

Act on the involvement of employees in a European company (SE Participation Act / SE-Beteiligungsgesetz - SEBG)

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This law serves to implement Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (Official Journal L 294 P. 22).

CONTENTS

Act on the involvement of employees in a European company (SE Participation Act / SE-Beteiligungsgesetz - SEBG)	1
Part 1 General provisions	3
Article 1 OBJECTIVE	3
Article 2 Definitions	3
Article 3 Geographic Scope	5
Part 2 Special negotiating body	5
Chapter 1 Formation and composition	5
Article 4 Notification provided by the management bodies	5
Article 5 Composition of the special negotiating body	5
Article 6 Personal requirements regarding the members of the special negotiating body accruing to Germany	6
Article 7 Distribution of seats on the special negotiating body allocated to Germany	6
Chapter 2 Elective body	7
Article 8 Composition of the elective body; direct vote	7
Article 9 Convening the elective body	8
Article 10 Election of the members of the special negotiating body	8
Chapter 3 Negotiation procedure	9
Article 11 Notification concerning the members of the special negotiating body	9
Article 12 Meetings; rules of procedure	9
Article 13 Cooperation between the special negotiating body and management bodies	9
Article 14 Experts and representatives of suitable outside organisations	9

Article 15 Adoption of resolutions by the special negotiating body	10
Article 16 Decision not to open or to terminate negotiations	10
Article 17 Written record	10
Article 18 Resumption of negotiations	11
Article 19 Costs relating to the special negotiating body	11
Article 20 Duration of negotiations	11
Part 3 Involvement of employees in the SE	12
Chapter 1 Involvement of employees by virtue of an agreement	12
Article 21 Content of the agreement	12
Chapter 2 Involvement of employees by operation of law	12
Section 1 SE works council by operation of law	12
Article 22 Prerequisites	13
Article 23 Establishment of the SE works council	13
Article 24 Meetings and resolutions	13
Article 25 Review of the composition of the SE works council	14
Article 26 Resolution to re-open negotiations	14
Article 27 Responsibilities of the SE works council	14
Article 28 Annual information and consultation	14
Article 29 Information and consultation on exceptional circumstances	15
Article 30 Notification by the SE works council	15
Article 31 Further training	15
Article 32 Experts	15
Article 33 Costs and material expenses	16
Section 2 Participation by operation of law	16
Article 34 Special requirements	16
Article 35 Extent of participation	16
Article 36 Allocation of seats and appointments	17
Article 37 Recall and appeals	17
Article 38 Legal position; internal organisation	18
Section 3 Protection of certain interests	18

Article 39 Enterprises and establishments with political, religious, scientific, educational, charitable or other aims	18
Part 4 Principals of cooperation; protective provisions	18
Article 40 Cooperation based on trust	18
Article 41 Secrecy; confidentiality.....	19
Article 42 Protection of employee representative.....	19
Article 43 Prohibition of abusive practices.....	20
Article 44 Protection against interference during the establishment and subsequent activities	20
Part 5 Penalties and fines; final provision	20
Article 45 Penalties	20
Article 46 Fines	21
Article 47 Application of national law	21

PART 1 GENERAL PROVISIONS

ARTICLE 1 OBJECTIVE

(1) This Act governs the involvement of employees in a European company (*Societas Europaea*, hereinafter referred to as SE), which is the subject of Council Regulation (EC) No 2157/2001 on the Statute for a European company (Official Journal L 294 P. 1). The purpose of this Act is to safeguard the acquired rights of employees in an SE to involvement in company decisions. The existing rights of participation in the companies forming the European company are definitive for determining the nature of the employees' participation rights in the SE.

(2) To safeguard the rights to transnational information, consultation, co-determination and other forms of employee involvement, an agreement on the involvement of employees in the SE shall be concluded. Where no such agreement is made, the involvement of employees in the SE shall be ensured by operation of law.

(3) The provisions of this Act and the agreement to be concluded in accordance with paragraph (2) are to be interpreted so that the objectives of the European Community to ensure the involvement of employees in the SE are promoted.

(4) The principles set out in paragraphs (1) to (3) shall also apply to structural changes to an established SE and to the impact of such changes on the concerned companies and their employees.

ARTICLE 2 DEFINITIONS

(1) The definition of an "employee" is based on the legal provisions and customs of the respective Member States. Employees of a German company or establishment shall comprise wage earners and

salaried employees, including persons undergoing vocational training and the executive staff referred to in the second sentence of Article 5 paragraph (3) of the Works Constitution Act (*Betriebsverfassungsgesetz – BetrVG*) irrespective of whether they are employed indoors, in the field, or as teleworkers. Home workers who work primarily for the company or establishment shall also be deemed to be employees.

(2) “Participating companies” mean the companies directly participating in the formation of an SE.

(3) “Subsidiaries” mean legally independent companies over which another company may exercise a controlling influence within the meaning of Article 3 paragraphs (2) to (7) of Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purpose of informing and consulting employees (Official Journal L 254 P. 0064). Article 6 paragraphs (2) to (4) of the European Works Council Act of 28 October 1996 (Federal Law Gazette (*BGBl.*), I P. 1548, 2022) shall apply.

(4) “Concerned subsidiaries” or “concerned establishments” mean subsidiaries or establishments of a participating company which are proposed to become subsidiaries or establishments of the SE.

(5) “Management” means the body of the companies participating directly in the formation of the companies of the SE, or of the SE itself, which manages the business of the company and is authorized to represent the company. In the case of participating companies, this is the management body or administrative body; in the SE it is the management body or the managing directors.

(6) “Employee representative body” means a body that represents employees in accordance with the Works Constitution Act (works council, company works council, group works council or a representative body formed in accordance with Article 3 paragraph (1) No’s 1 to 3 of the Works Constitution Act).

(7) “SE works council” means the representative body of the SE employees which has been established by an agreement in accordance with Article 21 or by operation of law according to Articles 22 to 33, in order to exercise the rights to information and consultation held by the employees of the SE, its subsidiaries and establishments, and if agreed, participation rights and other rights of involvement with regard to the SE.

