



Co-determination 2013

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Co-determination at a glance

Co-determination at a glance

The co-determination laws guarantee that workers have a say in the terms and conditions of employment and in the economic planning and decision-making of the company.

Worker participation

Worker participation takes place at two levels: at the level of the establishment as the place where operational purposes are pursued (production, marketing, administration, services) and at the level of the company as the corporate entity with legal capacity pursuing economic or non-material objectives.

The works council as an advocacy group

Co-determination and participation at establishment level mean the involvement of the works council in all issues affecting employees at their workplace. These include, for instance, the introduction of short-time work, the determination of payment systems or piecework and bonus rates, the introduction of new technical equipment or work processes or the elaboration of social plans in cases of envisaged establishment closures or other changes in operations. The works council defends employees' interests.

Worker representation at the board level

Rights of participation in business matters have their primary focus on economic planning and decision-making. Co-determination at board level takes place in the supervisory boards.

Whereas co-determination at the establishment level applies to all German private law companies, the right of co-determination in board matters affects only large corporations. The two levels of co-determination complement each other. Co-determination at board level was confined to corporations because in partnerships at least some of the shareholders are personally liable and often part of the management. In addition, in corporations the supervisory board offers an adequate platform for worker participation.

Co-determination at the level of establishments

How far do the rights of consultation of individual employees and their workplace representatives go, and how much of a share can they have in decision-making? What are the trade unions' rights at the workplace? These questions are answered by the Works Constitution Act, which lays down how the workplace labour relations system in Germany should operate.

The Act allows employees to participate in decisions made at their place of work. These participation rights cover practically all areas of activity at work, including social welfare, personnel and economic matters. So the Act establishes democratic conditions at the workplace, opening up greater opportunities to make working life more civilised.

The works council represents all employees

The size of the works council depends on the size of the workforce at a particular establishment:

- If 5-20 employees are eligible to vote, the function is carried out by one person
- If 21-50 are eligible to vote, the works council will have three members
- If 51-100 are eligible to vote, the works council will have five members

Larger establishments have correspondingly larger works councils. If there are a number of works councils within the same company, a central works council must also be established. A combine works council can be constituted if there are two or more central works councils in a group of companies. The same applies to youth and trainees' delegations.

If a company has more than 100 employees, a finance committee (Wirtschaftsausschuss) must also be formed. This committee has extensive rights of information and consultation on financial matters. The membership is nominated by the works council.

Important: If a works council has three or more members, whichever gender is in the minority among the workforce must make up at least the same percentage of the works council as it does in the establishment as a whole. If the works council has nine or more members, it must also appoint an works committee (Betriebsausschuss) to manage its everyday business. In certain circumstances, delegates of the trade unions representend in the establishment may also take part in works council meetings.

The works council and the employer should co-operate on a basis of trust, in the interests of the employees and the establishment. In so doing, they should also co-operate with the trade unions and relevant employers' federations.

What establishments have a works council?

If a private sector establishment has at least five employees over the age of 18, they are entitled to elect their own works council (Betriebsrat). However, at least three employees need to have been there for at least six months (this is the requirement to be eligible for office).

Employees under 18 years of age and trainees under 25 years of age can, if they wish, elect their own youth and trainees' delegation.

A central works council must be established if a company has several operating locations that each have their own works council; a combine works council if the company is part of a group of companies.

Government offices (at the federal, Länder and municipal levels), and other public sector agencies and institutions do not have works councils. They are covered instead either by the Federal Personnel Representation Act or by similar acts in force in each of the Länder.

Executive staff are not represented by the works council. If an establishment has at least ten senior managers, they are entitled by the Executive Committees Act to form an executive committee. A corporate executive committee can be formed for the company as a whole, and a combine executive committee if it belongs to a group of companies.

The right to vote for the works council

All employees aged 18 and over have the right to vote for the works council. However, employees are not eligible to stand for membership until they have spent at least six months working for the same establishment, or elsewhere in the same company or group.

Since the Act Reforming the Works Council Act (Gesetz zur Reform des Betriebsverfassungsgesetzes) came into force, temporary employees have the right to vote in works council elections in the hiring company provided they have worked there for more than three months.

Under an amendment to Section 5 of the Works Constitution Act, civil servants, public-sector employees and members of the armed forces are now normally considered employees as defined in the Act when employed in an establishment belonging to a private-sector enterprise. The rule governing classification as executive staff under Section 5 (3) of the Act likewise applies to civil servants and members of the armed forces employed in a private-sector enterprise. This introduces general provision for civil servants and public-sector employees to stand for election and be elected onto works councils, supervisory boards and executive committees in private-sector enterprises.

The works council election is a key element of industrial democracy, which is why works council elections are protected by law to ensure they are properly conducted. Thus, any attempts to obstruct or unlawfully influence the election are subject criminal to prosecution. A breach of election provisions can lead to the election being appealed before the labour courts. If the election is declared null and void, a new election must take place.

Tasks of the works council

The main tasks of the works council include monitoring the employer's adherence to all legal requirements, safety regulations, collective agreements and in-house agreements on the employees' behalf.

There are various social matters in which the works council's agreement is needed before the employer can take the respective measure (known as its 'right of co-determination'). This applies to situations:

- When questions arise relating to internal rules specific to the establishment, or to the conduct of employees
- When issues of working hours at the establishment have to be dealt with, or when there are plans to introduce short-time or overtime working schemes
- When the principles for allotting holiday time are announced, the holiday schedule is posted or (in cases where employee and employer cannot agree) individual employees have their holiday allotted
- When determining the form to be taken by social welfare facilities operating solely at the one establishment, or within the company or group, and how those facilities should be run
- When there is any proposal to introduce mechanisms to monitor the conduct and performance of employees
- Within the scope of legislation, when measures are taken to combat occupational hazards (accident or illness), or when issues of health protection are involved
- When company residential accommodation is to be allocated or vacated
- When issues come up regarding the composition of pay at the workplace, when payment systems are devised, or piecework and bonus rates or similar performance-related payments are set
- When determining principles for the practice of group working

The works council also cooperates, and has a substantial amount of codetermination rights, on these matters:

- Structuring of jobs, work processes and working environments
- Personnel planning
- Vocational training

In view of the current importance of job security and training, works councils have been given greater participatory rights. For example, a works council can make proposals to the employer regarding flexible working hours, the promotion of part-time work and partial retirement, on in-house employee training, and on new forms of work organisation and changes to processes and work flows.

If the employer plans structural changes in the workplace (such as cutbacks, closing down or relocating operations), he must inform the works council without delay, discuss the planned changes with them prior to making a final decision and attempt to reach an agreement that considers all needs.

Once the scope of the planned changes are settled, the works council can implement a social plan to compensate for or alleviate the financial disadvantages employees would face as a result of the change.

In important financial matters the employer has the duty to inform the finance committee in good time and to consult with the finance committee on these matters. Such matters include inter alia a planned takeover of the company if it is linked to the acquisition of control of the company. Where no finance committee exists, the Works Council has to be involved in the case of takeover.

If a company has more than 20 employees entitled to vote, the employer must obtain the works council's approval for all specific personnel changes, namely:

- New appointments
- Gradings
- Regradings
- Transfers

In certain circumstances defined by law, the works council is entitled to refuse its consent. If the employer still wishes to implement a measure the works council has legally rejected, the matter has to be referred to a labour court.

The works council must be heard before any employee is served notice. If the employer fails to comply with this, the notice has no effect.

The Works Council must be heard before any dismissal. If the employer fails to do so, the notice of dismissal is invalid.

The Works Council may lodge an objection to a routine dismissal for the reasons stated in the law. If an objection to a routine dismissal has been lodged by the Works Council and if the employee has brought an action before the labour court under the Protection against Dismissal Act, the employer is obliged to keep the employee in his employment at the latter's request until a final decision is given on the case at issue.

If the works council has given good grounds for contesting an employee's dismissal, this will substantially strengthen the employee's position in unfair dismissal proceedings before the court.

Everyone employed at any establishment has to be treated justly and equitably. The employer and the works council share the responsibility for ensuring that this principle is observed. They particularly need to ensure that nobody is treated differently from their colleagues because of their race or ethnic origin, heritage or other background, nationality, religion or beliefs, disability, age, gender, sexual identity, political views or activities, or trade union activities. The works council and the youth and trainee representatives thus have the right to apply for measures to combat xenophobic tendencies in the workplace. Similarly, no employee may be placed at a disadvantage because he or she has passed a certain age limit. Finally, the employer and the works council foster the personal development of employee's.

The works council must hold a works meeting once every calendar quarter. The meeting allows the works council and employees to exchange their views and concerns. The works council is also required to report on its activities to the works meeting. Employees have the opportunity to comment on the works council's decisions, and to propose motions for resolutions.

Works Agreement co-determination

The works agreement is the most important instrument of the works constitution. It is agreed in writing between the employer and the works council and serves primarily as an instrument for implementing co-determination rights. The provisions contained in the works agreement apply directly and bindingly to all employees and to the employer.

Pay, salary and other work conditions governed or which are usually governed by collective bargaining agreements may not be governed by a works agreement.

Conciliation committee

The conciliation committee is a works constitution body which handles and mediates in-house disputes. It comprises an equal number of employer and works council representatives, plus a neutral chairperson on whom both sides agree. The conciliation committee only acts if the two sides request it. In cases where this is required by law (e.g. in co-determination matters), the committee's decision replaces an agreement between the employer and the works council if such an agreement could not be reached. The conciliation committee can in these cases act on the request of a single party.

Industrial democracy in Europe

The 1996 Act on European Works Councils transposed the EU Directive on European Works Councils into German law. It provides for cross-border information and consultation of employees in community-scale enterprises and groups of companies that have operations in two or more EU member states or the European Economic Area. The Act's scope of application takes in such enterprises and groups that operate in Germany, have at least 1,000 employees in the member states and of those at least 150 employees each in two different member states.

The European Works Council (EWC) is a transnational employee representation body to inform and consult employees in transnational enterprises and groups of companies. It supplements national-level employee representations (works council, central works council, combine works council) without affecting their capacities.

The establishment of the EWC and the structuring of cross-border information and consultation of employees is primarily the responsibility of central management and the special negotiating body, comprising employee representatives from the respective EU member states, through agreeing on a voluntary agreement. The EU Directive gives both employer and employee representatives the broadest possible scope as regards company-specific structure and organisation of the EWC. The EU Directive and Germany's Act on European Works Councils do however provide a set of rules for guidance. This requires that the agreements set out the responsibilities and work performed by the EWC, the procedure to be used in informing and consulting with the EWC, the place, frequency and duration of meetings, and the financial and material resources allocated to it.

Only when it is clear that no agreement can be reached on the establishment of an EWC does the EU Directive and the German Act on European Works Councils prescribe that an EWC be established by law and sets out the specific responsibilities and the procedure to be used in informing and consulting employees.

The minimum requirement for mandatory establishment of an EWC calls for the EWC to be informed and consulted once per calendar year about the business developments and prospects of the enterprise or group. This includes details of the economic and financial situation, the expected trends in business, production and sales, workforce levels, investments, relocation of production sites, mergers, downsizing or closure of companies, operations or significant portions of operations, and mass redundancies. This is largely in line with the provisions laid down in Section 106 (3) of Germany's Works Constitution Act.

Apart from these regular meetings, the EWC must be informed and, upon request, consulted on extra-ordinary cross-border activities where these have an impact on the workforce and significantly affect employee interests (e.g. relocation of production sites, works closures, mass redundancies). This means that if extra-ordinary circumstances arise, central management must inform the EWC, provide it with the necessary documentation without delay and consult it if requested to do so by the EWC itself. The EWC must normally be consulted in a timely manner to ensure its proposals and concerns are taken into account before a business decision is reached.

The Directive on European Works Councils was recast in 2009 in close consultation with unions and employers' associations. Changes include definitions of the terms 'information' and 'consultation' ensuring that an EWC is given timely notification prior to any corporate decisions involving any transnational restructuring. In the main body of the Directive, EWCs are assigned competence for transnational issues. Additionally, among other things, it is clarified that EWCs must be provided with the means to represent the workforce collectively under the Directive, that the agreement establishing an EWC must be renegotiated on any major restructuring of the company or group of companies concerned, and that members of the EWC must be provided with necessary training. The new provisions were transposed into national law with the revised Act on European Works Councils and came into effect on 18 June 2011.

The law

The legislative basis for the fields discussed in this chapter is provided by:

- The Works Constitution Act
- The Executive Committees Act
- The Act on European Works Councils

Numerous legal provisions are also in place to facilitate the support of works councils by the trade unions.

Co-determination at board level

Co-determination in large companies under the Co-determination Act

Joint stock companies not in the coal, iron and steel industries (which have their own co-determination rules) and employing more than 2,000 people, either directly or in subsidiary companies under their control, are subject to the Co-determination Act of 1976. The Act provides that a company's supervisory board must be made up of employee and shareholder representatives in equal measure. Despite this, the company's owners do have slightly more say, since the chairperson – who in practice is invariably a shareholder representative – has an additional casting vote to ensure that a majority is obtained whenever the board has come to a tied voting decision at the second attempt. Moreover, one of the employee seats on the board is always occupied by a management representative. In companies outside the coal, iron and steel industries, the employee representatives on the supervisory board do not have a right of veto when the labour relations director (who sits on the executive board) is appointed.

How employee board representatives are chosen

All employee representatives on the supervisory board are elected either in a direct ballot or via delegates (the process depends on the size of the workforce) to an electoral college, regardless of whether they come from inside the company or are external, trade union representatives.

Election of shareholder representatives

The shareholder or 'capital' representatives on the supervisory board are elected at the shareholders' general meeting.

Election of the chairperson

At the first meeting of a newly elected supervisory board (its 'constitutive meeting'), the board's chairperson and vice chairperson are elected by its members. A candidate must receive a two-thirds majority to be elected.

