

## Austria

# Employment protection in relation to business transfers

<b>Phase</b>	Employment Law Harmonisation Act
<b>Native name</b>	Arbeitsvertragsrechtsanpassungsgesetz (AVRAG)
<b>Type</b>	Employment protection in relation to business transfers
<b>Added to database</b>	19 September 2016
<b>Access online</b>	<a href="#">Click here to access online</a>

## Article

3, 4, 5

## Description

Transfer of business functions ('Funktionsnachfolge') do not qualify under this legislation, as the law only applies to the change of ownership ('Betriebsübergang') of an undertaking, business or part of a business. This is usually distinguished by the transfer of licences, patents, copyright, logistics systems, specific software or the transfer of more than 10% of employees.

Austrian courts have interpreted the meaning of transfer of undertakings in accordance with the European Court of Justice and use the following indicators:

- the transfer covers an economic entity;
- the undertaking retains its identity as an economic entity following the transaction;
- tangible and/or intangible assets are transferred;
- customers are transferred;
- a significant number of employees (in number or expertise) are taken over.

According to [AVRAG](#) [§3] (AVRAG)), the new employer must take over all rights and obligations contained in each individual employment contract (including temporary and fixed-term contracts), if not indicated otherwise due to changes in the affiliation of the

collective agreement ([AVRAG § 4](#)), the occupational pension schemes ([AVRAG § 5](#)) or work agreements ([ArbVG, §§ 32, 33](#)). Any changes to an employment contract can only be enacted by mutual agreement. However, this rule is not applicable in the case of compensation, which cannot be decreased under the new contract. Any liabilities resulting from the contract are also transferred. Obligations which arise during the period prior to transfer, the transferor and the transferee are jointly responsible for. If the transferee is subject to a collective agreement, this agreement tends to take precedence over agreements to which the transferor is subject, however, if the transferee is not subject to any collective agreement, the former agreement remains applicable. If the affiliation of collective agreements is changing, the favourability principle ('Günstigkeitsprinzip') does not apply except for wages for normal working hours. If the collective or work agreement after the transfer deteriorates working conditions substantially, employees are entitled to terminate the contract within one month without losing entitlements to benefits.

If dismissals occur within 6 to 9 months of the transfer, and the employee has some evidence that the dismissal was carried out in relation to the transfer, they can bring an action for declaratory judgement that the dismissal was based on the transfer and is therefore void.

All employees are covered by the act, including apprentices and executive staff members. All government employees are excluded.

Employees can object against the transfer in two cases ([AVRAG §3 \(4\)](#)). First, if the new owner refuses to agree to special protection against dismissal as detailed in a collective agreement that applied at the time of the transfer. Second, if the new owner refuses to take over the occupational pension fund. The employee must raise an objection within one month of such a refusal. In this case, the contract with the transferor remains intact.

The employer may refuse to take over a company pension commitment in some cases, for instance if the deal was an assets deal and not a case of universal succession. The employee is then entitled to object, and their employment contract is, in effect, not transferred.

## Commentary

According to AVRAG §3 (2), regulations for changes of ownership do not apply in cases of reorganisation procedures without self-administration ('Sanierungsverfahren ohne Eigenverwaltung') as well as bankruptcy proceedings.

Areas of legal uncertainty regarding transfers of undertakings in Austria include:

- whether certain circumstances and procedures are deemed to be transfers of undertakings which are subject to the Employment Law Harmonisation Act,
- what kinds of agreements are considered void because they bypass mandatory protection provisions.

## Additional metadata

<b>Cost covered by</b>	None
<b>Involved actors other than national government</b>	National government
<b>Involvement (others)</b>	None
<b>Thresholds</b>	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

## Sources

- [Arbeitsvertragsrechtsanpassungsgesetz \(AVRAG\) - § 3](#)~~~  
[Arbeitsvertragsrechtsanpassungsgesetz \(AVRAG\) - § 4](#)~~~  
[Arbeitsvertragsrechtsanpassungsgesetz \(AVRAG\) - § 5](#)~~~ Brodil, W., Risak, M. and Wolf, C. (2016), Arbeitsrecht in Grundzügen, Ed. 9, Wien: LexisNexis~~~ Ius Laboris (2009), Transfers of Undertakings Guide, Brussels~~~ [Austrian Chamber of Labour \(Arbeiterkammer Österreich\): Eigentümerwechsel \(Betriebsübergang\)](#)~~~ [Austrian Economic Chamber \(Wirtschaftskammer Österreich\): Betriebsübergang](#)~~~

## Citation

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