(8) “Involvement of employees” means any mechanism, including information, consultation and participation – through which employee representatives may influence decisions to be taken within the company.

(9) “Rights of involvement” mean the rights accruing to employees and their representatives regarding information, consultation, participation and other forms of involvement. This may also include the exercise of these rights in the SE’s group companies.

(10) “Information” means information provided to the SE works council or other employee representatives by the management of the SE on matters concerning the SE itself or any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-taking bodies in a single Member State. The time, manner and content of the information is to be provided in such a way so that it is possible for the employee representatives to conduct an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the SE management.

(11) “Consultation” means the establishment of a dialogue and an exchange of views between the SE works council or other employee representatives, and the SE management or any other competent management level vested with its own decision-making powers. The time, manner and content of the consultation must allow the SE works council to express an opinion on measures planned by the SE management, so that it may be taken into account in the decision-making process within the SE.

(12) "Participation" means the influence of employees in the affairs of a company by way of:

1. the exercise of the right to elect or appoint some of the members of the company's supervisory or administrative organ; or
2. the exercise of the right to recommend or reject the appointment of some or all of the members of the supervisory or administrative organ of the company.

ARTICLE 3 GEOGRAPHIC SCOPE

(1) This Act applies to any SE with a registered office in Germany. Irrespective of where the SE has its registered office, it also applies to SE employees who work in Germany as well as to participating companies, concerned subsidiaries and concerned establishments with registered offices in Germany.

(2) Within the meaning of this Act, "Member States" mean the Member States of the European Union and the contracting parties of the Agreement on the European Economic Area.

PART 2 SPECIAL NEGOTIATING BODY

CHAPTER 1 FORMATION AND COMPOSITION

ARTICLE 4 NOTIFICATION PROVIDED BY THE MANAGEMENT BODIES

(1) The special negotiating body is to be established on the basis of a written request of the management bodies. It is tasked with concluding an agreement with the management bodies on employee involvement in the SE.

(2) Where the management bodies proposes to form an SE, they shall notify the employee representative bodies and the representative bodies for executive staff in the participating companies, concerned subsidiaries and concerned establishments about the proposed formation. Where no employee representative body exists, such notification is to be sent to the employees. This notification shall be unsolicited and given without undue delay after the disclosure of the proposed merger, of the proposed formation of a holding company, or the draft terms of conversion or after the conclusion of an agreement on the formation of a subsidiary.

(3) In particular, the notification shall cover

1. the identity and structure of the participating companies, concerned subsidiaries and concerned establishments and their distribution among the Member States;
2. the employee representative bodies existing in these companies and establishments;
3. the number of persons employed in these companies and establishments respectively, and the total number of employees in a given Member State calculated on this basis;
4. the number of employees having participation rights in the bodies of these companies.

(4) The applicable date for determining the number of employees is the date of the notification given in accordance with paragraph (2) above.

ARTICLE 5 COMPOSITION OF THE SPECIAL NEGOTIATING BODY

(1) Members shall be elected or appointed to the special negotiating body on behalf of the employees of the participating companies, concerned subsidiaries and concerned establishments employed in every Member State. For every share of the employees in a Member State comprising 10% of the total number of employees of the participating companies and concerned subsidiaries or concerned

establishments in a Member State or a fraction thereof, one member from this Member State is to be elected or appointed to the special negotiating body.

(2) If the SE is formed by way of a merger, then so many additional members are to be elected or appointed to the special negotiating body, as are necessary in order to ensure that every participating company, which is registered and employs persons in the Member State concerned and which will cease to exist as a separate legal entity as a consequence of the proposed registration of the SE, is represented in the special negotiating body by at least one member. This may not lead to double representation of the employees concerned.

(3) The number of additional members may not exceed 20% of the number of members arising from paragraph (1). Where not every company which is to be given special consideration under paragraph (2) can be represented by an additional member in the special negotiating body, these companies shall be taken into consideration in decreasing order of the number of persons they employ. In doing so, it must be ensured that no Member State receives multiple additional seats unless all other Member States in which the companies to be given special consideration in accordance with paragraph (2) are located have been allocated a seat.

(4) Where, during the term of office of the special negotiating body, changes in the structure of or the number of employees in the participating companies, concerned subsidiaries or concerned establishments occur which would alter the composition of the special negotiating body, the latter shall be reconstituted accordingly. The competent management bodies have to notify the special negotiating body about such changes without undue delay. Article 4 paragraphs (2) to (4) apply *mutatis mutandis*.

ARTICLE 6 PERSONAL REQUIREMENTS REGARDING THE MEMBERS OF THE SPECIAL NEGOTIATING BODY ACCRUING TO GERMANY

(1) The personal requirements regarding the members of the special negotiating body are determined by the respective provisions of the Member States in which they are elected or appointed.

(2) In Germany, employees of the companies and establishments and trade union representatives are eligible for election as members of the special negotiating body. Men and women are to be elected in proportion to their share of the total number of employees. A substitute member is to be elected for every member.

(3) Where more than two members from Germany belong to the special negotiating body, every third member shall be a representative of a trade union which is represented in a company participating in the formation of the SE.

(4) Where more than six members from Germany belong to the special negotiating body, at least every seventh member shall be an executive staff member.

ARTICLE 7 DISTRIBUTION OF SEATS ON THE SPECIAL NEGOTIATING BODY ALLOCATED TO GERMANY

(1) Members of the special negotiating body formed in accordance with Article 5 shall be elected or appointed in accordance with the respective provisions of the Member States.

(2) When the members of the special negotiating body allocated to Germany are elected, all of the companies with registered offices in Germany, which are involved in the formation of the SE and which have employees in Germany, shall be represented by at least one member on the special negotiating body.

(3) Where the number of member of the special negotiating body accruing to Germany is lower than the number of companies with a registered office in Germany which are participating in the formation of the SE, and which have employees within Germany, the companies shall be allocated one seat in decreasing order of the number of persons employed by them.

(4) Where the number of members of the special negotiating body accruing to Germany is higher than the number of companies with a registered office in Germany which are participating in the formation of the SE, and which have employees within Germany, any seats remaining after the allocation in accordance with paragraph (2) shall be distributed to the participating companies in accordance with the D'Hondt highest averages method.