If a candidate does not attain the necessary majority, a second ballot is held. This time round, the shareholder representatives elect the chairperson, and the employee representatives the vice-chairperson – the majority of votes cast being decisive in each case.

The executive board

The supervisory board is responsible for appointing the members of the executive board – and is also empowered to dismiss them.

Candidates for election to the executive board must also attain a two-thirds majority to be successfully elected. If a candidate fails to attain this, a mediation committee is set up.

If an absolute majority still cannot be achieved, the supervisory board's chairperson has an additional casting vote in a further ballot.

Co-determination in the executive board also includes a labour relations director who has equal status with the other board members. The labour relations director's area of responsibility primarily covers personnel and employee welfare matters.

Co-determination in smaller companies under the One-Third Participation Act

Employee representatives have to make up one third of the membership of the supervisory board in joint stock companies with 501 to 2,000 employees.

However, there is no lower limit on the number of employees in a company if it is a public limited company (AG) or partnership limited by shares (KGaA) established before 10 August 1994, and is not a family firm. That is, companies fitting this description are also obliged to have one third of their supervisory board made up of employee representatives, even if they have less than 500 employees. On the one hand, this one-third participation does not give the employees much of a share in decision-making power, but it does allow them to be party to important company information.

Co-determination in the coal, iron and steel industries

Co-determination in the coal, iron and steel industries not only has the longest tradition but is also more extensive than anywhere else. In these industries, the rules apply to any incorporated firm with more than 1,000 employees.

In these industries, too, the supervisory board is composed of equal numbers of members representing shareholders and employees. However, it also includes one additional, 'neutral' member. Supervisory boards in the coal, iron and steel industries normally have 11 members, but the number may increase to 15 or 21 in larger companies.

The members of the executive board are appointed and dismissed by the supervisory board. The executive board must also include a labour relations director. A person cannot be appointed to or dismissed from this post if a majority of the employee representatives is opposed to it. This ensures that labour relations directors always have the confidence of the employee representatives on the supervisory board.

Any incorporated firm that does not in itself belong to the coal, iron and steel industries but is the parent company of others that do is subject to a diluted form of these co-determination rules.

Co-determination in a European company under the Act on Employee Participation in European Companies (SEBG)

With the German Act on the Introduction of European Companies (SEEG) the EU Regulation on the Statute for a European Company (SE) and the supplementing Directive on involvement of employees were transposed into German national law. The SE is a new legal form under EU law and lines up alongside the legal forms of Aktiengesellschaft and GmbH allowed under German law. The introduction of the SE aims to simplify the establishment of cross-border mergers within the European Community. The establishment of an SE can take four main forms: transformation, merger and establishment of either a holding company or a subsidiary.

Organisational structures

The SE may be organised under either a two-tier system with a management board, a supervisory board and a general meeting or – following the example of many of our neighbouring EU Member States – a single-tier system. In contrast to the two-tier system in which the supervisory board monitors the management board, the single-tier system combines the two functions into a single administrative board. The single-tier system is new to German company law.

Employee participation in an SE

Employees' rights to participate in a European company are set out in the German Act on Employee Participation in European Companies (SEBG). Like the SE Directive, the SEBG is based on the following fundamental structures:

- Employee rights in force before the establishment of SEs should provide the basis for employee rights of involvement in the SE (the 'before and after' principle).
- Employee involvement is categorised into information and consultation rights and also participation in SEs. This is largely in line with the differentiation applied under German co-determination laws.

- The procedures for employee involvement in an SE should be agreed between the employer and the employees. The employees are represented by a special negotiation body (BVG).
- In the absence of an agreement, a set of standard rules are applied. This ensures to a large extent that employees retain their existing participation rights in the founding company.

Negotiation procedures

On the employer side, the negotiations are conducted by management or administrative bodies of the founding company. On the employee side, the special negotiation body representing the employees must be formed to represent employees from all founding company. The provisions of the SE Directive require that employees in each EU Member State be given one seat on the special negotiation body for each 10 percent or fraction thereof of the total workforce. To reduce the level of effort involved in appointing members of the special negotiating body, the SEBG does not require a general ballot for the election of Germany's members to the special negotiation body. Rather, an election is held by an election committee using the existing works council structures. The elected employee representatives at the respective highest levels (works council, central works council, group works council) should decide on the domestic members to be appointed to the special negotiation bodies. If multiple company groups are involved, their representatives form a joint election committee. The maximum number of members on the special negotiation body is 40. Only in exceptional circumstances – in the absence of an employee representation – may the workforce elect the domestic members of the special negotiation body directly.

Standard rules

If no agreement is reached on employee involvement, a set of standard rules apply. These comprise two parts which largely match the distinctions applied under German co-determination law.

SE works council

The transnational information and consultation of employees in an SE is ensured by the formation of a European/SE works council. The representative body is proportionally comprised of representatives from the Member States in which the SE employees are employed. SE Works Council members from Germany are elected by an election committee.

Participation in the supervisory or administrative board

Employee involvement in SEs is subject to the statutory standard rules which follow the 'before and after principle'. The number of employee representatives in the supervisory or administrative board is based on the highest proportion of employee representatives from one (or multiple) founding companies. This applies where an SE is created as a result of a merger if at least 25 percent of the employees from the founding companies or their subsidiaries have co-determination rights. If a holding SE or a subsidiary SE is to be created, at least 50 percent of the employees in the participating companies and subsidiaries must have co-determination rights. When an SE is created through transformation, the existing co-determination arrangements are upheld.

If the percentage thresholds stated earlier are not achieved, a special resolution of the special negotiating body is required for co-determination to be introduced in the SE.

Members of the supervisory or administrative boards who come from Germany are elected by an election committee.

Co-determination in a European cooperative society (SCE) under the Act on Employee Participation in European Cooperative Societies (SCEBG)

The SCE Implementation Act (SCEAG) and the SCE Employee Participation Act (SCEBG) transpose EU provisions on European cooperative societies into German law. The SCEBG governs employee participation in an SCE.

The SCE is modelled on the SE. The two acts are near-identical in the arrangement and substance of their provisions. Employee participation rights are secured by the same principles in an SCE as in an SE (the 'before and after' principle, negotiation procedures and standard rules). As the implementing acts largely contain the same provisions (in particular regarding the election committee, composition of the special negotiation body and the negotiation procedure), the rules on co-determination in a European company apply as described above.

The main differences between an SE and an SCE are contained in the provisions for its initial establishment. Unlike an SE, an SCE's founding membership can be made up wholly or partly of individuals.

Employee participation in the event of cross-border mergers of joint stock companies under the Act on Employee Participation in the Event of Cross-Border Mergers (MgVG)

The MgVG transposes the labour law provisions of the Directive on Cross-Border Mergers of joint stock Companies (the Tenth Company Law Directive) into German law. After the European Company (SE) and the European Cooperative Society (SCE), this represents a further key step in the modernisation of European co-determination law. The company law provisions has been transposed into German law by revisions to the law on company transformation.

The MgVG resembles the SEBG and the SCEBG not only in the arrangement of its sections; in many instances, its provisions are identical in wording or at least in

substance. This is particularly the case as concerns the formation and composition of the special negotiating body and the negotiation procedure. The rules for SEs and SCEs apply with regard to these points as described above.

Despite the many common features, there are a number of important differences relative to the provisions on SEs and SCEs:

Focus on participation in corporate decisionmaking

Unlike with SEs and SCEs, the Tenth Directive and the MgVG only cover employee participation in corporate decisionmaking. They do not cover cross-border employee information and consultation, which are provided for with regard to SEs and SCEs.

National law or negotiated solution

As the outcome of a cross-border merger under the Tenth Directive is not a new form of European legal entity but a company incorporated under the national law of a member state, employee participation is governed by national law. In departure from this general rule, employee participation is determined by negotiation or, if negotiations fail, by standard rules if any one of the following exceptions applies:

- One of the companies involved in the cross-border merger operates an employee participation system and its average workforce exceeds 500 in the six months before publication of the draft merger terms, or
- national law applicable to the company resulting from the cross-border merger does not provide for at least the same level of employee participation as is operated in the merging companies, or
- national law applicable to the company resulting from the cross-border merger does not give employees of units in other member states the same entitlement to exercise participation rights as is enjoyed by employees in the member state where the company has its registered office.

These requirements are such that one or other of them (often the third) will be found to apply in most cross-border mergers, as a result of which employee participation will normally be determined by negotiation.

Modified standard rules

If negotiations fail, standard rules take effect to safeguard existing employee participation rights. For a company established by cross-border merger, however, the Tenth Directive sets the threshold for automatic application of the standard rules at one-third (compared with 25 percent for SEs and SCEs). That is, participation in corporate decisionmaking must have covered at least one third of the workforce prior to registration of the merged company. Below this threshold, the special negotiating body can decide to introduce employee participation in the merged company by special resolution.

Application of the standard rules without prior negotiation

Under the law governing SEs, the standard rules apply if the parties agree that they should or if negotiations to determine employee participation rights fail. In line with European law, the MgVG provides a further opening for application of the standard rules. The managements of the companies involved in a cross-border merger can choose without prior negotiation to be subject to the standard rules for employee participation from the merger registration date. Management does not have this unilateral option under the law governing SEs and SCEs.

Safeguarding employee participation in the event of subsequent domestic merger

The basic principle of protecting established rights continues to apply to the company resulting from a cross-border merger if it subsequently becomes party to one or more domestic mergers. This protection of employee participation rights ends without exception three years after registration of the cross-border merger. Once this three-year period has elapsed, national employee participation rules apply.

The Law

The following laws form the legal basis for co-determination:

Co-determination Act of 1976

One-Third Participation Act

Coal, Iron and Steel Industry Co-determination Act

Supplementary Co-determination Act

Act on Employee Participation in European Companies

SCE Employee Participation Act

Act on Employee Participation in the Event of Cross-Border Mergers

Works Constitution Act

as promulgated by the Act of 25 September 2001, Federal Law Gazette ("Bundesgesetzblatt"), Part I, p. 2518, last amended by Art 3 Law of the April 20, 2013 ("Bundesgesetzblatt", Part I, p. 2424) and BGBl I 2003, P 868

Part One

General provisions

Section 1 Establishment of works councils

- (1) Works councils shall be elected in all establishments that normally have five or more permanent employees with voting rights, including three who are eligible. The same shall apply to joint establishments of several companies.
- (2) A joint establishment of several companies is assumed to exist if
 1. the companies employ the equipment and workers jointly in order to pursue their working objectives, or
 2. splitting a company would have the effect that one or several departments of an establishment would be allocated to another company that is involved in the split, without thereby fundamentally changing the organisation of the establishment concerned.

Section 2 Status of trade unions and employers' associations

- (1) The employer and the works council shall work together in a spirit of mutual trust having regard to the applicable collective agreements and in co-operation with the trade unions and employers' associations represented in the establishment for the good of the employees and of the establishment.

- (2) In order to permit the trade unions represented in the establishment to exercise the powers and duties established by this Act, their agents shall, after notification of the employer or his representative, be granted access to the establishment, in so far as this does not run counter to essential operational requirements, mandatory safety rules or the protection of trade secrets.
- (3) This Act shall not affect the functions of trade unions and employers' associations and more particularly the representation of their members' interests.

Section 3 Different arrangements

- (1) The following may be determined by collective agreements:
 1. for companies comprising several establishments
 - a) the formation of a uniform works council for the company, or
 - b) the combination of companies or establishments if the formation of works councils is thereby facilitated, or if this combination serves the appropriate safeguarding of the workers' interests;
 2. for companies and combines, to the extent that they have been organised according to product- or project-specific divisions (branches) and the branch management also makes decision concerning issues that require participation, the formation of works councils for the branches (branch works councils), if this arrangement serves to appropriately carry out the works council's duties;
 3. other workers' representation structures to the extent that these structures serve an efficient and appropriate representation of workers' interests, in particular, because of the organisation of the establishment, company, or combine, or because of other types of cooperation between companies;

4. additional bodies under the Works Constitution Act (working groups) that serve for the inter-company co-operation of workers' representations;
 5. additional workers' representations under the Works Constitution Act that facilitate cooperation between the works council and the workers.
- (2) If no provisions are included in a collective agreement that cover the cases listed in subsection (1), Clauses 1, 2, 4, or 5, and if no other collective agreement is available, such an arrangement can be agreed upon in a works agreement.
 - (3) If no provisions are included in a collective agreement that cover the case described in subsection (1) clause 1 letter a), and if there is no works council in the establishment, a majority of workers can resolve to elect a uniform works council. This vote can be initiated by a minimum of three workers with voting rights employed by the establishment, or by a trade union represented in the establishment.
 - (4) Unless provided otherwise in the collective agreement or the plant-level agreement, the arrangements specified in Subsection (1) Clauses 1 to 3 shall be applied for the first time in the course of the next regular works council elections, unless no works council exists, or unless the works council has to be re-elected for other reasons. If the collective agreement or the works agreement provides for another voting time, the term of office of existing works councillors, which will become obsolete under the Subsection 1 Clauses 1 to 3, shall terminate upon announcement of the election results.
 - (5) The organisation units under the Works Constitution Act, which were established on the basis of a collective agreement or a plant-level agreement in accordance with Subsection 1 Clauses 1 to 3, are considered establishments for the purposes of this Act. The provisions concerning the rights and obligations of the works council and the legal position of its members shall be applicable to the workers' representations formed therein.

Section 4 Separate departments, very small establishments

- (1) Separate departments of establishments shall be regarded as independent establishments if they meet the conditions laid down in the first sentence of section 1 (1) and
 1. are situated at a considerable distance from the principal establishment, or
 2. are independent by reason of their function and organization.

The employees of a separate department, in which no separate works council exists, may resolve by a simple majority of votes and without complying with a special form that they will participate in the works council elections of the principal establishment; the second sentence of section 3 (3) shall apply, *mutatis mutandis*. The vote may also be initiated by the works council of the principal establishment. The resolution shall be communicated to the works council of the principal establishment not later than ten weeks before expiry of its term of office. The second to fourth sentences of this subsection shall apply, *mutatis mutandis*, to the revocation of the resolution.

