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104. Federal Law: Equal Opportunities Act for Women and Men on Supervisory Boards – GFMA-G

(NR: GP XXV IA 2226/A AB 1742 p. 188. BR: AB 9877 p. 871.)

104. Federal Act amending the Stock Corporation Act, the Limited Liability Company Act, the SE Act, the Cooperative Society Act, and the Labor Constitution Act to achieve equal representation of women and men on supervisory boards (Equal Opportunities Act for Women and Men on Supervisory Boards – GFMA-G)

The National Council has decided:

Article 1

Amendment to the Stock Corporation Act – AktG

The Federal Act on Public Limited Companies, Federal Law Gazette No. 98/1965, last amended by the Federal Act Federal Law Gazette I No. 20/2017, is amended as follows:

1. The following paragraphs 7 to 9 are added to Section 86:

"(7)In listed companies and in companies with more than 1,000 permanent employees, the supervisory board shall consist of at least 30 percent women and at least 30 percent men, provided the supervisory board has at least six members (shareholder representatives) and the workforce comprises at least 20 percent female and male employees. Figures shall be rounded to the nearest whole number; rounding upwards shall be used if the calculated minimum proportion has at least five decimal places.

(8)The election of members of the Supervisory Board by the Annual General Meeting and the appointment of members to the Supervisory Board in violation of the minimum quota requirement in paragraph 7 are void. If an election is declared void for other reasons, elections held in the meantime do not violate the minimum quota requirement to that extent.

(9)The minimum quota must be met by the Supervisory Board as a whole. If the majority of the Supervisory Board members appointed pursuant to this Federal Act or the Articles of Association (capital representatives) or the majority of the Supervisory Board members

delegated pursuant to Section 110 of the Labor Constitution Act (ArbVG) object to the overall fulfillment of the minimum quota to the Chairman of the Supervisory Board at least six weeks before an election or delegation, the minimum quota for this election or delegation must be met separately by the capital representatives and the employee representatives. The capital representatives and the employee representatives may agree to waive the right of objection for a specific period or each declare that they will maintain an objection; this must be communicated to the Chairman of the Supervisory Board in each case.

2. In Section 108 (1), the following sentence is inserted after the first sentence:

“In this context, consideration must be given to Section 86, Paragraphs 7 and 9, as well as Section 87, Paragraph 2a.”

3. In Section 108 (2), the following sentence is inserted after the first sentence:

"In companies to which Section 86 (7) applies, it must also be stated how many of the seats on the supervisory board must at least be occupied by women and how many of the seats on the supervisory board must be occupied by men in order to meet the minimum proportion requirement pursuant to Section 86 (7) and whether an objection has been raised pursuant to Section 86 (9)."

4. The following sentence shall be added to Section 110 (2):

"In companies to which Section 86 (7) applies, the company must also state how many of the seats on the supervisory board must at least be occupied by women and men in order to meet the minimum proportion requirement pursuant to Section 86 (7) and whether an objection has been raised pursuant to Section 86 (9)."

5. The following paragraph 38 is added to Section 262:

"(38)Section 86 (7) to (9), Section 108 (1) and (2), and Section 110 (2) in the version of the Federal Law Gazette I No. 104/2017 shall enter into force on January 1, 2018. Section 86 (7) to (9) shall apply to elections and appointments to the Supervisory Board that take place after December 31, 2017. Existing Supervisory Board mandates remain unaffected; the minimum quota requirement must be observed when replacing substitute members elected or appointed before January 1, 2018.

Article 2

Amendment to the GmbH Act – GmbHG

The Law of 6 March 1906 on Limited Liability Companies, RGBI. No. 58/1906, last amended by the Federal Law BGBl. I No. 40/2017, is amended as follows:

1. The following third sentence is added to Section 30:

“Section 86 (7) to (9) AktG shall apply mutatis mutandis.”

2. The following paragraph 24 is added to Section 127:

"(24)Section 30, third sentence, as amended by Federal Law Gazette I No. 104/2017, shall enter into force on January 1, 2018, and shall apply to elections and appointments to the Supervisory

Board that take place after December 31, 2017. Existing Supervisory Board mandates remain unaffected; the minimum quota requirement shall be observed when replacing substitute members elected or appointed before January 1, 2018.