(5) Where no companies with a registered office in Germany are participating in the formation of the SE, and only establishments of foreign companies are affected, paragraphs (2) to (4) shall apply *mutatis mutandis*.

CHAPTER 2 ELECTIVE BODY

ARTICLE 8 COMPOSITION OF THE ELECTIVE BODY; DIRECT VOTE

(1) The members of the special negotiating body who, pursuant to this Act or the laws of another Member State, are allocated to the persons employed within Germany in the companies participating in the formation of the SE, concerned subsidiaries and concerned establishments shall be chosen by an elective body through a secret and direct ballot. In the circumstances referred to in Article 6 paragraph (3), every third member to be elected shall be proposed by a trade union represented in one of the companies participating in the formation of the SE. Where only one nomination for election is made, it must contain at least twice as many candidates as there are trade union representatives to be elected. Every nomination from a trade union must be signed by a trade union representative. In the circumstances referred to in Article 6 paragraph (4), every seventh member is to be elected upon the nomination of the representative body for executive staff; the third sentence applies *mutatis mutandis*. Where no representative body for executive staff exists in a participating company or participating group of companies, executive staff members may make nominations; a nomination must be signed by one-twentieth or 50 of the executive staff eligible for election.

(2) Where only one group of companies in Germany is participating in the formation of the SE, the elective body shall comprise the members of the group works council or, insofar as there is no such body, from the members of the company works councils, or insofar as no such body exists in a company, from the members of the works council. Establishments and group companies with no works council shall also be represented by the group works council, or the company works council, or the works council.

(3) Where only one company from within Germany is participating in the formation of an SE, the elective body shall comprise the members of the company works council, or where no such body exists, the members of the works council. Establishments of a company which have no works council shall also be represented by the company works council or the works council.

(4) Where only one establishment from Germany is affected by the formation of an SE, the elective body comprises the members of the works council.

(5) Where one or more groups of companies or non-affiliated companies are involved in the formation of the SE, or where independent establishments are affected hereby, the elective body comprises the employee representatives at group, company and establishment levels; paragraphs (2) to (4) shall apply *mutatis mutandis*. Where, in the circumstances referred to in the first sentence, there are no employee representatives, the members of the elective body shall be elected by the employees by means of a direct ballot. The election shall be initiated and conducted by an election committee

chosen at a meeting of the employees to which the management of the German group, company, or establishment management issues invitations. The number of members of the elective body to be chosen shall be the same as the number of statutory members of an existing body representing employees would be in the circumstances referred to in paragraphs (2) to (4); paragraph (7), third to fifth sentences, shall apply to the election procedure *mutatis mutandis*.

(6) The elective body shall consist of no more than 40 members. Where this maximum would be exceeded, the number of members of the elective body shall be reduced using the D'Hondt highest averages method.

(7) Where, the circumstances referred to in paragraphs (2) to (5), there is no employee representative body, the employees shall elect the members of the special negotiating body by means of a secret and direct ballot. The election shall be initiated and conducted by an election committee chosen at a meeting of the employees to which the management of the German group, company, or establishment management issues invitations. Members of the special negotiating body will be elected in accordance with the principles of proportional representation. The principles of majority voting shall be applied where only one nomination for election is submitted. Every nomination by employees must be signed by at least one twentieth of employees entitled to vote; but by no less than three and no more than 50 persons entitled to vote; in establishments which have 20 or fewer employees entitled to vote as a rule, it shall suffice if the nomination is signed by two persons entitled to vote. Article 8 paragraph (1), second to sixth sentences, shall apply *mutatis mutandis*.

ARTICLE 9 CONVENING THE ELECTIVE BODY

(1) On the basis of the information received from the management bodies, the chairman of the employee representative body at the group level, or, in the absence thereof, at the company level, or in the absence thereof, at the establishment level, shall

1. designate the location, date and time of the meeting of the elective body;
2. designate the number of employees from the respective employee representative bodies in accordance with Article 8 paragraph (6); and
3. issue invitations to the meeting of the elective body.

(2) Where more than one employee representative body exists at a particular level, the obligations set out in paragraph (1) shall be incumbent upon the chairman of the body representing the most employees.

ARTICLE 10 ELECTION OF THE MEMBERS OF THE SPECIAL NEGOTIATING BODY

(1) At least two thirds of the members of the elective body representing at least two thirds of the employees must be present at the election. The members of the elective body shall have as many votes as the number of employees that they represent. Members shall be elected by a simple majority of the votes cast.

(2) In the elective body, the employee representative bodies and the members elected by direct ballot shall each represent all employees in the organisational unit for which they are responsible in accordance with Article 8 paragraphs (2) to (5). Employees who are not represented under the provisions of the first sentence shall be allocated in equal proportions to the employee representative bodies in the respective group of companies.

(3) Where an employee representative body is represented by more than one member in the elective body, the votes to which they are entitled on the basis of the number of employees they represent shall be equally divided. This also applies to the members of the elective body elected in accordance with the third sentence of Article 8 paragraph (5).

CHAPTER 3

NEGOTIATION PROCEDURE

ARTICLE 11 NOTIFICATION CONCERNING THE MEMBERS OF THE SPECIAL NEGOTIATING BODY

(1) The members of the special negotiating body shall be elected or appointed within ten weeks following the notification required by Article 4 paragraphs (2) and (3). The names of the members of the special negotiating body, their addresses and the respective company for which they work are to be communicated to the management bodies without undue delay. The management bodies have to provide this information to the local managements of establishments and companies, any employee representative bodies and representative bodies for executive staff in those establishments and companies, and the trade unions represented in German establishments.

(2) The negotiating procedure as set out in Article 12 to Article 17 shall also be used where the deadline referred to in the first sentence is exceeded for reasons for which the employees are responsible. Members elected or appointed after the expiry of this deadline may participate in the negotiation procedure at any time.

ARTICLE 12 MEETINGS; RULES OF PROCEDURE

(1) After the designation of the members or in the circumstances provided for in Article 11, after the expiry of the deadline referred to in the first sentence of Article 11 paragraph (1), the management bodies shall issue invitations to the constituent meeting of the special negotiating body without undue delay and shall notify the local managements of establishments or companies. The special negotiating body shall elect a chairman and at least two deputies from among its members. The special negotiating body may adopt written rules of procedure.