- (2) Establishments that do not meet the conditions laid down in the first sentence of section 1 (1) shall be treated as part of the principal establishment.

Section 5 Employees

- (1) In this Act the term “employee” (male and female) comprises wage earners and salaried employees including persons employed for the purpose of their vocational training, regardless of whether they are engaged in indoor work, in field service, or in tele-work. The term includes persons engaged in home work who work principally for one and the same establishment. Furthermore, (female and male) civil servants and workers of the public service, including persons employed for the purpose of their vocational training, are considered “employees” if they work in establishments organised under private law.

(2) The following shall not be considered as employees for the purposes of this Act:

1. in establishments belonging to a corporation, the members of the organs that are legally empowered to represent the corporation;
2. partners in an ordinary commercial partnership or members of another association of persons in the establishment belonging to the partnership or association, in so far as they are empowered by law, its own by-laws or the articles of association to represent the association or to exercise management functions;
3. persons whose employment is not primarily for the purpose of earning their livelihood but is chiefly inspired by charitable or religious motives;
4. persons whose employment is not primarily for the purpose of earning their livelihood but principally for their cure or recovery, rehabilitation, moral improvement or education;
5. the spouse, the life partner, as well as the relatives by blood or marriage of the first degree living with the employer.

(3) Unless this Act expressly provides to the contrary, it shall not apply to executive staff. Executive staff are employees who, under their contract of employment and by their status in the company or establishment,

1. are entitled on their own responsibility to engage and dismiss employees on behalf of the establishment or one of its departments; or
2. are endowed with general authority (power of procuration) or full power of representation or power to sign, the latter also being important in relation to the employer; or

3. regularly carry out other duties which are important for the existence and development of the company or an establishment and fulfilment of which requires particular experience and knowledge, if, in doing so, they either essentially make decisions on their own responsibility or substantially influence these decisions; this may also be the case with stipulated procedures, particularly those based on legal provisions, plans or guidelines and when cooperating with other executive staff.
- (4) In case of doubt, executive staff under subsection (3), clause 3, are employees who
1. have been assigned to the executive staff on the occasion of the last election of the works council, the executives' committee or of supervisory board members of the employees or by means of a final and conclusive legal decision; or
 2. belong to a management level at which executive staff are predominantly represented in the company; or
 3. regularly receive an annual salary which is customary for executive staff in the company; or
 4. if there is still doubt on application of clause 3, regularly receive an annual salary which is three times greater than the reference figure as per section 18 of Book Four of the Social Code. The first and second sentences shall apply, *mutatis mutandis*, to the civil servants referred to in subsection 1, sentence 3.

Section 6

(cancelled)

Part Two

Works council, works meeting, central works council and combine works council

Division One

Composition and election of the works council

Section 7 Voting rights

All employees of the establishment who are 18 years of age or over shall have voting rights. If employees of another employer are hired out for work, they are entitled to vote if they are working in the establishment for more than three months.

Section 8 Eligibility

- (1) All employees with voting rights who have been employed in or principally worked for the establishment as homeworkers for six months shall be eligible to the works council. The said period of six months shall be deemed to include any immediately preceding period during which the employee was employed in another establishment belonging to the same company or combine as defined in section 18 (1) of the Joint Stock Act. Persons who by court judgement have been declared ineligible or debarred from holding public office shall be ineligible to works councils.
- (2) If the establishment has been in existence for less than six months, such employees as are employed in the establishment and fulfil the other conditions for eligibility at the announcement of the election for the works council shall be eligible notwithstanding the requirement of six months' service under subsection (1).

Section 9 Number of members of the works council

The membership of the works council shall be as follows, according to the number of employees with voting rights normally employed in the establishment:

5 to 20 employees entitled to vote: 1 person,		
21 to 50 employees entitled to vote: 3 members,		
51 to 100 employees entitled to vote: 5 members		
101 to	200 employees:	7 members
201 to	400 employees:	9 members
401 to	700 employees:	11 members
701 to	1000 employees:	13 members
1001 to	1500 employees:	15 members
1501 to	2000 employees:	17 members
2001 to	2500 employees:	19 members
2501 to	3000 employees:	21 members
3001 to	3500 employees:	23 members
3501 to	4000 employees:	25 members
4001 to	4500 employees:	27 members
4501 to	5000 employees:	29 members
5001 to	6000 employees:	31 members
6001 to	7000 employees:	33 members
7001 to	9000 employees:	35 members

In establishments employing more than 9,000 employees the number of members of the works council shall be increased by two members for every additional fraction of 3,000 employees.

Section 10

(cancelled)

Section 11 Reduction in the number of works council members

If the number of eligible employees in an establishment is insufficient, the number of members in the works council shall be the one specified for the next lower size of establishment.

Section 12

(cancelled)

Section 13 Time of elections to the works council

- (1) Regular elections to the works council shall be held every four years at some time between 1 March and 31 May. They shall be held at the same time as the regular elections in accordance with section 5 (1) of the Executives' Committee Act.
- (2) Elections to the works council shall be held outside this period whenever –
 1. by the end of twenty-four months from the date of the last election, the number of employees regularly employed has increased or decreased by one half but by not less than fifty in any case;
 2. the total membership of the works council, after all the substitutes have been called upon, has fallen below the prescribed number;
 3. the works council decides to resign by the vote of a majority of its members;
 4. the works council election results are successfully contested;
 5. the works council is dissolved by court order; or
 6. there is no works council in the establishment.
- (3) If an election for a works council has been held outside the period set aside for regular works council elections, a new election shall be held in the next immediately following period for regular elections for the works council. If at the beginning of the period fixed for regular elections the works council has been in office for less than a year, the new works council elections shall be held in the regular election period that follows.

Section 14 Election procedure

- (1) The works council shall be elected directly by secret ballot.

- (2) The election shall be conducted according to the principles of proportional representation. If only one list of candidates is submitted, or if the works council is to be elected according to the simplified electoral procedure specified in Section 14a, the election shall be conducted according to the principles of majority representation.
- (3) Employees with voting rights and trade unions represented in the establishment shall be entitled to submit lists of candidates for the works council elections.
- (4) Each list of candidates submitted by the employees shall be signed by not less than onetwentieth of the employees entitled to vote, but by not less than three employees with voting rights; in establishments with up to twenty voting employees, as a rule, the signatures of two employees with voting rights shall suffice. The signatures of fifty voting employees shall suffice in all cases.
- (5) Each list of candidates from a trade union must be signed by two representatives.

Section 14a Simplified electoral procedure for small establishments

- (1) Works councils shall be elected in a two-step process in establishments that normally have five to fifty employees with voting rights. The electoral board pursuant to section 17a clause 3 is elected at an initial election meeting. The works council shall be elected directly by secret ballot at a second election meeting. This election meeting shall take place one week after the election meeting in which the electoral board was elected.
- (2) Lists of candidates may be submitted until the end of the election assembly in which the electoral board is elected pursuant to section 17a clause 3, and section 14 (4) shall be applicable to employees' lists of candidates with the proviso that lists of candidates submitted at this election meeting need not be submitted in writing.

- (3) Notwithstanding the first and second sentence of subsection (1) hereof, if the electoral board of establishments that normally have five to fifty voting employees has been appointed by the works council, the central works council or the combine works council pursuant to section 17a clause 1 in conjunction with section 16 or by the labour court pursuant to section 17a clause 4, the works council shall be elected directly by secret ballot at a single election meeting only. Lists of candidates may be submitted not later than one week before the election meeting in which the works council is elected; section 14 (4) shall not be affected.
- (4) Those employees with voting rights who cannot participate in the election meeting in which the works council is elected shall be given the opportunity to cast their votes in writing.
- (5) In establishments that normally have fifty-one to one-hundred employees with voting rights the electoral board and the employer may agree on the application of the simplified electoral procedure.

Section 15 Representation of employment categories and of male and female employees

- (1) The works council should be composed as far as possible of employees of the various organisation units and the different employment categories of the workers employed in the establishment.
- (2) The gender that accounts for a minority of staff shall at least be represented according to its relative numerical strength whenever the works council consists of three or more members.

Section 16 Appointment of the electoral board

- (1) Not less than ten weeks before the end of its term of office, the works council shall appoint an electoral board of three persons with voting rights, one of whom shall be the chairman. The works council may increase the number of

members on the electoral board if the proper conduct of the election so requires. In all cases the electoral board shall consist of an odd number of members. A substitute may be appointed for each member of the electoral board in order to replace him in his absence. In establishments with male and female employees, the electoral board shall comprise women and men. Each trade union represented in the establishment may, in addition, delegate a representative belonging to the establishment to the electoral board as a non-voting member, inasmuch as no voting member of the electoral board belongs to the trade union involved.

- (2) If no electoral board has been appointed by the beginning of the eighth week before the end of the term of office of the works council, it shall be appointed by the labour court on application from three or more persons with voting rights or a trade union represented in the establishment; the preceding subsection shall apply, *mutatis mutandis*. The application may contain proposals as to the composition of the electoral board. In the case of establishments that normally employ more than twenty employees with voting rights the labour court may also appoint as members of the electoral board persons who are not employed in the establishment but belong to a trade union represented in the establishment, if the proper conduct of the election so requires.
- (3) If no electoral board has been appointed by the beginning of the eighth week before the end of the term of office of the works council, the central works council or, in the absence of the latter, the combine works council may appoint the electoral board. Subsection (1), above, shall apply, *mutatis mutandis*.

Section 17 Appointment of the electoral board in establishments without a works council

- (1) If an establishment that fulfils the conditions of the first sentence of section 1 (1) has no works council, an electoral board shall be appointed by the central works council or, in the absence of the latter, the combine works council. Section 16 (1) shall apply, *mutatis mutandis*.

- (2) If there is neither a central works council nor combine works council, an electoral board shall be elected at a works meeting of the employees on a majority vote of those present; Section 16 (1) shall apply, *mutatis mutandis*. The same applies if the central works council or combine works council fails to appoint the electoral board as stipulated in subsection (1).
- (3) Such works meeting may be called by three employees of the establishment with voting rights or a trade union represented in the establishment; in doing so, the said employees or trade union may make proposals as to the composition of the electoral board.
- (4) If a works meeting thus called is not held or fails to elect an electoral board, the board shall be appointed by the labour court on application from three or more persons with voting rights or a trade union represented in the establishment. Section 16 (2) shall apply, *mutatis mutandis*.

Section 17a Appointment of the electoral board in the simplified electoral procedure

If section 14a is applicable, sections 16 and 17 shall apply with the following modifications:

1. The period referred to in the first sentence of section 16 (1) shall be reduced to four weeks and the period referred to in the first sentences of section 16 (2) and (3) to three weeks.
2. The second and third sentences of section 16 (1) shall not apply.
3. If section 17 (2) is applicable, the electoral board shall be elected at an election meeting by the majority of the workers present. Section 17 (3) shall apply, *mutatis mutandis*, to the calling of the election meeting.
4. Section 17 (4) shall apply, *mutatis mutandis*, if no election meeting takes place although it has been properly convened, or if no electoral board was elected at the election meeting.

Section 18 Preparation and conduct of the election

- (1) The electoral board shall without delay call the election, carry it out and announce the results. If the electoral board fails to carry out this duty, the labour court shall act in its place on application of the works council, of three or more employees with voting rights or a trade union represented in the establishment. Section 16 (2) shall apply, *mutatis mutandis*.
- (2) If there is any doubt as to whether an organisation unit qualifies for having a works council, the employer, any interested electoral board member or a trade union represented in the establishment shall be entitled to apply to the labour court for a decision.
- (3) Directly after termination of the election the electoral board shall count the votes in public, record the results in writing and announce them to the employees of the establishment. The employer and the trade unions represented in the establishment shall each be sent a copy of the election records.

18 a. Allocation of executive staff for elections

- (1) If the elections are to be held at the same time in accordance with section 13 (1) and section 5 (1) of the Executives' Committee Act, the electoral boards shall notify each other immediately after preparation of the voters' lists, but not later than two weeks prior to the start of the elections, which salaried employees have been allocated to the executive staff; this shall also apply if the elections are held at the same time without the existence of a legal obligation. Insofar as there is no agreement between the electoral boards regarding this allocation, an attempt must be made to reach an agreement in a joint meeting. Insofar as agreement is reached, the salaried employees shall be entered in the appropriate voters' list in accordance with their allocation.
- (2) Insofar as no agreement is reached, a mediator shall make a renewed attempt to achieve agreement between the electoral boards regarding allocation, this occurring not less than one week before the start of the elections. The employer

shall support the mediator at his request, particularly by providing the necessary information and documentation. If this attempt to reach agreement fails, the mediator shall decide after consultation with the employer. The third sentence of subsection (1), above, shall apply, *mutatis mutandis*.

- (3) The electoral boards must agree on the mediator. Only an employee of the establishment or of another establishment of the company or combine, or the employer may be appointed as mediator. If no agreement is reached, the electoral boards shall each propose one person as a mediator; the casting of lots shall decide who will act as mediator.
- (4) If an election in accordance with the Executives' Committee Act is not held at the same time as the election in accordance with section 13 (1) or (2), the electoral board shall notify the executives' committee in accordance with the first phrase of the first sentence of subsection (1). If there is disagreement regarding allocation, the executives' committee shall appoint members to participate in the allocation procedure in lieu of the electoral board. If an election in accordance with this Act is not held at the same time as the election in accordance with section 5 (1) or (2) of the Executives' Committee Act, the first and second sentences of this subsection shall apply to the works council, *mutatis mutandis*.
- (5) Recourse to the courts of law shall not be excluded by the allocation. Contestation of the works council election or the election in accordance with the Executives' Committee Act shall be excluded, insofar as it is based on the claim that the allocation was incorrect. The second sentence of this subsection shall not apply if the allocation is patently incorrect.

