the employer together have to ensure that all executives are treated according to principles of fairness.

b) Individual executives may consult the executives' committee and ask for support and mediation in order to pursue their own **personal matters** vis-à-vis the employer. Before a notice of dismissal can be given to an executive the executives' committee is to be heard. Thus, dismissals are effective only if the executives' committee was consulted in advance.

c) The employer has to inform the executives' committee at least once a year on **economic matters**. In the case of proposed changes in operations that may involve economic disadvantages for the executives, the employer has to discuss compensatory or mitigating measures with the executives' committee.

## 8. Agreements between the executives' committee and the employer

Executives' committee and employer may settle the contents, the conclusion or the termination of the executives' employment relations. As a rule the content of these

guidelines becomes part of the individual contracts of employment, by means of individual agreements between the employer and the executives.

However, in the case the employer and the executives' committee expressly stipulate that the contents of a guideline are effective directly and imperatively, an act of assignment to every single employment contract is not necessary. Such a guideline has the character of statutory law. Of course, deviating arrangements for individual contracts, which are more favourable than the guideline agreement have priority.

## **9. Plenary assembly of the executive staff**

Once a year a plenary meeting of the executive staff shall be convoked, in which the executives' committee reports on its activities. In this plenary meeting the employer has to report on matters concerning the executive staff and the company's economic situation and development. The assembly has the right to submit motions to the executives' committee and can express its opinion on the decisions of the executives' committee.