(2) The chairman may convene additional meetings.

ARTICLE 13 COOPERATION BETWEEN THE SPECIAL NEGOTIATING BODY AND MANAGEMENT BODIES

(1) The special negotiating body shall enter into a written agreement with the management bodies on the involvement of the employees in the SE. To fulfil this task, they shall negotiate in a spirit of cooperation.

(2) The management bodies shall, in a timely manner, provide all of the required information to the special negotiating body and make the required documents available. In particular, the special negotiating body is to be informed about the proposed formation and the course of the procedure to be followed up to the registration of the SE. The date(s), frequency and location of the negotiations will be determined by the management bodies and the special negotiating body by mutual agreement.

ARTICLE 14 EXPERTS AND REPRESENTATIVES OF SUITABLE OUTSIDE ORGANISATIONS

(1) The special negotiating body may ask experts of its own choice for assistance in the negotiations, whereby these may also include representatives from relevant trade union organisations at Community level. These experts may, where the special negotiating body so desires, be invited to attend the negotiations in an advisory capacity.

(2) The special negotiating body may decide to inform the representatives of suitable external organisations of the start about the negotiations.

ARTICLE 15 ADOPTION OF RESOLUTIONS BY THE SPECIAL NEGOTIATING BODY

(1) The members of the special negotiating body who are elected or appointed in one Member State shall represent all persons employed in that Member State. Where no members from a given Member State are elected or appointed to the special negotiating body (Article 11 paragraph (2)), the employees concerned shall be deemed to be unrepresented.

(2) Subject to the provisions of paragraph (3) and Article 16 paragraph (1), the special negotiating body shall adopt resolutions by a majority of its members, provided that this majority also represents a majority of the employees being represented. Every member accruing to Germany represents an equal number of employees.

(3) Where the negotiations would lead to a reduction of the participation rights of employees, the resolution approving such an agreement would require a majority of two thirds of the members of the special negotiating body, who represent at least two thirds of the employees in at least two Member States. This applies

1. where an SE is to be established by way of a merger, insofar as participation rights apply to at least 25% of the total number of employees of the participating companies and the concerned subsidiaries, or
2. where an SE is to be established by the formation of a holding company or a subsidiary, insofar as participation rights apply to at least 50% of the total number of employees of the participating companies and the concerned subsidiaries.

(4) "Reduction of participation rights" means that

1. the proportion of employee representatives on the supervisory or administrative organ of the SE is lower than the highest proportion of employee representatives in the participating companies, or
2. the right to elect, appoint, recommend, or reject members of the supervisory or administrative organ of the company is abolished or restricted.

(5) Where an SE is to be established by way of conversion, no resolution in accordance with paragraph (3) may be adopted.

ARTICLE 16 DECISION NOT TO OPEN OR TO TERMINATE NEGOTIATIONS

(1) The special negotiating body may resolve not to open negotiations or to terminate any such negotiations. For this resolution, a majority of two thirds of the members representing at least two thirds of the employees in at least two Member States is required. The regulations on the information and consultation of employees applicable in the Member States in which the SE has employees, shall apply.

(2) A resolution adopted in accordance with paragraph (1) terminates the process to conclude an agreement in accordance with Article 21. If such a resolution has been adopted, the provisions of Articles 22 to 33 on the SE works council and those provisions of Articles 34 to 38 on participation do not apply by operation of law.

(3) Where an SE is to be established by way of a conversion, no resolution may be adopted according to paragraph (1), where the employees of the company to be converted have participation rights.

ARTICLE 17 WRITTEN RECORD

A written record, to be signed by the chairman and one other member of the special negotiating body, must contain

1. a resolution on the conclusion of an agreement in accordance with Article 13 paragraph (1),
2. a resolution on the non-commencement or the termination of the negotiations according to Article 16 paragraph (1), and
3. the respective majorities by which these resolutions were adopted.

A copy of the written record is to be given to the management bodies.

ARTICLE 18 RESUMPTION OF NEGOTIATIONS

(1) A special negotiating body shall be reconstituted at the written request of at least 10% of the employees of an SE, its subsidiaries and establishments, or their representatives, no earlier than two years after the resolution adopted in accordance with Article 16 paragraph (1), subject to the proviso that the SE, its subsidiaries and establishments shall take the place of the participating companies, concerned subsidiaries and concerned establishments. The parties may agree to resume negotiations at an earlier date.

(2) Where the special negotiating body decides to resume negotiations with the management of the SE in accordance with paragraph (1), but no agreement is reached in these negotiations, the provisions of Articles 22 to 33 pertaining to the SE works council and the provisions of Articles 34 to 38 pertaining to participation shall not apply by operation of law.

(3) Where structural changes to the SE are proposed, which are suitable for reducing the participation rights of employees, negotiations on the participation rights of the employees of the SE shall take place at the instigation of the SE management or of the SE works council. Instead of reconstituting a special negotiating body, the negotiations with the SE management may be conducted by mutual agreement by the SE works council together with representatives of the employees affected by the proposed structural change, who have not previously been represented by the SE works council. Where no agreement is reached in these negotiations, the provisions of Articles 22 to 33 concerning the SE works council and of Articles 34 to 38 concerning participation shall apply by operation of law.

(4) In the circumstances provided for in paragraphs (1) and (3), the provisions of Part 2 shall apply subject to the proviso that the SE management shall take the place of the management bodies.

ARTICLE 19 COSTS RELATING TO THE SPECIAL NEGOTIATING BODY

The costs incurred by the formation and activities of the special negotiating body shall be borne by the participating companies and the SE, after its formation, as joint and several debtors. In particular, rooms, material resources, interpreters and office staff required for the meetings are to be provided, and the required travel and subsistence expenses of the members of the special negotiating body shall be met.

ARTICLE 20 DURATION OF NEGOTIATIONS

(1) The negotiations shall commence with the establishment of the special negotiating body and may last up to six months. "Establishment" means the date on which the management bodies issued invitations to the constituent meeting of the special negotiating body.