Section 19 Contesting of elections

- (1) An election may be contested before the labour court, if any of the essential rules respecting the right to vote, eligibility or electoral procedure have been infringed and no subsequent correction has been made, unless the infringement could not have altered or influenced the election results.

- (2) Such contestation may be made by any three or more persons with voting rights, a trade union represented in the establishment or the employer. To be receivable the action must be brought within two weeks of the announcement of the election results.

Section 20 Protection against obstruction and costs of the election

- (1) No person shall obstruct the election of a works council. In particular, no employee shall be restricted in his right to vote or to stand for election.
- (2) Any attempt to influence a works council election by inflicting or threatening any unfavourable treatment or by granting or promising any advantage shall be unlawful.
- (3) The costs of the election shall be borne by the employer. Any loss of working time entailed by voting, performance of duties on the electoral board or activity as a mediator (section 18a) shall not give the employer a right to reduce the remuneration.

Division Two

Term of office of the works council

Section 21 Term of office

The regular term of office of a works council shall be four years. It shall run from the announcement of the election results or, if a works council is still in office at that date, from the end of the term of office of that council. The term of office shall expire not later than 31 May of the year in which the regular works council elections are to be held under section 13

- (1) In the case covered by the second sentence of section 13 (3) the term of office shall end not later than 31 May of the year in which a new works council is to be elected. In the cases covered by section 13 (2), clauses 1 and 2, the term of office shall end on the announcement of the election results giving the newly elected works council.

Section 21a Transitional mandate

- (1) If an establishment is split up, its works council shall continue in office and conduct the day-to-day business for the departments assigned to it, provided that they meet the conditions laid down in the first sentence of section 1 (1) and are not integrated into an establishment which has a works council (transitional mandate). In particular, the works council shall immediately appoint electoral boards. The transitional mandate shall be finished as soon as a new works council has been elected in the departments and the election results have been announced, but in any case not later than six months after the split has become effective. The transitional mandate may be extended by six more months by a collective agreement or works agreement.
- (2) If establishments or departments are combined into one establishment, the works council of the largest establishment or department in terms of number of workers with voting rights shall hold the transitional mandate. Subsection (1), above, shall apply, *mutatis mutandis*.
- (3) Subsections 1 and 2 shall also be applicable if establishments or departments are split up or combined in the course of a divestiture or a transformation in accordance with the Law Regulating Transformation of Companies.

Section 21b Residual mandate

If an establishment is shut down, split up or combined with others and therefore ceases to exist, its works council shall continue in office for as long as it is necessary to safeguard the rights to participate and of co-determination existing in this context.

Section 22 Continuation in office of the works council

In the cases covered by section 13 (2), clauses 1 to 3, the works council shall continue in office until the new works council has been elected and the election results have been announced.

Section 23 Dereliction of statutory duties

- (1) One-fourth or more of the employees with voting rights or the employer or a trade union represented in the establishment may apply to the labour court for an order to remove from office any member of the works council or to dissolve the council on the grounds of grave dereliction of its statutory duties. The works council itself may also apply for the removal of a member.
- (2) Where a works council is dissolved, the labour court shall without delay appoint an electoral board for a fresh election. Section 16 (2) shall apply, *mutatis mutandis*.
- (3) Where the employer has grossly violated his duties under this Act, the works council or a trade union represented in the establishment may apply to the labour court for an order to the employer enjoining him to cease and desist from an act, allow an act to be performed or perform an act. If the employer does not obey an executory court order to cease and desist from an act or allow an act to be performed, the labour court shall, on application and after prior warning, impose a fine on him for each such violation. If the employer does not carry out an act imposed on him by an executory court order, the labour court shall, on application, give a decision that he shall be made to perform the act imposed on him subject to payment of fines. Such application may be made by the works council or by a trade union represented in the establishment. The maximum amount of the fine shall be Euro 10,000.

Section 24 Termination of membership

- (1) Membership of the works council shall be terminated by –
 1. expiry of the term of office;
 2. resignation from the works council;
 3. termination of the contract of employment;
 4. loss of eligibility;

5. removal from office or dissolution of the works council by court order;
6. a court order relating to the determination of non-eligibility after the expiry of the time limit referred to in section 19 (2) unless the grounds for non-eligibility are found to be nonexistent.

Section 25 Substitutes

- (1) Whenever a member leaves the works council he shall be replaced by a substitute. The foregoing shall apply, mutatis mutandis, to the replacement of a member of a works council who is temporarily unable to act.
- (2) The substitutes shall be taken in turn from the unelected employees on the same candidate lists as the members who are to be replaced, having regard to section 15 (2). After all persons on one list of candidates have been taken, the substitute shall be taken from the candidate list from which the next seat would be filled in accordance with the principles of proportional representation. If the member who is leaving or unable to act was elected on the principles of majority representation, the sequence of the substitutes shall be in accordance with the number of votes obtained, having regard to section 15 (2).

Division Three

Conduct of business of the works council

Section 26 Chairman

- (1) The works council shall elect two of its members as chairman and vice-chairman.
- (2) The chairman of the works council (or if he is unable to act, the vice-chairman) shall represent the works council subject to the decisions adopted by the council. The chairman of the works council (or, if he is unable to act, the vice-chairman) shall have the right to receive statements to be submitted to the works council.

Section 27 Works committee

- (1) If a works council consists of nine or more members, it shall set up a works committee. The works committee shall consist of the chairman of the works council, the vice-chairman, as well as, in works councils with

9 to 15 members:	3 additional committee members,
17 to 23 members:	5 additional committee members,
25 to 35 members:	7 additional committee members,
37 or more members:	9 additional committee members,

The additional committee members shall be elected from its midst by the works council in a secret ballot and in accordance with the principles of proportional representation. If only one list of candidates is proposed, the ballot shall be carried out in accordance with the principles of the majority vote. If the additional committee members are elected in accordance with the principles of proportional representation, they shall be removed from office by a decision of the works council, taken in a secret ballot and requiring a majority of three-quarters of the votes of the works council members.

- (2) The works committee shall deal with the day-to-day business of the works council. The works council may by majority vote of its members delegate tasks to the works committee for independent action; the foregoing shall not apply to the negotiation of works agreements. Such delegation of tasks must be recorded in writing. The second and third sentences of this subsection shall apply, *mutatis mutandis*, to the revocation of such delegation of tasks.
- (3) A works council consisting of less than nine members may delegate day-to-day business to its chairman or others of its members.

Section 28 Assignment of tasks to committees

- (1) In establishments with more than 100 employees, the works council may establish additional committees and assign them specific tasks. The third to

fifth sentences of section 27 (1) shall apply, mutatis mutandis, to the election and removal from office of the committee members. Once a works committee has been set up the works council may assign tasks for autonomous action to the committees; the second to fourth sentences of section 27 (2) shall apply, mutatis mutandis, insofar as these tasks are assigned to them for independent action.

- (2) Subsection 1 shall apply, mutatis mutandis to the delegation of tasks for independent action to works council members on joint committees whose members are appointed by the works council and by the employer.

Section 28a Assignment of tasks to working groups

- (1) In establishments with more than 100 employees, the works council may by majority vote of its members delegate certain tasks to working groups, such delegation of tasks being subject to a framework agreement to be made with the employer. The tasks shall be linked to the activities to be performed by the working group. Such delegation of tasks must be recorded in writing. The first phrase of the first sentence and the third sentence of this subsection shall apply, mutatis mutandis, to the revocation of such delegation of tasks.
- (2) The working group may, within the scope of the tasks delegated to it, make agreements with the employer; such an agreement shall be made by a majority vote of the group's members. Section 77 shall apply, mutatis mutandis. If the employer and the working group do not reach an agreement on a certain matter, the works council shall exercise the right to participation.

Section 29 Convening of meetings

- (1) The electoral board shall convene the members of the works council for the purposes of the election under section 26 (1) before one week has elapsed after the election date. The meeting shall be presided over by the chairman of the electoral board, until the works council has appointed one of its own members to preside over the election.

- (2) Subsequent meetings shall be called by the chairman of the works council. The chairman shall draw up the agenda and conduct the proceedings. He shall notify the works council members of the meetings in good time, informing them of the agenda. The foregoing shall also apply to the disabled persons' delegation and to the youth and trainee representatives, insofar as they are entitled to attend the works council meeting. If a member of the works council or of the youth and trainee delegation is unable to attend a meeting, he shall inform the chairman without delay, indicating the reasons for his absence. The chairman shall then invite the substitute to replace the said member of the works council or the youth and trainee representative in his absence.
- (3) The chairman shall convene a meeting and place on its agenda the matter on which a discussion has been requested, if such request is made by one-fourth of the members of the works council or by the employer.
- (4) The employer shall attend the meetings which take place at his request and any other meetings to which he is expressly invited. He may be accompanied by a representative of the employers' association of which he is a member.

Section 30 Meetings of the works council

The works council shall normally meet during working hours. In fixing the meetings the works council shall take account of the operational needs of the establishment. The employer shall be notified of the date of the meeting in advance. Meetings of the works council shall not be public.

Section 31 Attendance of trade union delegates

If one-fourth of the members of the works council so request, a delegate of a trade union represented on the works council may be invited to attend meetings in an advisory capacity; in that case the trade union shall be notified in good time of the time of the meeting and its agenda.

Section 32 Attendance of the disabled persons' delegation

The disabled persons' delegation (section 94 of Book Nine of the Social Code) shall be entitled to attend all meetings of the works council in an advisory capacity.

Section 33 Decisions of the works council

- (1) Unless otherwise provided in this Act, the decisions of the works council shall be deemed to be adopted if the majority of the members present vote in favour. In the case of a tie the motion shall be taken to be defeated.
- (2) At least one-half of the members of the works council must take part in a vote to constitute a quorum; members may be replaced by substitutes.
- (3) If the youth and trainee delegation participates in the voting, the votes of the youth and trainee representatives shall be taken into account in tallying the results.

Section 34 Minutes

- (1) Minutes shall be kept of all proceedings of the works council, giving at least the text of all decisions taken and the majority by which they were adopted. The minutes shall be signed by the chairman and one other member. They shall be accompanied by a list of the members present, in which each member shall personally enter his name.
- (2) If the employer or a trade union representative attended the meeting, he shall be given a copy of the section of the minutes which concerns him. Any objections to the minutes shall be lodged in writing without delay; they shall be attached to the minutes.
- (3) Members of the works council shall be entitled at any time to inspect all records of the works council and its committees.

Section 35 Deferment of decisions

- (1) If a majority of the youth and trainee delegation or the disabled persons' delegation is of the opinion that a decision of the works council considerably prejudices important interests of the employees they represent, the decision shall at their request be deferred for one week (counted from the date on which the decision is taken) to allow time for an attempt to come to an agreement, where appropriate with the assistance of the trade unions represented in the establishment.
- (2) On expiry of this period a fresh decision shall be taken on the matter at issue. If the initial decision is confirmed, no further deferment may be requested; the same rule shall apply if the initial decision is adopted with only minor amendments.

Section 36 Standing orders

Further provisions respecting the conduct of business should be laid down in writing in standing orders to be adopted by the works council by majority vote of its members.

Section 37 Honorary nature of post; loss of working time

- (1) The post of member of the works council shall be unpaid.
- (2) The members of the works council shall be released from their work duties without loss of pay to the extent necessary for the proper performance of their functions, having regard to the size and nature of the establishment.
- (3) By way of compensation for works council activities which for operational reasons must be performed outside working hours, a member of a works council shall be entitled to corresponding time off without loss of pay. Operational reasons are also present if the works council activities cannot be carried out during the personal working hours because of different working

hours of the works council members. Such time off shall be granted within a month; if this cannot be done for operational reasons, the time spent on such activities shall be remunerated on the same basis as extra work.

- (4) During his term of office and for one year thereafter the remuneration of a member of the works council shall not be fixed at a lower rate than the remuneration paid to workers in a comparable position who have followed the career that is usual in the establishment. The same shall apply to general benefits granted by the employer.
- (5) During his term of office and for one year thereafter a member of the works council shall be employed only on activities that rank on the same level as those of the workers referred to in the preceding subsection, except where this is precluded by imperative operational requirements.
- (6) Subsections (2) and (3) shall apply, *mutatis mutandis*, to the attendance of training and educational courses, in so far as the knowledge imparted is necessary for the activities of the works council. Operational reasons as defined in subsection (3) are also present if the training is provided to the works council member outside his working hours due to special features of the establishment's working hours regulations; in this case, the claim for compensation is limited to the working hours of one full-time employee per day of training, taking into account the releases stipulated in subsection (2) hereof. In scheduling the time for attending training and educational courses the works council shall take account of the operational requirements of the establishment. It shall notify the employer in good time of the attendance of training and educational courses and of the time at which they are held. If the employer feels that the operational requirements of the establishment have not sufficiently been taken into account, he may submit the case to the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.
- (7) Without prejudice to subsection (6), each member of the works council shall be entitled during his regular term of office to a paid release for a total of three

weeks to enable him to attend training and educational courses that have been approved for this purpose by the competent central labour authority of the Land concerned after consultation with the central organization of trade unions and employers' associations. The entitlement conferred by the preceding sentence shall be increased to four weeks for employees who are serving for the first time as a member of the works council and have not yet previously served as a youth and trainee representative. The second to sixth sentences of subsection (6) shall apply.

Section 38 Releases

- (1) The minimum number of works council members to be released from their work duties shall depend on the number of employees normally employed in the establishment, as set out below:

200 to	500 employees:	1 member of the works council,
501 to	900 employees	2 members of the works council
901 to	1500 employees	3 members of the works council
1501 to	2000 employees	4 members of the works council
2001 to	3000 employees	5 members of the works council
3001 to	4000 employees	6 members of the works council
4001 to	5000 employees	7 members of the works council
5001 to	6000 employees	8 members of the works council
6001 to	7000 employees	9 members of the works council
7001 to	8000 employees	10 members of the works council
8001 to	9000 employees	11 members of the works council
9001 to	10000 employees	12 members of the works council.