Article 3

Amendment to the SE Act – SEG

The Act on the Statute for a European Company (Societas Europaea – SE), Federal Law Gazette I No. 67/2004, last amended by Federal Law Gazette I No. 43/2016, is amended as follows:

1. In Section 45 (3), the phrase “paragraphs 3 to 6 AktG” is replaced by the phrase “paragraphs 3 to 9 AktG” .

2. The following paragraph 11 is added to Section 67:

"(11)Section 45 (3) in the version of the Federal Law Gazette I No. 104/2017 shall enter into force on January 1, 2018, and shall apply to elections and appointments to the Administrative Board that take place after December 31, 2017. Existing Administrative Board mandates remain unaffected; the minimum quota requirement shall be observed when replacing substitute members elected or appointed before January 1, 2018.

Article 4

Amendment to the Cooperatives Act – GenG

The Law of 9 April 1873 on Commercial and Economic Cooperatives, RGBL No. 70/1873, last amended by the Federal Law BGBL I No. 43/2016, is amended as follows:

1. The following sentence is inserted after the second sentence of Section 24 (1):

“Section 86 (7) to (9) AktG shall apply mutatis mutandis.”

2. The following Section 94i is inserted after Section 94h:

“ § 94i.

Section 24, paragraph 1, third sentence, as amended by the Federal Law Gazette I No. 104/2017, shall enter into force on January 1, 2018, and shall apply to elections and appointments to the Supervisory Board that take place after December 31, 2017. Existing Supervisory Board mandates remain unaffected; the minimum quota requirement shall be observed when replacing substitute members elected or appointed before January 1, 2018.

Article 5

Amendment to the Labour Constitution Act – ArbVG

The Labour Constitution Act, Federal Law Gazette No. 22/1974, last amended by Federal Law Gazette I No. 37/2017, is amended as follows:

1. Section 110 paragraph 1 reads:

“ § 110.

(1) In companies managed as a stock corporation, the central works council or, if there is only one company, the works council shall appoint one employee representative to the supervisory board from among the works council members who are entitled to active voting rights for the works council for every two supervisory board members to be appointed under the Stock Corporation Act 1965, Federal Law Gazette No. 98/1965, or the articles of association. If the number of supervisory board members to be appointed under the Stock Corporation Act 1965 or the articles of association is odd, an additional employee representative shall be appointed.

2. After Section 110 Paragraph 2, the following Paragraphs 2a to 2d are inserted:

"(2a) In listed companies and in companies that permanently employ more than 1,000 employees, paragraph 1 shall apply, with the proviso that each of the two genders must be represented to the extent of at least 30 percent among the employee representatives appointed to the supervisory board, provided that at least three employee representatives are to be appointed to the supervisory board and the workforce consists of at least 20 percent of female and male employees.

(2b) In companies pursuant to paragraph 2a, the right of nomination pursuant to paragraph 2 must be exercised in such a way as to ensure that both genders are represented in at least 30 percent of the total. If the candidate groups do not exercise their right of nomination in this way, the seats that are to be filled first and which result in the minimum proportion of 30 percent of female and male employees on the supervisory board not being achieved will remain vacant until a legally valid nomination is submitted; unless the minimum proportion is met pursuant to Section 86 paragraph 9 of the German Stock Corporation Act (AktG) (overall consideration). Subsequent nominations for the remaining vacant seats to meet the minimum proportion are possible at any time.

(2c) When calculating the minimum share bid, the number of people must be rounded to the nearest whole number; the number must be rounded up if the calculated minimum share has at least five decimal places.

(2d) In companies pursuant to paragraph 2a, the nomination of employee representatives for appointment to the supervisory board may be carried out in a manner deviating from the procedure pursuant to paragraph 2, provided that the central works council (works council) adopts a corresponding unanimous decision and the minimum proportion of employees to be appointed pursuant to paragraph 2a is maintained."

3. Section 110 paragraph 6, second sentence reads:

"The central works council (works council) of the controlling undertaking shall, subject to the mutatis mutandis application of paragraphs 2a to 2d, appoint as many employee representatives as corresponds to the ratio of the number of employees employed in the controlling undertaking to the number of employees employed in the controlled undertakings, but at least one employee representative."

4. Section 110 paragraph 6b last sentence reads:

"Paragraphs 2 to 2d shall apply mutatis mutandis to the exercise of the right of nomination within the respective group of Group Representatives."

5. After Section 247 Paragraph 1, the following Paragraph 1a is inserted:

"(1a)When Austrian members are appointed to the supervisory or administrative board of the European Company, Section 110 (2a) to (2d) shall apply mutatis mutandis."

6. The following paragraph 32 is added to Section 264:

"(32)Sections 110 (1), (2a) to (2d), (6) and (6b) as well as Section 247 (1a) in the version of the Federal Law Gazette I No. 104/2017 shall enter into force on 1 January 2018 and shall apply to the delegation of employee representatives by employee bodies whose election takes place after 31 December 2017."

Van der Bellen

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