(2) The parties may, by mutual consent, decide to continue the negotiations beyond the period designated in paragraph (1) up to a period of one year as of the establishment of the special negotiating body.

PART 3

INVOLVEMENT OF EMPLOYEES IN THE SE

CHAPTER 1

INVOLVEMENT OF EMPLOYEES BY VIRTUE OF AN AGREEMENT

ARTICLE 21 CONTENT OF THE AGREEMENT

(1) Without prejudice to the autonomy of the parties in other respects, and subject to the provisions of paragraph (6) the written agreement between the management bodies and the special negotiating body shall specify:

1. the geographic scope of the agreement, including the companies and establishments located outside the territory of the Member States, insofar as such are incorporated into the scope;
2. the composition of the SE works council, the number of its members and the allocation of seats, including the impact of any significant changes on the number of persons employed in the SE;
3. the functions and the procedure for information and consultation of the SE works council;
4. the frequency of the meetings of the SE works council;
5. the financial and material resources to be made available to the SE works council;
6. the date of entry into force and the duration of the agreement; furthermore, the circumstances in which the agreement should be renegotiated and the procedure to be used hereby.

(2) Where no SE works council is formed, the parties shall specify the arrangements for implementing the procedure(s) for information and consultation, and paragraph (1) shall apply *mutatis mutandis*.

(3) In the event that the parties conclude an agreement on employee participation, the content thereof is to be specified. In particular, the following should be agreed:

1. the number of members of the supervisory or administrative organ of the SE whom the employees may elect or appoint or whose appointment they may recommend or reject;
2. the procedure by which the employees may elect or appoint these members or whose appointment they may recommend or reject; and
3. the rights of these members.

(4) It shall be stipulated in the agreement that negotiations about the involvement of employees in the SE may be commenced even prior to structural changes to the SE. The parties may determine the procedure to be used hereby.

(5) The agreement may stipulate that the provisions of Articles 22 to 33 concerning the SE works council and Articles 34 to 38 concerning participation apply wholly or in part by operation of law.

(6) Without prejudice to how this Act relates to other provisions concerning employee participation in the company, and where an SE is to be established by way of conversion, the agreement must safeguard all components of employee involvement to at least the same extent as these are provided for in the company to be converted to an SE. This shall also apply where the company switches from a two-tier to a one-tier organisation structure, or vice-versa.

CHAPTER 2

INVOLVEMENT OF EMPLOYEES BY OPERATION OF LAW

SECTION 1

SE WORKS COUNCIL BY OPERATION OF LAW

SUB-SECTION 1

ESTABLISHMENT AND MANAGEMENT

ARTICLE 22 PREREQUISITES

(1) The provisions of Articles 23 to 33 concerning the SE works council by operation of law shall apply as of the date on which the SE is registered, where

1. the parties so agree, or
2. no agreement is reached within the period provided for negotiations indicated in Article 20 and the special negotiating body has not adopted a resolution in accordance with Article 16.

(2) Paragraph (1) shall apply mutatis mutandis in the circumstances provided for in Article 18 paragraph (3).

ARTICLE 23 ESTABLISHMENT OF THE SE WORKS COUNCIL

(1) To safeguard the right to information and consultation in the SE, an SE works council is to be established. This shall be composed of employees of the SE, its subsidiaries and establishments. The provisions of Article 5 paragraph (1), Article 6 paragraph (1) and the second and third sentences of paragraph (2), Articles 7 to 10 and the second and third sentences of Article 11 paragraph (1) shall apply mutatis mutandis to the establishment of the SE works council subject to the proviso that the SE, its subsidiaries and establishments shall take the place of the participating companies, concerned subsidiaries and concerned establishments. In the circumstances provided for in Article 22 paragraph (1) No. 2, the end of the period designated in Article 20 shall be definitive for determining the number of persons employed. Membership of the SE works council shall commence upon election or appointment. The term of office of the members from Germany shall be four years, unless such term ends prematurely owing to their recall or for other reasons. The provisions of Articles 8 to 10 shall apply mutatis mutandis to the recall, subject to the proviso that the SE, its subsidiaries and establishments shall take the place of the participating companies, concerned subsidiaries and concerned establishments.

(2) The SE management shall issue invitations to the constituent meeting of the SE works council without undue delay following the designation of the members. The SE works council shall elect a chairman and a deputy from among its members.

(3) The chairman, or if he is unavailable, his deputy shall represent the SE works council within the framework of the resolutions adopted by it. The chairman, or if he is unavailable, his deputy shall be entitled to take receipt of declarations to be issued to the SE works council.

(4) The SE works council shall elect from among its number a committee of three members, consisting of two members to be elected in addition to the chairman. This committee shall be responsible for the day-to-day business of the SE works council (executive committee).

ARTICLE 24 MEETINGS AND RESOLUTIONS

(1) The SE works council shall adopt written rules of procedure by a majority vote of its members.

(2) Prior to meetings with the SE management, the SE works council or the executive committee – with additional persons attending as provided for in Article 29 paragraph (3) where appropriate – shall be entitled to convene in the absence of representatives from the SE management. With the consent of the SE management, the SE works council may hold further meetings. The meetings of the SE works council are not open to the public.

(3) The SE works council shall have a quorum where at least half of its members are present. Unless otherwise provided for in this Act, resolutions shall be adopted by a majority of the members present.

ARTICLE 25 REVIEW OF THE COMPOSITION OF THE SE WORKS COUNCIL

Every two years calculated as of the date of the constituent meeting of the SE works council, the SE management shall have to review whether changes to the SE and its subsidiaries and establishments, in particular, with regard to the numbers of employees in the individual Member States, have occurred and to communicate the result to the SE works council. If a different composition of the SE works council is subsequently required, the latter shall arrange with the competent bodies in the respective Member States for the members of the SE works council to be re-elected or reappointed in these Member States. Such re-election or reappointment shall terminate the membership of the previous employee representatives from these Member States.