In establishments with more than 10,000 employees one further member of the works council shall be released for each additional fraction of 2,000 employees. Releases may also be granted in the form of partial releases. Taken together, such partial releases shall not exceed the amount of releases specified in the first and second sentences. Other arrangements concerning releases can be made by collective or works agreement.

- (2) The works council members to be released shall be elected by secret ballot and in accordance with the principles of proportional representation by the works council from its midst after consultation with the employer. If only one list of candidates is proposed, the ballot shall be carried out in accordance with the principles of the majority vote; if only one works council member is to be released, he shall be elected by simple majority. The works council shall give the employer the names of the members to be released. If the employer feels that the release is not justifiable under the circumstances, he may appeal to the conciliation committee within two weeks of being notified. The award of the conciliation committee shall take the place of an agreement between the employer and the works council. If the conciliation committee confirms the concern of the employer, it shall also take into account the protection of minorities in the sense of the first sentence of this subsection when deciding upon another works council member to be released. If the employer does not appeal to the conciliation committee, his approval shall be deemed to have been given and the releases shall take effect on the expiry of the two weeks referred to above. The fifth sentence of section 27 (1) shall apply, *mutatis mutandis*, to removal of members from office.
- (3) In respect of members of the works council who have been released from their work duties for three full consecutive terms of office, the period during which their remuneration continues pursuant to section 37 (4) and their employment pursuant to 37 (5) shall be extended to two years after the expiry of their term of office.
- (4) Members of the works council who have been released from their work duties shall not be debarred from vocational training programmes inside or outside the establishment. Within a year of the date on which the release comes to an end, members of the works council shall be allowed, as far as the facilities offered by the establishment permit, to take any career training normally provided for the employees of the establishment that they missed because of their release. In respect of members of the works council who were released from their work duties for three full consecutive terms of office, the period referred to in the preceding sentence shall be extended to two years.

Section 39 Consultation hours

- (1) The works council may fix hours for consultation during working hours. The time and place of such consultation hours shall be fixed in agreement with the employer. If no agreement is reached the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.
- (2) If the youth and trainee delegation does not have its own consultation hours, a member of the youth and trainee delegation may take part in the consultation hours held by the works council for the purpose of advising the employees referred to in section 60 (1).
- (3) Any loss of working time entailed by making use of consultation hours or otherwise seeking the assistance of the works council shall not give the employer a right to reduce the employee's remuneration.

Section 40 Expenses of the works council and material facilities

- (1) Any expenses arising out of the activities of the works council shall be defrayed by the employer.
- (2) The employer shall provide to the necessary extent the premises, material facilities, means of information and communication and office staff required for the meetings, consultations and day-to-day operation of the works council.

Section 41 Prohibition of employees' contributions

It shall be unlawful to collect or pay employees' contributions towards the works council.

Division Four

Works meeting

Section 42 Composition, sectional meetings, department meetings

- (1) The works meeting shall be composed of all the employees of the establishment; it shall be conducted by the chairman of the works council. It shall not be public. In establishments whose nature precludes works meetings which all employees can attend at the same time, sectional meetings shall be held.
- (2) The works council shall call department meetings for employees of departments that are separated by their organization or location where this is necessary to discuss the special interests of the said employees. Department meetings shall be conducted by a member of the works council who should, if possible, be employed in the department concerned. The second and third sentences of the preceding subsection shall apply, *mutatis mutandis*.

Section 43 Ordinary works meetings and department meetings

- (1) The works council shall call a works meeting once in every calendar quarter and report on its activities. In the circumstances referred to in the first sentence of section 42 (2) the works council shall organise two of the works meetings referred to in the preceding sentence in the form of department meetings. The department meetings shall, as far as possible, be held simultaneously. The works council may call an additional works meeting (or, in the circumstances referred to in the first sentence of section 42 (2), one additional holding of simultaneous department meetings) in every calendar half year, if this appears advisable for special reasons.
- (2) The employer shall be invited to the works meetings and department meetings and notified of the agenda. He shall be entitled to address the meetings. At least once in every calendar year the employer or his representative shall make a report to the works meeting on staff questions including the status of equality between women and men and the integration of the foreign employees

working in the establishment, the financial position of and trends in the establishment, and on environmental protection in the establishment as far as there is no risk of a disclosure of trade or business secrets.

- (3) The works council may, and if so requested by the employer or one-fourth or more of the employees with voting rights, must convene a works meeting and place on the agenda the matter on which a discussion has been requested. The employer shall be notified in good time of the day and time of the meetings convened at his request.
- (4) At the request of a trade union represented in the establishment, the works council shall call a works meeting of the type referred to in the first sentence of subsection (1) within two weeks of receiving the said request, if no works meeting and no department meetings have been held in the preceding calendar half year.

Section 44 Time of meetings and loss of remuneration

- (1) Meetings held in pursuance of sections 14a, 17 and 43 (1) as well as any meetings called at the request of the employer shall be held during working hours unless it is absolutely necessary in view of the nature of the establishment to make some other arrangement. The time for attending the meetings, including additional travel time, shall be remunerated as hours of work. This rule shall also apply if meetings are held outside working hours because of the nature of the establishment; any travel costs incurred by the employees through attending these meetings shall be reimbursed by the employer.
- (2) All other works meetings or department meetings shall be held outside working hours. This rule may be relaxed if the employer so agrees; meetings held during working hours with the employer's agreement shall not give the employer any right to reduce the employees' remuneration.

Section 45 Subjects dealt with at works meetings and department meetings

Works meetings and department meetings may deal with matters of direct concern to the establishment or to the employees, including subjects in connection with collective bargaining policies, social policy, environmental and financial matters, issues concerning the promotion of equality between women and men and the reconciliation of family and employment; as well as the integration of the foreign employees working in the establishment, the principles laid down in section 74 (2) shall apply. Works meetings and department meetings may make suggestions to the works council and take a stand on its decisions.

Section 46 Delegates from industrial associations

- (1) Delegates from the trade unions represented in the establishment shall be entitled to attend all works and department meetings in an advisory capacity. Where the employer attends a works or department meeting, he may be accompanied by a delegate from the employers' association of which he is a member.
- (2) The trade unions represented on the works council shall be sent a written notification in good time indicating the date, time and agenda of the works or department meetings.

Division Five

Central works council

Section 47 Conditions for establishment, number of members, weighting of votes

- (1) If there are several works councils in one company, a central works council shall be established.

- (2) Each works council shall appoint to the central works council one of its members if it consists of up to three members, and two of its members if it comprises more than three members. The genders shall be adequately represented.
- (3) The works council shall appoint at least one substitute for each member of the central works council and establish their order of succession to office.
- (4) A different number of members of the central works council from the one prescribed in the first sentence of subsection (2) above may be provided for by collective agreement or works agreement. (5) If under the provisions of the first sentence of subsection (2) a central works council has more than forty members and no stipulation of the type referred to in subsection (4) has been made by collective agreement, the employer and the central works council shall negotiate a works agreement on the number of members of the said council providing for the joint appointment of members to the central works council by the works councils of two or more establishments of the company that are linked by regional ties or similar interests.
- (6) If no agreement is reached in a case covered by subsection (5), the matter shall be decided by a conciliation committee to be set up for the whole company. The award of the conciliation committee shall take the place of an agreement between the employer and the central works council.
- (7) Each member of the central works council shall have as many votes as there are employees having voting rights and recorded in the voters' list of the establishment in which he was elected. Where several members of the works council have been appointed, the votes shall be apportioned among them in accordance with the first sentence.
- (8) Where a member of the central works council has been appointed to represent more than one establishment, he shall have as many votes as there are employees with voting rights who are recorded in the voters' list of the establishment for which he has been appointed; if several members have been appointed, the second sentence of subsection 7 shall apply, *mutatis mutandis*.

- (9) For the members of the central works council who have been appointed by a joint establishment of several companies, provision differing from subsections 7 and 8 hereof can be made by collective agreement or works agreement.

Section 48 Removal from office of members of the central works council

One-fourth or more of the employees of the company who have voting rights or the employer or the central works council or a trade union represented in the company may apply to the labour court for an order to remove from office any member of the central works council on the grounds of grave dereliction of his statutory duties.

Section 49 Termination of membership

Membership of the central works council shall be ended by termination of membership of the works council, resignation, removal from office in the central works council by court order or by the works council.

Section 50 Competency

- (1) The central works council shall be competent to deal with matters affecting the company as a whole or two or more of its establishments, which the individual works councils are unable to settle within their establishments; therefore, its competency also covers establishments that have no works council. It shall not be deemed to be a higher organ than the individual works councils.
- (2) A works council may refer a matter to the central works council by a majority vote of its members. In doing so, the works council may reserve the right of decision. The third and fourth sentences of section 27 (2) shall apply, *mutatis mutandis*.

Section 51 Conduct of business

- (1) Sections 25 (1), 26, 27 (2) and (3), section 28 (1) first and third sentence, and (2), sections 30, 31, 35, 36, 37 (1) to (3) and sections 40 and 41 shall apply, *mutatis mutandis*, to the central works council. Section 27 (1) shall also apply, *mutatis*

mutandis, with the proviso that the central works committee shall consist of the chairman and vice-chairman of the central works council and some additional members whose number shall depend on the size of the central works council, as set out below:

9 to 16 members: 3 additional committee members,
17 to 24 members: 5 additional committee members,
25 to 36 members: 7 additional committee members,
more than 36 central works council members: 9 additional committee members.

- (2) If a central works council is to be established, the works council of the head office of the company or, if there is no such works council, the works council of the establishment with the largest number of employees with voting rights shall call a meeting to elect the chairman and the vice-chairman of the central works council. The chairman of the works council that has called the meeting shall preside over the meeting until the central works council has appointed one of its members to conduct the election. Section 29 (2) to (4) shall apply, mutatis mutandis.
- (3) Unless otherwise provided, the decisions of the central works council shall be taken by a majority of the members present and voting. In the case of a tie the motion shall be taken to be defeated. To constitute a quorum not less than one-half of the members of the central works council must take part in the vote and those who vote must represent at least one-half of the total voting strength; members may be replaced by substitutes. Section 33 (3) shall apply, mutatis mutandis.
- (4) Section 33 (1) and (2) shall apply to voting in the central works committee and other committees of the central works council.
- (5) In as far as this Act does not contain any special provisions, the provisions relating to the rights and obligations of the works council shall apply, mutatis mutandis, to the central works council.

Section 52 Attendance of the central disabled persons' delegation

The central disabled persons' delegation (section 97 (1) of Book Nine of the Social Code) shall be entitled to attend all meetings of the central works council in an advisory capacity.

Section 53 Meeting of works councils

- (1) At least once in every calendar year the central works council shall call a meeting of the chairmen and vice-chairmen of the works councils and all other members of the works committees. Works councils may appoint other members not covered by the first sentence as delegates to this meeting on condition that the total number of participants allotted to it in application of the first sentence is not exceeded.
- (2) At the said meeting –
 1. the central works council shall make a report on its activities, and
 2. the employer shall make a report on staff questions and social affairs in the company including the status of equality between women and men and the integration of the foreign employees working in the establishment, the financial position of and trends in the establishment, and on environmental protection in the establishment, in as far as there is no risk of a disclosure of trade or business secrets.
- (3) The central works council may hold the works council meetings in the form of partial meetings. In all other respects the second phrase of the first sentence and the second sentence of section 42 (1), the first and second sentences of section 43 (2) and sections 45 and 46 shall apply, *mutatis mutandis*.

Division Six

Combine works council

Section 54 Establishment of the combine works council

- (1) In a combine (as defined in section 18 (1) of the Joint Stock Act) a combine works council may be established by resolutions of the individual central works councils. Any proposal to establish such council must be approved by the central works councils for the subsidiaries of the combine employing more than 50 per cent of the employees of the whole combine.
- (2) Where a subsidiary of the combine only has a works council, the said council shall assume the duties assigned to the central works council under the provisions of this Division.

Section 55 Composition of the combine works council and weighting of votes

- (1) Each central works council appoints to the combine works council two of its members. The genders shall be adequately represented.
- (2) The central works council shall appoint at least one substitute for each member of the combine works council and establish their order of succession to office.
- (3) Each member of the combine works council is entitled to one-half of the votes of the members of the central works council by which he was appointed.
- (4) A different number of members of the combine works council than the one prescribed in the first sentence of subsection (1) may be provided for by collective agreement or works agreement. Section 47 (5) to (9) shall apply, *mutatis mutandis*.

Section 56 Removal from office of members of the combine works council

One-fourth or more of the employees with voting rights of the subsidiaries of the combine or the employer or the combine works council or a trade union represented in the combine may apply to the labour court for an order to remove from office any member of the combine works council on the grounds of grave dereliction of his statutory duties.

Section 57 Termination of membership

Membership of the combine works council shall be ended by termination of membership of the central works council, resignation, removal from office in the combine works council by court order or by the central works council.

Section 58 Competency

- (1) The combine works council shall be competent to deal with matters affecting the combine as a whole or two or more of its subsidiaries, which the individual central works councils are unable to settle within their establishments; therefore, its competency also covers establishments that have no central works council as well as establishments of the subsidiaries without a works council. It shall not be deemed to be a higher organ than the individual central works councils.
- (2) A central works council may refer a matter to the combine works council by a majority vote of its members. In doing so, the central works council may reserve the right of decision. The third and fourth sentences of section 27 (2) shall apply, *mutatis mutandis*.

Section 59 Conduct of business

- (1) Sections 25 (1), 26, 27 (2) and (3), section 28 (1) first and third sentence, and (2), sections 30, 31, 34, 35, 36, 37 (1) to (3) and sections 40, 41 and 51 (1) second sentence and (3) to (5) shall apply, *mutatis mutandis*, to the combine works council.