ARTICLE 26 RESOLUTION TO RE-OPEN NEGOTIATIONS

(1) Four years after its establishment, the SE works council shall have to adopt a resolution by a majority of its members on whether the agreement is to be negotiated in accordance with Article 21 or whether the previous arrangements shall continue to apply.

(2) Where a resolution is adopted to negotiate an agreement in accordance with Article 21, Articles 13 to 15, 17, 20 and 21 shall apply *mutatis mutandis*, subject to the proviso that the SE works council shall take the place of the special negotiating body. Where no agreement is reached, the previous arrangements shall continue to apply.

SUB-SECTION 2 DUTIES

ARTICLE 27 RESPONSIBILITIES OF THE SE WORKS COUNCIL

The SE works council is responsible for matters concerning the SE itself, one of its subsidiaries or one of its establishments in another Member State or which exceed the powers of the competent bodies at the level of the individual Member States.

ARTICLE 28 ANNUAL INFORMATION AND CONSULTATION

(1) At least once every calendar year, the SE management has to inform and consult with the SE works council, in a joint meeting, about the development of the business situation and the prospects of the SE, whereby the required documents are to be provided in a timely manner. In particular, the required documentation shall include

1. the annual accounts,
2. the agendas of all meetings of the management body and the supervisory or administrative organ,
3. copies of all documents submitted to the general meeting of shareholders.

(2) In particular, the development of the business situation and the prospects of the SE shall include

1. the structure of the SE and the economic and financial situation;
2. the foreseeable development of the business, production and sales situations;
3. the employment situation and its foreseeable development;
4. capital expenditure (investment programmes);
5. fundamental organisational changes;
6. the introduction of new working and production methods;

7. the relocation of companies, establishments or significant parts hereof; or relocation of production;
8. mergers or splits of companies or establishments;
9. the reduction of operations in, or the closure of, companies, establishments or significant parts hereof;
10. mass dismissals.

(3) The SE management shall inform the management bodies about the place and date of the meeting.

ARTICLE 29 INFORMATION AND CONSULTATION ON EXCEPTIONAL CIRCUMSTANCES

(1) The SE management has to inform the SE works council about exceptional circumstances, which have a considerable impact on the interests of employees in a timely manner and by submitting the required documents. In particular, “exceptional circumstances” mean

1. the transfer or relocation of companies, establishments or significant parts hereof;
2. the closure of companies, establishments or significant parts hereof;
3. mass dismissals.

(2) The SE works council has the right, on request, to meet with the SE management or with the representatives of other levels of management vested with decision-making powers within the SE, in order to be consulted with regard to the exceptional circumstances.

(3) By resolution of the SE works council, the rights of the SE works council in accordance with paragraph (2) may be assigned to the executive committee (Article 23 paragraph (4)). Where a meeting is held with the executive committee, the members of the SE works council representing employees directly affected by these measures shall also be entitled to take part.

(4) Where the SE management decides to act in a way that does not correspond to the position taken by the SE works council or the executive committee, the SE works council shall have the right to again meet with the SE management in order to reach a settlement.

ARTICLE 30 NOTIFICATION BY THE SE WORKS COUNCIL

The SE works council shall notify the employee representatives of the SE, its subsidiaries and establishments about the content and the outcome of the information and consultation procedure. Where there are no employee representatives, the employees are to be notified.

SUB-SECTION 3 RELEASE FROM WORK AND COSTS

ARTICLE 31 FURTHER TRAINING

The SE works council may designate members to take part in training and educational events, insofar as such events impart knowledge and/or skills required for the work of the SE council. The SE works council has to notify the SE management about the participation and the timing of such events in a timely manner. When determining the dates, the company's operational needs are to be taken into consideration.

ARTICLE 32 EXPERTS

The SE works council or the executive committee may ask experts of their choice for assistance where this is required to enable them to properly perform their duties. Experts may also be trade union representatives.

ARTICLE 33 COSTS AND MATERIAL EXPENSES

The required costs incurred by the establishment and activities of the SE works council and of the executive committee shall be borne by the SE. In other respects, the provisions of Article 19 paragraph (2) shall apply *mutatis mutandis*.

SECTION 2 PARTICIPATION BY OPERATION OF LAW

ARTICLE 34 SPECIAL REQUIREMENTS

(1) Where the prerequisites of Article 22 have been met, the provisions on the participation of employees shall apply in accordance with Articles 35 to 38 by operation of law

1. where an SE is established by way of a conversion, if provisions on the participation of employees in the supervisory or administrative organ were in place in the company prior to the conversion;
2. where an SE is established by way of a merger,
 - a. if prior to the registration of the SE, one or more forms of participation existed in one or more of the participating companies and covered at least 25% of the total number of employees in all participating companies and concerned subsidiaries, or
 - b. if prior to the registration of the SE, one or more forms of participation existed in one or more of the participating companies and covered less than 25% of the total number of employees in all participating companies and concerned subsidiaries, and if the special negotiating body adopts a corresponding resolution;
3. where an SE is established by way of creating a holding company or a subsidiary,
 - a. if prior to the registration of the SE, one or more forms of participation existed in one or more of the participating companies and covered at least 50% of the total number of employees in all participating companies and concerned subsidiaries,
 - b. if prior to the registration of the SE, one or more forms of participation existed in one or more of the participating companies and covered less than 50% of the total number of employees in all participating companies and concerned subsidiaries, and if the special negotiating body adopts a corresponding resolution.

(2) Where in the instances referred to in paragraph (1) No 2 and No 3, more than one form of participation within the meaning of Article 2 paragraph (12) existed in the various participating companies, the special negotiating body shall decide which of those forms are to be established in the SE. Where the special negotiating body does not adopt such a resolution and a German company whose employees are entitled to participation rights, participates in the formation of the SE, participation in accordance with Article 2 paragraph (12) No 1 shall apply. Where no German company whose employees are entitled to participation rights is involved, the form of participation in accordance with Article 2 paragraph (12) shall apply, which covers the highest number of persons employed in the participating companies.

(3) The special negotiating body shall notify the management bodies about the resolutions adopted in accordance with paragraph (1) No 2 (b) and No 3 (b) and the first sentence of paragraph (2).