- (2) If a combine works council is to be established, the central works council of the controlling company or, if there is no such central works council, the central works council of the subsidiary with the largest number of employees with voting rights shall call a meeting to elect the chairman and vice-chairman of the combine works council. The chairman of the central works council that has called the meeting shall preside over the meeting until the combine works council has appointed one of its members to conduct the election. Section 29 (2) to (4) shall apply, *mutatis mutandis*.

Section 59a Attendance of the combine disabled persons' delegation

The combine disabled persons' delegation (section 97 (2) of Book Nine of the Social Code) shall be entitled to attend all meetings of the combine works council in an advisory capacity.

Part Three

Youth and trainee delegation

Division One

Youth and trainee delegation at the level of the establishment

Section 60 Establishment and function

- (1) In establishments that normally employ five or more persons under 18 years of age (young employees) or persons under 25 years of age receiving vocational training, youth and trainee delegations shall be elected.
- (2) The youth and trainee delegation shall represent the special interests of the employees referred to in the preceding subsection in accordance with the provisions set out below.

Section 61 Voting rights and eligibility

- (1) All employees of the establishment referred to in section 60 (1) shall have voting rights.
- (2) All employees of the establishment who are under 25 years of age shall be eligible for election; the third sentence of section 8 (1) shall apply. Members of the works council shall not be eligible as youth and trainee representatives.

Section 62 Number of youth and trainee representatives; composition of the youth and trainee delegation

- (1) The membership of the youth and trainee delegation shall be as follows, according to the number of young employees and trainees normally employed in the establishment:

5 to	20 employees referred to in section 60 (1) – 1 person,
21 to	50 employees referred to in section 60 (1) – 3 members,
51 to	150 employees referred to in section 60 (1) – 5 members,
151 to	300 employees referred to in section 60 (1) – 7 members,
301 to	500 employees referred to in section 60 (1) – 9 members,
501 to	700 employees referred to in section 60 (1) – 11 members,
701 to	1000 employees referred to in section 60 (1) – 13 members,
more than	1000 employees referred to in section 60 (1) – 15 members.
- (2) The youth and trainee delegation shall, as far as possible, comprise representatives of the various employment categories and training occupations of the employees of the establishment referred to in section 60 (1).
- (3) The gender that accounts for a minority of the employees referred to in section 60 (1) shall at least be represented according to its relative numerical strength whenever the youth and trainee delegation consists of three or more members.

Section 63 Election procedure

- (1) The youth and trainee delegation shall be elected directly by secret ballot.
- (2) The works council shall appoint an electoral board and its chairman at least eight weeks before the end of the term of office of the youth and trainee delegation. The election of the youth and trainee representatives shall be governed by section 14 (2) to (5), the fourth to sixth sentences of section 16 (1), the first sentence of section 18 (1), section 18 (3), and sections 19 and 20, *mutatis mutandis*.
- (3) If the works council fails to appoint an electoral board or does not appoint it at least six weeks before the end of the term of office of the youth and trainee delegation, or if the electoral board fails to carry out its duties under the first sentence of section 18 (1), the first and second sentences of section 16 (2), the first sentence of section 16 (3) and the second sentence of section 18 (1) shall apply, *mutatis mutandis*, subject to the proviso that the application to the labour court may also be made by young employees.
- (4) Section 14a shall apply, *mutatis mutandis*, to establishments that normally have five to fifty permanent employees referred to in section 60 (1). The period specified for appointing the electoral board shall be reduced to four weeks in the cases covered by the first sentence of subsection 2 above, and to three weeks in the cases covered by the first sentence of subsection 3 above.
- (5) Section 14a (5) shall apply, *mutatis mutandis*, to establishment that normally have 51 to 100 permanent employees referred to in section 60 (1).

Section 64 Time of elections and term of office

- (1) Regular elections to the youth and trainee delegation shall be held every two years at some time between 1 October and 30 November. In respect of the election of the youth and trainee delegation outside this period, section 13 (2), clauses 2 to 6, and (3) shall apply, *mutatis mutandis*.

- (2) The regular term of office of a youth and trainee delegation shall be two years. It shall run from the announcement of the election results or, if a youth and trainee delegation is still in office at that date, from the end of its term of office. The term of office shall expire not later than 30 November of the year in which regular elections are to be held under the first sentence of subsection (1). In the case covered by the second sentence of section 13 (3), the term of office shall end not later than 30 November of the year in which a new youth and trainee delegation is to be elected. In the case covered by section 13 (2), clause 2, the term of office shall end on the announcement of the election results for the newly elected youth and trainee delegation.
- (3) If a member of the youth and trainee delegation reaches his twenty-fifth birthday while in office, he shall continue to hold office until the end of his term.

Section 65 Conduct of business

- (1) Sections 23 (1), 24, 25, 26, 28 (1), first and second sentences, and sections 30, 31, 33 (1) and (2), as well as sections 34, 36, 37, 40 and 41 shall apply, *mutatis mutandis*, to the youth and trainee delegation.
- (2) The youth and trainee delegation may hold meetings after notifying the works council; section 29 shall apply, *mutatis mutandis*. Such meetings may be attended by the chairman of the works council or another member of the works council delegated for this purpose.

Section 66 Deferment of decisions taken by the works council

- (1) If a majority of the youth and trainee representatives are of the opinion that a decision of the works council considerably prejudices important interests of the employees referred to in section 60 (1), the decision shall at their request be deferred for one week to allow time for an attempt to come to an agreement, where appropriate with the assistance of the trade unions represented in the establishment.

- (2) If the initial decision is confirmed, no further deferment may be requested; the same rule shall apply if the initial decision is adopted with only minor amendments.

Section 67 Participation in works council meetings

- (1) The youth and trainee delegation may send a representative to attend any meeting of the works council. Where matters of particular concern to the employees referred to in section 60 (1) are on the agenda, the full youth and trainee delegation shall be entitled to participate in the discussion of the relevant items.
- (2) The youth and trainee representatives shall be entitled to take part in the vote, insofar as the decisions to be taken by the works council mainly concern the employees referred to in section 60 (1).
- (3) The youth and trainee delegation may request the works council to place on the agenda of its next meeting any matters of particular concern to the employees referred to in section 60 (1) that have previously been discussed by the youth and trainee delegation. The works council shall refer matters of particular concern to the employees referred to in section 60 (1) to the youth and trainee delegation for consideration.

Section 68 Participation in joint discussions

The works council shall invite the youth and trainee delegation to take part in discussions between the employer and the works council if the matters dealt with are of particular concern to the employees referred to in section 60 (1).

Section 69 Consultation hours

In establishments that normally employ more than fifty of the employees referred to in section 60 (1), the youth and trainee delegation may appoint hours for consultation during working hours. The time and place of such consultation hours

shall be fixed by agreement between the works council and the employer. The third and fourth sentences of section 39 (1) and section 39 (3) shall apply, mutatis mutandis. The chairman of the works council or another member of the works council delegated for this purpose may be present at the consultation hours of the youth and trainee delegation in an advisory capacity.

Section 70 General duties

(1) The youth and trainee delegation shall have the following general duties:

1. to request the works council to take action for the benefit of the employees referred to in section 60 (1), especially in vocational training matters and issues regarding the continued employment of persons employed for training purposes;
- 1a. to request the works council to take action to ensure the actual equality of the employees referred to in section 60 (1) as stipulated in section 80 (1) Clauses 2a and 2b;
2. to see that effect is given to Acts, ordinances, safety regulations, collective agreements and works agreements in favour of the employees referred to in section 60 (1);
3. to receive suggestions from the employees referred to in section 60 (1), especially in matters of vocational training, and have the works council act on these suggestions if they appear justified. The youth and trainee delegation shall inform the involved employees referred to in section 60 (1) of the state of the negotiations and their results;
4. to promote in the establishment the integration of foreign employees referred to in section 60 (1) and to request the works council to take appropriate action in this respect.

- (2) The works council shall supply comprehensive information to the youth and trainee delegation in good time to enable it to discharge its duties. The youth and trainee delegation may demand that the works council make available any documentation it may require for the discharge of its duties.

Section 71 Works meetings for young and trainee employees

Before or after each works meeting, the youth and trainee delegation may call a works meeting for young and trainee employees in agreement with the works council. The works meeting for young and trainee employees may also be called at another time in agreement with the works council and the employer. The first and second sentences of section 43 (2), section 44 to 46 and the second sentence of section 65 (2) shall apply, *mutatis mutandis*.

Division Two

Central youth and trainee delegation

Section 72 Conditions for establishment, number of members, weighting of votes

- (1) If there are two or more youth and trainee delegations in one company, a central youth and trainee delegation shall be established.
- (2) Each youth and trainee delegation shall appoint one of its members to the central youth and trainee delegation.
- (3) The youth and trainee delegation shall appoint at least one substitute for the member appointed to the central youth and trainee delegation and establish the order of succession to office.
- (4) A different number of members of the central youth and trainee delegation from that prescribed in subsection (2) may be provided for by collective agreement or works agreement.

- (5) If, under the provisions of subsection (2), a central youth and trainee delegation has more than twenty members and no stipulation of the type referred to in subsection (4) has been made by collective agreement, the central works council and the employer shall negotiate a works agreement on the number of members of the central youth and trainee delegation, providing for the joint appointment of members to the central youth and trainee delegation by the youth and trainee delegations of two or more establishments of the company that are linked by regional ties or by similar interests.
- (6) If no agreement is reached in a case covered by subsection (5), the matter shall be decided by a conciliation committee to be set up for the whole company. The award of the conciliation committee shall take the place of an agreement between the employer and the central works council.
- (7) Each member of the central youth and trainee delegation shall have as many votes as there are employees referred to in section 60 (1) recorded in the voters' list of the establishment in which he was elected. Where a member of the central youth and trainee delegation has been appointed for more than one establishment, he shall have as many votes as the number of employees referred to in section 60 (1) recorded in the voters' list of the establishments for which he has been appointed. Where two or more members of the youth and trainee delegation have been appointed, the votes shall be apportioned among them in accordance with the first sentence.
- (8) Different provisions from subsection 7 hereof can be made in a collective or works agreement for the members of the youth and trainee delegation which have been appointed by a joint establishment of several companies.

Section 73 Conduct of business and application of other provisions

- (1) The central youth and trainee delegation may hold meetings after notifying the central works council. The meetings may be attended by the chairman of the central works council or another member of the central works council delegated for this purpose. (2) Section 25 (1), sections 26 and the first sentence of

28 (1), and sections 30, 31, 34, 36, 37 (1) to (3), sections 40, 41, 48, 49, 50, 51 (2) to (5), and sections 66 to 68 shall apply, mutatis mutandis, to the central youth and trainee delegation.

Division Three

Combine youth and trainee delegation

Section 73a Condition for establishment, number of members, weighting of votes

- (1) If several central youth and trainee delegations exist in a combine (as defined in section 18 (1) of the Joint Stock Act) a combine youth and trainee delegation may be established by resolutions of the individual central youth and trainee delegations. Any proposal to establish such delegation must be approved by the central youth and trainee delegations for the subsidiaries of the combine employing at least 75 per cent of the employees referred to in section 60 (1). Where a subsidiary of the combine only has a youth and trainee delegation, the said delegation shall assume the duties assigned to the central youth and trainee delegation under the provisions of this Division.
- (2) Each central youth and trainee delegation shall appoint one of its members to the combine youth and trainee delegation. It shall appoint at least one substitute for each member of the combine youth and trainee delegation and establish their order of succession to office.
- (3) Each member of the combine youth and trainee delegation shall have a number of votes that corresponds to the total number of votes of the central youth and trainee delegation by which it was appointed.
- (4) Section 72 (4) to (8) shall apply, mutatis mutandis.

Section 73b Conduct of business and application of other provisions

- (1) The combine youth and trainee delegation may hold meetings after notifying the combine works council. The meetings may be attended by the chairman of the combine works council or another member of the combine works council delegated for this purpose.
- (2) Section 25 (1), sections 26, 28 (1), first sentence, sections 30, 31, 34, 36, 37 (1) to (3), sections 40, 41, 51 (3) to (5), sections 56, 57, 58, 59 (2) and sections 66 to 68 shall apply, mutatis mutandis, to the combine youth and trainee delegation.

Part Four

Collaboration by employees and co-determination

Division One

General

Section 74 Principles of collaboration

- (1) The employer and the works council shall meet together at least once a month for joint conferences. They shall discuss the matters at issue with an earnest desire to reach agreement and make suggestions for settling their differences.
- (2) Industrial action between the employer and the works council shall be unlawful; the foregoing shall not apply to industrial action between collective bargaining parties. The employer and the works council shall refrain from activities that interfere with operations or imperil the peace in the establishment. They shall refrain from any activity within the establishment in promotion of a political party; the foregoing shall not apply to dealing with matters of direct concern to the establishment or its employees in the field of collective bargaining policy, social policy, environmental policy and of a financial nature.

- (3) The fact that an employee has assumed duties under this Act shall not restrict him in his trade union activities even where such activities are carried out in the establishment.

Section 75 Principles for the treatment of persons employed in the establishment

- (1) The employer and the Works Council shall ensure that all persons working in the establishment are treated in accordance with the principles of law and equity, in particular that no one is subject to discrimination on grounds of race, ethnic origin, descent or other origin, nationality, religion or belief, disability, age, political or trade union activities or convictions or on the grounds of gender or sexual identity.
- (2) The employer and the works council shall safeguard and promote the untrammelled development of the personality of the employees of the establishment. They shall promote the independence and personal initiative of the employees and working groups.

Section 76 Conciliation committee

- (1) Whenever the need arises a conciliation committee shall be set up for the purpose of settling differences of opinion between the employer and the works council, central works council or combine works council. A standing conciliation committee may be established by works agreement.
- (2) The conciliation committee shall be composed of assessors appointed in equal number by the employer and the works council and of an independent chairman accepted by both sides. If no agreement can be reached on a chairman, he shall be appointed by the labour court. The latter shall also decide in cases where no agreement can be reached on the number of assessors.

- (3) The conciliation committee shall act without delay. It shall adopt its decisions by majority vote after oral proceedings. The chairman shall not participate in the voting; in the case of a tie the discussion shall be resumed and the chairman shall participate in the subsequent vote. The decisions of the conciliation committee shall be recorded in writing, signed by the chairman and transmitted to the employer and the works council.
- (4) Further details of the procedure in the conciliation committee may be fixed by works agreement.
- (5) In cases where the award of the conciliation committee takes the place of an agreement between the employer and the works council, the conciliation committee shall act at the request of either side. If one side fails to appoint members or if the members appointed by one side fail to attend after being convened in due time, the chairman and the members present shall make the award without them following the procedure laid down in subsection (3). In taking its decisions the conciliation committee shall have due regard to the interests of the establishment and of the employees concerned as reasonably assessed. The employer or the works council may make an appeal to the labour court on the grounds that the conciliation committee has exceeded its powers, but only within two weeks of the date of notification of the award.
- (6) In all other cases the conciliation committee shall act only if both sides so request or agree to its intervention. In such cases its award shall take the place of an agreement between the employer and the works council only if both sides have accepted the award in advance or accept it subsequently.
- (7) In as far as other provisions allow for judicial proceedings, such proceedings shall not be precluded by the award of the conciliation committee.
- (8) It may be stipulated by collective agreement that an arbitration body set up under the agreement shall take the place of the conciliation committee referred to in subsection (1).

76a Costs of the conciliation committee

- (1) The costs of the conciliation committee shall be borne by the employer.
- (2) The assessors of the conciliation committee who belong to the establishment shall not receive any remuneration for their activity; section 37 (2) and (3) shall apply, *mutatis mutandis*. Where a conciliation committee is to be formed to settle differences of opinion between the employer and the central works council or combine works council, the first sentence shall apply, *mutatis mutandis*, to the assessors belonging to an establishment of the company or of a constituent company.
- (3) The chairman and the assessors of the conciliation committee who are not among the persons referred to in subsection (2) shall be entitled to remuneration from the employer for their activity. The amount of remuneration shall be based on the principles of the third to fifth sentences of subsection (4).
- (4) The Federal Minister of Labour and Social Affairs may settle the remuneration in accordance with subsection (3) by way of a ministerial order. Maximum rates shall be established in the remuneration regulations. In this case, the time required, the complexity of the dispute and the loss of earnings shall be taken into account, in particular. The remuneration of the assessors shall be lower than that of the chairman. When establishing the maximum rates, the rightful interests of the members of the conciliation committee and the employer shall be taken into account.
- (5) Subsection (3) and remuneration regulations in accordance with subsection (4) may be deviated from by way of a collective agreement or in a works agreement, if a collective agreement permits this or if no such collective agreement exists.

Section 77 Execution of joint decisions, works agreements

- (1) Agreements between the works council and the employer including those based on an award of the conciliation committee shall be executed by the employer save where otherwise agreed in particular cases. The works council shall not interfere with the management of the establishment by any unilateral action.
- (2) Works agreements shall be negotiated by the works council and the employer and recorded in writing. They shall be signed by both sides, except where they are based on an award of the conciliation committee. The employer shall display the works agreements in a suitable place in the establishment.
- (3) Works agreements shall not deal with remuneration and other conditions of employment that have been fixed or are normally fixed by collective agreement. The foregoing shall not apply where a collective agreement expressly authorises the making of supplementary works agreements.
- (4) Works agreements shall be mandatory and directly applicable. Any rights granted to employees under a works agreement cannot be waived except with the agreement of the works council. Such rights cannot be forfeited. Any time limits for invoking these rights shall be valid only in so far as they are laid down by collective or works agreement; the same shall apply to any reduction of the periods provided for the lapsing of rights.
- (5) Unless otherwise agreed, works agreements may be terminated at three months' notice.
- (6) After the expiry of a works agreement its provisions shall continue to apply until a fresh agreement is made in respect of all matters in which an award of the conciliation committee may take the place of an agreement between the employer and the works council.

Section 78 Protective provisions

Members of the works council, the central works council, the combine works council, the youth and trainee delegation, the central youth and trainee delegation, the combine youth and trainee delegation, the finance committee, the ship's committee, the fleet works council, the representative bodies of the employees referred to in section 3 (1), the conciliation committee, an arbitration board set up by collective agreement (section 76 (8)) a grievance committee (section 86), or personnel providing information (third sentence of section 80 (2)) shall not be interfered with or obstructed in the discharge of their duties. They shall not be prejudiced or favoured by reason of their office; this principle shall also apply to their vocational development.

Section 78a Protection of trainees in special cases

- (1) Where the employer does not intend to offer a trainee who is a member of the youth and trainee delegation, the works council, the ship's committee or the fleet works council permanent employment after completion of vocational training, he shall notify the trainee of this fact in writing three months before completion of the vocational training.
- (2) Where a trainee referred to in subsection (1) demands continued employment from the employer in writing within the last three months prior to completion of his vocational training, a permanent employment contract shall be deemed to exist between the trainee and employer following the vocational training. Section 37 (4) and (5) shall apply in particular, mutatis mutandis, to this employment.
- (3) Subsections (1) and (2) shall also apply where the vocational training ends less than one year after the end of the term of office of the youth and trainee delegation, the works council, the ship's committee or the fleet works council.
- (4) The employer may apply to the labour court not more than two weeks after completion of the vocational training

1. to establish that an employment contract in accordance with subsection (2) or (3) has not been established, or
 2. to dissolve an employment contract which has already been established in accordance with subsection (2) or (3), if facts exist which indicate that, in view of all the circumstances, continued employment may not be reasonably expected of the employer. The works council, the ship's committee, the fleet works council and the youth and trainee delegation, if one of its members is concerned, are also involved in the proceedings before the labour court as interested parties.
- (5) Subsections (2) to (4) shall apply, irrespective of whether the employer has observed his obligation to notify in pursuance of subsection (1).

Section 79 Secrecy

- (1) Members and substitute members of the works council shall be bound to refrain from divulging or making use of trade or business secrets that have come to their knowledge as a result of their membership on the works council and which the employer has expressly stated to be confidential. This obligation shall be maintained even after they have ceased to belong to the works council. It shall not apply as between members of the works council. Moreover it shall not apply as regards dealings with members of the central works council, the combine works council, the ship's committee, the fleet works council and the employees' representatives on the supervisory board or in the proceedings of the conciliation committee, the arbitration body set up by collective agreement (section 76 (8)) or a grievance committee (section 86).
- (2) Subsection (1) shall apply, *mutatis mutandis*, to the members and substitute members of the central works council, the combine works council, the youth and trainee delegation, the central youth and trainee delegation, the combine youth and trainee delegation, the financial committee, the ship's committee, the fleet works council, the representative bodies of the employees established under section 3 (1), the conciliation committee, the arbitration body set up by

collective agreement (section 76 (8)) and a grievance committee (section 86), as well as to the representatives of trade unions or employers' associations.

Section 80 General duties

(1) The works council shall have the following general duties:

1. to see that effect is given to Acts, ordinances, safety regulations, collective agreements and works agreements for the benefit of the employees;
2. to make recommendations to the employer for action benefiting the establishment and the staff;
- 2a. to promote the implementation of actual equality between women and men, in particular, as regards recruitment, employment, training, further training and additional training and vocational advancement;
- 2b. to promote reconciliation of family and work;
3. to receive suggestions from employees and the youth and trainee delegation and, if they are found to be justified, to negotiate with the employer for their implementation; it shall inform the employees concerned of the state of the negotiations and their results;
4. to promote the rehabilitation of severely handicapped persons and other persons in particular need of assistance;
5. to prepare and organise the election of a youth and trainee delegation and to collaborate closely with said delegation in promoting the interests of the employees referred to in section 60 (1); it may invite the youth and trainee delegation to make suggestions and to state its view on various matters;
6. to promote the employment of elderly workers in the establishment;

7. to promote the integration of foreign workers in the establishment and to further understanding between them and their German colleagues, and to request activities to combat racism and xenophobia in the establishment;
 8. to promote and safeguard employment in the establishment;
 9. to promote health and safety at work and the protection of the environment in the establishment.
- (2) The employer shall supply comprehensive information to the works council in good time to enable it to discharge its duties under this Act; such information shall also refer to the employment of persons who have not entered into a contract of employment with the employer. The works council shall, if it so requests, be granted access at any time to any documentation it may require for the discharge of its duties; in this connection the works committee or a committee set up in pursuance of section 28 shall be entitled to inspect the payroll showing the gross wages and salaries of the employees. The employer shall provide knowledgeable personnel as informers to the works council, if necessary for the proper discharge of its functions, having due regard to the suggestions of the works council, except where this is precluded by imperative operational requirements.
- (3) In discharging its duties the works council may, after making a more detailed agreement with the employer, call on the advice of experts in as far as the proper discharge of its duties so requires.
- (4) The informers and experts shall be bound to observe secrecy as prescribed in section 79, *mutatis mutandis*.

Division Two

Employees' rights to participate and to make complaints

Section 81 Employer's obligation to inform and discuss

- (1) The employer shall inform the employee of his tasks and responsibilities, the nature of his activity and how it fits into the operations of the establishment. Before the employee takes up his employment, the employer shall instruct him on the safety and health hazards to which he will be exposed in his employment as well as on the measures and devices for the prevention of the said hazards and on the measures taken pursuant to section 10 (2) of the Health and Safety Act.
- (2) Any changes within the area of an employee's activities shall be brought to his notice in good time. Subsection (1) shall apply, *mutatis mutandis*.
- (3) In those establishments which have no works council, the employer shall consult the employees concerning all measures that might affect the health and safety of the employees.
- (4) The employer shall inform the employee about measures envisaged due to plans concerning technical plants, works procedures and operations or jobs and their effects on his job, the working environment as well as the contents and nature of his activity. As soon as it is known that the activity of the employee will change and his professional knowledge and skills are no longer sufficient to fulfil his duties, the employer shall discuss with the employee how the latter's professional knowledge and skills can be adapted to the future requirements within the framework of the in-house possibilities. The employee may call in a member of the works council to the discussion.

Section 82 Employee's right to be heard and request explanations

- (1) The employee shall be entitled to obtain a hearing from the persons who are competent according to the organisational structure of the establishment on any operational matter concerning his own person. He shall be entitled to state

his case on any measure taken by the employer concerning him and to make suggestions on the design of his workplace and the organization of operations.

- (2) The employee shall be entitled to an explanation of how his remuneration is calculated and the elements of which it is composed and to apply for an interview on the assessment of his performance and his career possibilities in the establishment. He may be accompanied by a member of the works council. The member of the works council shall be bound to observe secrecy with respect to the contents of these discussions except where the employee releases him from this obligation in his particular case.

Section 83 Access to personal files

- (1) The employee shall have access to his personal file. In this connection he may call in a member of the works council. The member of the works council shall be bound to observe secrecy with respect to the contents of the personal file except where the employee releases him from this obligation in his particular case.
- (2) The employee's own comments on the entries in his personal file shall be appended at his request.

Section 84 Right to make complaints

- (1) Every employee shall be entitled to make a complaint to the competent bodies in the establishment if he feels that he has been discriminated against or treated unfairly or otherwise put at a disadvantage by the employer or by other employees of the establishment. He may call on a member of the works council for assistance or mediation.
- (2) The employer shall inform the employee on how his complaint will be dealt with and, if he considers the complaint justified, remedy his grievance.
- (3) The employee shall not suffer any prejudice as a result of having made a complaint.

Section 85 Works council's role in dealing with grievances

- (1) The works council shall hear employees' grievances and, if they appear justified, induce the employer to remedy them.
- (2) If there are any differences of opinion between the works council and the employer as to whether the complaint is well-founded, the works council may appeal to the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council. The foregoing shall not apply in as far as the grievance relates to a legal entitlement.
- (3) The employer shall inform the works council on how the grievance is dealt with. The foregoing shall be without prejudice to section 84 (2).

Section 86 Supplementary agreements

The details of the grievance procedure may be fixed by collective agreement or works agreement. In this connection provision may be made for the conciliation committee to be replaced in cases covered by section 85 (2) by a grievance committee at the level of the establishment.

86a Employees' right of proposal

Each employee shall have the right to propose issues to be discussed by the works council. If a proposal is seconded by at least 5 per cent of the employees in the establishment, the works council shall place it on the agenda of a works council meeting within two months.

Division Three

Social matters

Section 87 Right of co-determination

- (1) The works council shall have a right of co-determination in the following matters in so far as they are not prescribed by legislation or collective agreement:
1. matters relating to the rules of operation of the establishment and the conduct of employees in the establishment;
 2. the commencement and termination of the daily working hours including breaks and the distribution of working hours among the days of the week;
 3. any temporary reduction or extension of the hours normally worked in the establishment;
 4. the time and place for and the form of payment of remuneration;
 5. the establishment of general principles for leave arrangements and the preparation of the leave schedule as well as fixing the time at which the leave is to be taken by individual employees, if no agreement is reached between the employer and the employees concerned;
 6. the introduction and use of technical devices designed to monitor the behaviour or performance of the employees;
 7. arrangements for the prevention of accidents at work and occupational diseases and for the protection of health on the basis of legislation or safety regulations;
 8. the form, structuring and administration of social services whose scope is limited to the establishment, company or combine;

9. the assignment of and notice to vacate accommodation that is rented to employees in view of their employment relationship as well as the general fixing of the conditions for the use of such accommodation;
 10. questions related to remuneration arrangements in the establishment, including in particular the establishment of principles of remuneration and the introduction and application of new remuneration methods or modification of existing methods;
 11. the fixing of job and bonus rates and comparable performance-related remuneration including cash coefficients;
 12. principles for suggestion schemes in the establishment;
 13. principles governing the performance of group work; group work within the meaning of this provision is defined as a group of employees performing a complex task within the establishment's workflows, which has been assigned to it and is executed in a largely autonomous way.
- (2) If no agreement can be reached on a matter covered by the preceding subsection, the conciliation committee shall make a decision. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.