ARTICLE 35 EXTENT OF PARTICIPATION

(1) Where the prerequisites of Article 34 paragraph (1) No 1 exist (formation of an SE by way of a conversion), the arrangements on participation existing in the company prior to the conversion shall remain in effect.

(2) Where the prerequisites of Article 34 paragraph (1) No 2 exist (formation of an SE by way of a merger) or of Article 34 paragraph (1) No 3 exist (formation of a holding SE or a subsidiary SE), the employees of the SE, its subsidiaries and establishments or its representative body shall have the right to elect or appoint some of the members of the supervisory or administrative organ or to recommend or reject their appointment. The number of these employee representatives in the supervisory or administrative organ of the SE shall be determined according to the highest proportion of employee representatives existing in the bodies of the participating companies prior to the registration of the SE.

ARTICLE 36 ALLOCATION OF SEATS AND APPOINTMENTS

(1) The SE works council allocates the number of seats on the supervisory or administrative organ to the Member States, in which members are to be elected or appointed. The seats shall be allocated in proportion to each individual Member State's share of the total number of persons employed in the SE, its subsidiaries and establishments. Where the employees from one or more Member States are unable to be allocated a seat under this proportionate distribution arrangement, the SE works council shall allocate the last seat to be distributed to a hitherto unrepresented Member State. This seat shall, where appropriate, be allocated to the Member State in which the SE shall have its registered office. This allocation procedure shall also apply in the event that the employees of the SE may recommend or reject members of these bodies.

(2) Where the Member States do not make their own arrangements about who is to fill the seats allocated to them, the SE works council shall determine the employee representatives who are to sit on the supervisory or administrative organ of the SE.

(3) The employee representatives from Germany on the SE's supervisory or administrative body shall be determined by an elective body composed of employee representatives of the SE, its subsidiaries and establishments. The provisions of Article 6 paragraphs (2) to (4), Article 8 paragraph (1) second to fifth sentences, paragraphs (2) to (7) and Articles 9 and 10 shall apply mutatis mutandis, subject to the proviso that the SE, its subsidiaries and establishments shall take the place of the participating companies, concerned subsidiaries and concerned establishments. The result of the election is to be communicated to the SE management, the SE works council, the persons elected, the representative bodies for executive staff and the trade unions.

(4) The appointment of the employee representatives ascertained in accordance with paragraphs (2) and (3) above shall be proposed to the general meeting of shareholders of the SE. The general meeting of shareholders is bound by these proposals.

ARTICLE 37 RECALL AND APPEALS

(1) A member or substitute member representing employees from Germany on the supervisory or administrative organ may be recalled prior to the end of their term of office. The following persons are entitled to request such a recall

1. the employee representative bodies forming the elective body;
2. in instances where a direct ballot is used, at least three employees who are entitled to vote;
3. in the case of a member in accordance with Article 6 paragraph (3), only the trade union which proposed the member;
4. in the case of the member in accordance with Article 6 paragraph (4), only the representative body for executive staff, which proposed the member.

Articles 8 to 10 shall apply to the recall procedure accordingly with the proviso, that the SE, its subsidiaries and establishments shall take the place of the participating companies, concerned subsidiaries and concerned establishments; in deviation from Article 8 paragraph (5) and the third sentence of Article 10 paragraph (1), this resolution shall require a majority of three quarters of the votes cast. The employee representatives are to be recalled by the general meeting of shareholders.

(2) The election of a member or of a substitute member of the employee representatives from Germany on the supervisory or administrative organ may be challenged where substantive provisions concerning the right to vote, eligibility for election or the election procedure have been infringed and such infringement has not been remedied, unless the result of the vote could not be altered or influenced by the infringement. Such challenges may be asserted by the persons designated in the second sentence of paragraph (1), the SE works council and the SE management. An action must be brought within one month following the resolution adopted by the general meeting of shareholders regarding the appointment.

ARTICLE 38 LEGAL POSITION; INTERNAL ORGANISATION

(1) The employee representatives on the supervisory or administrative organ of the SE shall have the same rights and duties as the members representing the shareholders.

(2) The members of the management body (Article 16 of the SE Implementation Act (*SE-Ausführungsgesetz – SEAG*) or the managing directors (Article 40 of the SE Implementation Act) shall number at least two, one of whom shall be responsible for the area of labour relations and social matters.

(3) Where the supervisory organ of one of the participating companies consists of an equal number of shareholder and employee representatives and another member, an additional member shall also be elected to the supervisory or administrative organ of the SE on the basis of a joint proposal by the shareholder and employee representatives.

SECTION 3 PROTECTION OF CERTAIN INTERESTS

ARTICLE 39 ENTERPRISES AND ESTABLISHMENTS WITH POLITICAL, RELIGIOUS, SCIENTIFIC, EDUCATIONAL, CHARITABLE OR OTHER AIMS

(1) Section 2 shall not apply to an SE which directly and primarily

1. is engaged in the pursuit of political, coalition policy, religious, charitable, educational, scientific or artistic objectives, or
2. serves purposes of reporting or expressing opinions covered by the second sentence in Article 5 paragraph (2) of the Basic Law (German Constitution/*Grundgesetz-GG*).

(2) Information and consultation shall be restricted to the subject-matter referred to in Article 28 paragraph (2) No 5 to No 10 and of Article 29 and relates only to full compensation for or mitigation of any economic disadvantages incurred by employees as a consequence of changes to the company or the establishment.

PART 4 PRINCIPALS OF COOPERATION; PROTECTIVE PROVISIONS

ARTICLE 40 COOPERATION BASED ON TRUST

The SE management and the SE works council, or the employee representatives, shall cooperate in the spirit of trust in the interests of the employees and of the company or group of companies in the context of an information and consultation procedure.

ARTICLE 41 SECRECY; CONFIDENTIALITY

(1) Obligations to provide information incumbent upon the management bodies and the SE management in accordance with this Act shall only exist, where, on the basis of objective criteria, the trade or business secrets of the companies participating in the formation of the SE, the SE or the respective subsidiaries and establishments are not jeopardized.

(2) The members and substitute members of an SE works council are obligated, irrespective of their whereabouts, not to disclose or use any business or trade secrets which come to their knowledge as a result of their membership of the SE works council which are expressly designated by the SE management as being confidential. This shall also apply even after the persons concerned have ceased to be a member of the SE works council.

(3) The duty of confidentiality of the SE works council in accordance with paragraph (2) shall not apply to

1. members of the SE works council;
2. employee representatives of the SE, its subsidiaries, and establishments, where, by virtue of an agreement in accordance with Article 21 or Article 30, these persons must be informed about the content of the information and the outcome of the consultation procedure;
3. employee representatives on the supervisory or administrative organ of the SE; and
4. interpreters and experts called in to render assistance.

(4) The duty of confidentiality in accordance with paragraph (2) shall apply *mutatis mutandis* to

1. the members and substitute members of the special negotiating body,
2. the employee representatives of the SE, its subsidiaries and establishments;
3. the employee representatives involved in an information and consultation procedure in any other way;
4. experts and interpreters.

(5) The exemption from the duty of confidentiality in accordance with paragraph (3) No. 1 shall apply to the group of persons designated in accordance with paragraph (4) No 1 to No 3 accordingly. Furthermore, the duty of confidentiality shall not apply to

1. the members of the special negotiating body in dealings with interpreters and experts;
2. the employee representatives in accordance with paragraph (4) No 3 in dealings with employee representatives on the supervisory or administrative organ of the SE, in dealings with interpreters and experts, called in to render assistance under as agreed and representatives of employees of the SE, its subsidiaries, and establishments in cases where these must be informed about the content of the information and the outcome of the consultation procedure in accordance with the agreement (Article 21).

ARTICLE 42 PROTECTION OF EMPLOYEE REPRESENTATIVE

When performing their duties, the

1. members of the special negotiating body;
2. members of the SE works council;
3. employee representatives involved in an information and consultation procedure in any other way;

4. employee representatives on the supervisory or administrative organ of the SE;

who are employees of the SE, its subsidiaries or establishments, or of any of the participating companies, concerned subsidiaries or concerned establishments, shall enjoy the same protection and the same security as the employee representatives in accordance with the laws and custom of the Member State in which they are employed. In particular, this shall apply to

1. protection against unjust dismissal,
2. participation in meetings of the respective bodies referred to in the first sentence, and
3. continued payment of wages.

ARTICLE 43 PROHIBITION OF ABUSIVE PRACTICES

An SE may not be misused for the purpose of depriving employees of participation rights or of withholding such rights. Misuse shall be deemed to exist where, in the absence of any procedure in accordance with Article 18 paragraph (3), structural changes shall occur within one year after the formation of the SE, which lead to employees being deprived of participation rights or to such rights being withheld.

ARTICLE 44 PROTECTION AGAINST INTERFERENCE DURING THE ESTABLISHMENT AND SUBSEQUENT ACTIVITIES

No person shall be permitted

1. to hinder the establishment of the special negotiating body, the creation of an SE works council, or the introduction of a procedure for information and consultation in accordance with Article 21 paragraph (2) or the election, appointment, recommendation or rejection of the employee representatives on the supervisory or administrative organ, or to influence the same through the infliction or threat of disadvantages, or the granting or promise of advantages;
2. to hinder or disrupt the activities of the special negotiating body, the SE works council, or the employee representatives in accordance with Article 21 paragraph (2) or the activities of the employee representatives on the supervisory or administrative organ, or
3. to discriminate against or give preferential treatment to any member or substitute member of the special negotiating body, of the SE works council, or any employee representative in accordance with Article 21 paragraph (2) or an employee representative on the supervisory or administrative organ because of their activities.

PART 5 PENALTIES AND FINES; FINAL PROVISION

ARTICLE 45 PENALTIES

(1) Whoever

1. makes use of a business or trade secret contrary to Article 2 paragraph (2), also in conjunction with paragraph (4), or
2. misuses an SE, contrary to the first sentence of Article 43 for the purpose of depriving employees of participation rights or of withholding such rights,

shall be punished by imprisonment of up to two years or by fine.

(2) Whoever

1. discloses a business or trade secret contrary to Article 41 paragraph (2), also in conjunction with paragraph (4),
2. contrary to Article 44, No 1 or 2, hinders, influences or disrupts an activity referred to herein, or
3. contrary to Article 44 No 3, discriminates against or gives preferential treatment to a person designated therein,

shall be punished by imprisonment of up to one year or by fine.

(3) Where, in the circumstances referred to in paragraph (2) No 1, the offender's actions are undertaken for payment or with the intention of enriching himself or another person, or of causing harm to another person, the punishment is imprisonment of up to two years or a fine.

(4) Prosecutions for such offences shall be undertaken only upon request. In the circumstances provided for in paragraph (1) No 2 and in paragraph (2) No 2 and No 3, such a request may be lodged by the special negotiating body, the SE works council, the majority of the employee representatives in the context of an information and consultation procedure, every member of the supervisory or administrative body, a trade union represented in the company, as well as the management bodies.

ARTICLE 46 FINES

(1) Whoever

1. fails to provide information, provides incorrect or incomplete information, or fails to provide information in a timely manner, contrary to Article 4 paragraph (2) or Article 5 paragraph 4, second sentence; or
2. fails to provide information to the SE works council, or provides incorrect or incomplete information, or fails to provide information in the prescribed manner or in a timely manner, contrary to Article 28 paragraph (1) first sentence, or Article 29 paragraph 1, first sentence,

shall be deemed to have committed a regulatory offence.

(2) The regulatory offence may be punished by a fine of up to twenty thousand euro.

ARTICLE 47 APPLICATION OF NATIONAL LAW

(1) This Act shall not affect the participation rights to which employees are entitled in accordance with legal provisions and regulations applying in Germany, with the exception of

1. participation in the bodies of the SE;
2. the provisions of the European Works Council Act, unless the special negotiating body has adopted a resolution in accordance with Article 16.

(2) Provisions and structures pertaining to employee representative bodies in a participating company with a registered office in Germany, which ceases to be an independent legal entity due to the establishment of SE, shall continue to exist after the registration of the SE. The SE management shall ensure that these employee representative bodies may continue to exercise their functions.

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