Section 88 Works agreements on a voluntary basis

The following, in particular, may be determined by works agreements:

1. additional measures to prevent accidents at work and health damages;
 - 1a. measures concerning the establishment's environmental policy;
2. the establishment of social services whose scope is limited to the establishment, company or combine;

3. measures to promote capital formation;
4. measures to promote the integration of foreign employees and to combat racism and xenophobia in the establishment.

Section 89 Health and safety as well as environmental protection at work

- (1) The works council shall endeavour to ensure that the provisions on safety and health at work and accident prevention as well as environmental protection are observed in the establishment. It shall support the competent occupational safety and health authorities, the statutory accident insurance institutions and other relevant bodies in their efforts to eliminate safety and health hazards by offering suggestions, advice and information
- (2) The employer and the bodies referred to in the second sentence of subsection (1) shall be obliged to invite the works council or the members it delegates for that purpose to participate in all inspections and issues relating to safety and health at work or the prevention of accidents and inquiries into accidents. The employer shall also consult the works council concerning all inspections and issues relating to environmental protection in the company, and shall immediately inform it of any conditions imposed and instructions given by the competent bodies relating to safety and health at work, the prevention of accidents, or environmental protection in the establishment.
- (3) For the purposes of this Act, environmental protection in the establishment comprises all personnel and organisational measures as well as all measures relating to the establishment's buildings, rooms, technical equipment, working methods, working processes and work places that serve the protection of the environment.
- (4) Members delegated by the works council shall take part in discussions between the employer and the safety delegates within the context of section 22 (2) of the Seventh Book of the Social Code.

- (5) The works council shall receive from the employer the minutes of inquiries, inspections and discussions in respect of which subsections (2) and (4) provide for its participation.
- (6) The employer shall supply the works council with a copy of the accident notification to be signed by the works council under section 193 (5) of the Seventh Book of the Social Code.

Division Four

Structuring, organization and design of jobs, operations and the working environment

Section 90 Information and consultation rights

- (1) The employer shall inform the works council in due time of any plans concerning
 1. the construction, alteration or extension of works, offices and other premises belonging to the establishment;
 2. technical plants;
 3. working procedures and operations or
 4. jobsand submit the necessary documents.
- (2) The employer shall consult the works council in good time on the action envisaged and its effects on the employees, taking particular account of its impact on the nature of their work and the resultant demands on the employees so that suggestions and objections on the part of the works council can be taken into account in the plans. In their consultations, the employer and the works council shall bear in mind the established findings of ergonomics relating to the tailoring of jobs to meet human requirements.

Section 91 Right of co-determination

Where a special burden is imposed on the employees as a result of changes in jobs, operations or the working environment that are in obvious contradiction to the established findings of ergonomics relating to the tailoring of jobs to meet human requirements, the works council may request appropriate action to obviate, relieve or compensate for the additional stress thus imposed. If no agreement is reached the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.

Division Five

Staff policy

Subdivision One

General staff policy

Section 92 Manpower planning

- (1) The employer shall inform the works council in full and in good time of matters relating to manpower planning including in particular present and future manpower needs and the resulting staff movements and vocational training measures and supply the relevant documentation. He shall consult the works council on the nature and extent of the action required and means of avoiding hardship.
- (2) The works council may make recommendations to the employer relating to the introduction and implementation of manpower planning. (3) Subsections (1) and (2), above, shall apply, mutatis mutandis, to measures under section 80 (1) Clauses 2a and 2b, in particular, the adoption and implementation of measures to promote equality between women and men.

Section 92a. Securing employment

- (1) The works council may submit proposals to the employer relating to the security and promotion of employment. These recommendations may refer to, in particular, a flexible design of working hours, the promotion of part-time work and old-age part-time work, new forms of work organisation, changes in working methods and working processes, the improvement of worker qualifications, alternatives to the spin-off of operations or outsourcing, as well as the production and investment plan.
- (2) The employer shall consult the works council concerning these proposals. If the employer believes that the works council's proposals are inadequate, he shall give reasons for this opinion, and in establishments with more than 100 employees the reasons shall be provided in written form. The employer or the works council may be accompanied by a representative of the Federal Employment Agency in these consultations.

Section 93 Notification of vacancies

The works council may request that all vacancies or vacancies for certain types of jobs are advertised internally before they are filled.

Section 94 Staff questionnaires, assessment criteria

- (1) Staff questionnaires shall require the approval of the works council. If no agreement is reached on their contents, the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.
- (2) Subsection (1) shall apply, *mutatis mutandis*, to any personal data contained in written employment contracts that are to be generally used in the establishment and to the formulation of general assessment criteria.

Section 95 Guidelines for selection

- (1) Guidelines for the selection of employees for recruitment, transfer, regrading and dismissal shall require the approval of the works council. If no agreement is reached on the guidelines or their contents, the employer may apply to the conciliation committee for a decision. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.
- (2) In establishments with more than 500 employees the works council may request the drawing up of guidelines on the technical, personal and social criteria to be applied in taking the measures referred to in the first sentence of the preceding subsection. If no agreement is reached on the guidelines or their contents, the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.
- (3) For the purposes of this Act a transfer means assignment to another work area which is expected to continue for more than one month or involves a substantial change in the conditions in which the work is to be performed. In the case of employees who are not, by the nature of their employment relationship, as a rule permanently employed on the same job, the assignment of the job to be performed shall not be deemed to constitute a transfer.

Subdivision Two

Vocational training

Section 96 Promotion of vocational training

- (1) The employer and the works council shall promote the vocational training of the staff within the framework of the manpower planning for the establishment and in collaboration with the bodies that are competent for vocational training

and for the promotion of vocational training. At the request of the works council the employer shall determine the need for vocational training and consult it on matters relating to staff training. The works council may make relevant proposals.

- (2) The employer and the works council shall ensure that employees are given an opportunity to participate in vocational training programmes inside or outside the establishment, having regard to the operational needs of the establishment. In this connection they shall also give due consideration to the interests of older employees, of part-time employees and of employees with family responsibilities.

Section 97 Vocational training facilities and programmes

- (1) The employer shall consult the works council on the establishment and equipment of inplant training facilities, the introduction of vocational training programmes in the establishment and participation in external vocational training programmes.
- (2) If the employer has planned or implemented measures as a result of which the work of the employees concerned is changed and their vocational knowledge and skills are no longer sufficient to discharge their duties, the works council shall participate in the decisions relating to the implementation of vocational training programmes in the establishment. If no agreement is reached the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.

Section 98 Implementation of vocational training in the establishment

- (1) The works council shall participate in the decisions relating to the implementation of vocational training programmes in the establishment.
- (2) The works council may oppose the appointment of a training officer in the

establishment or request his removal on the grounds that he lacks the necessary personal or technical qualifications and in particular the necessary knowledge of the teaching methods required to give training in the occupation and processes concerned within the meaning of the Vocational Training Act or is negligent in the performance of his duties.

- (3) If the employer provides vocational training in the establishment or releases employees to enable them to participate in vocational training programmes outside the establishment or if he defrays all or part of the cost arising from such participation, the works council may propose employees or groups of employees of the establishment for participation in such vocational training.
- (4) If no agreement is reached in the case covered by subsection (1) or concerning the trainees proposed by the works council under subsection (3), the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.
- (5) If no agreement is reached in the case covered by subsection (2), the works council may apply to the labour court for an order enjoining the employer to refrain from appointing or to recall the person concerned. If the employer proceeds with the appointment in violation of a mandatory court order, the labour court shall, on the request of the works council, sentence him, after giving prior warning, to pay a fine on account of the appointment; the maximum fine shall be EUR 10,000. If the employer does not remove the training officer, thereby violating a mandatory court order, the labour court shall, on application by the works council, compel the employer to comply with the order by the imposition of fines; the maximum fine shall be EUR 250 in respect of each day on which the violation continues. The foregoing shall be without prejudice to the provisions of the Vocational Training Act that relate to the organization of vocational training.
- (6) Subsections (1) to (5) shall apply, *mutatis mutandis*, where the employer carries out other vocational training programmes in the establishment.

Subdivision Three

Individual staff movements

Section 99 Co-determination in individual staff movements

- (1) In companies normally employing more than twenty employees with voting rights the employer shall notify the works council in advance of any recruitment, grading, regrading and transfer, submit to it the appropriate recruitment documents and in particular supply information on the persons concerned; he shall inform the works council of the implications of the measure envisaged, supply it with the necessary supporting documentation and obtain its consent to the measure envisaged. In the case of recruitments and transfers the employer shall in particular supply information on the job and grading envisaged. Members of the works council shall refrain from divulging any information relating to the personal circumstances and private affairs of the employees concerned that has come to their knowledge in connection with the staff movements referred to in the first and second sentences, where such information is of a confidential nature by reason of its implications or contents; the second to fourth sentences of section 79 (1) shall apply, *mutatis mutandis*.
- (2) The works council may refuse its consent in the following cases:
 1. if the staff movement would constitute a breach of any Act, ordinance, safety regulation or stipulation of a collective agreement or works agreement, or of a court order or official instruction;
 2. if the staff movement would amount to non-observance of a guideline within the meaning of section 95;
 3. if there is factual reason to assume that the staff movement is likely to result in the dismissal of or other prejudice to employees of the establishment not warranted by operational or personal reasons; in cases of permanent recruitment non-consideration of an equally suitable employee on a fixed term contract shall also be considered a prejudice to that employee;

4. if the employee concerned suffers prejudice through the staff movement although this is not warranted by operational or personal reasons;
 5. if the vacancy has not been notified in the establishment as required under section 93; or
 6. if there is reason based on facts to assume that the applicant or employee envisaged for the staff movement would cause trouble in the establishment through unlawful conduct or gross violation of the principles laid down in section 75 (1), in particular through racist or xenophobic activities.
- (3) If the works council refuses its consent, it shall notify the employer in writing, giving its reasons, within one week of being informed by the employer. If the works council fails to do so within the said time limit it shall be deemed to have given its consent.
- (4) If the works council refuses its consent, the employer may apply to the labour court for a decision in lieu of consent.

Section 100 Temporary staff movements

- (1) The employer may, if this is urgently required for reasons based on facts, make a staff movement within the meaning of the first sentence of section 99 (1) on a temporary basis before the works council takes a stand or if it has refused its consent. In such cases the employer shall inform the employee concerned of the position in fact and in law.
- (2) The employer shall immediately notify the works council of the temporary staff movement. If the works council contends the urgency of the action taken on grounds based on facts, it shall immediately report its objection to the employer. In such cases the employer shall be allowed to maintain the temporary staff movement only on condition that within three days he applies to the labour court for a decision in lieu of the consent of the works council and for a declaration stating that the action taken was urgently required for reasons based on facts.

- (3) If the labour court by mandatory decision refuses to issue a decision in lieu of the works council's consent or if it hands down a final mandatory judgement to the effect that the action taken was manifestly not urgently required by reasons based on facts, the temporary staff movement shall be cancelled on the expiry of two weeks after the date on which the decision or judgement becomes operative. After that date it shall be unlawful to maintain the staff movement.

Section 101 Fines

If the employer makes a staff movement within the meaning of the first sentence of section 99 (1) without the works council's consent or if he maintains a temporary staff movement in violation of section 100 (2), third sentence, or (3) the works council may request the labour court to order the employer to rescind the staff movement. If the employer fails to rescind the staff movement in violation of a mandatory court order, the labour court shall, on application by the works council, compel the employer to cancel the change by the imposition of fines. The maximum fine shall be EUR 250 in respect of each day on which the violation continues.

Section 102 Co-determination in the case of dismissal

- (1) The works council shall be consulted before every dismissal. The employer shall indicate to the works council the reasons for dismissal. Any notice of dismissal that is given without consulting the works council shall be null and void.
- (2) If the works council has objections to a routine dismissal, it shall notify the employer in writing within a week giving its reasons. If it does not report its objections within the said time limit, it shall be deemed to have given its consent to the dismissal. If the works council has objections against an exceptional dismissal, it shall notify the employer in writing immediately and at any rate not later than within three days, giving its reasons. The works council shall consult the employee concerned before it takes a stand, in so far as this appears necessary. The third sentence of section 99 (1) shall apply, *mutatis mutandis*.

- (3) The works council may oppose a routine dismissal within the time limit specified in the first sentence of subsection (2) in the following cases:
1. if the employer in selecting the employee to be dismissed disregarded or did not take sufficient account of social aspects;
 2. if the dismissal amounted to non-observance of a guideline covered by section 95;
 3. if the employee whose dismissal is being envisaged could be kept on at another job in the same establishment or in another establishment of the same company;
 4. if the employee could be kept on after a reasonable amount of retraining or further training; or
 5. if the employee could be kept on after a change in the terms of his contract and he has indicated his agreement to such change.
- (4) If the employer gives notice of dismissal although the works council has lodged objections to such dismissal under subsection (3), he shall append a copy of the works council's point of view to the notice of dismissal sent to the employee.
- (5) If the works council has lodged an objection to a routine dismissal within the period and in the manner prescribed and if the employee has brought an action under the Protection against Dismissal Act for a declaration that the employment relationship has not been dissolved by the notice of dismissal, the employer shall be bound to keep the employee in his employment at the latter's request after expiry of the term of notice until a final decision is given on the case at issue; during such period he shall not make any change in his conditions of work. On application by the employer the court may issue an interim order releasing him from his obligation under the first sentence of this subsection to maintain the employment relationship in the following cases:

1. if the action brought by the employee is not reasonably likely to succeed or appears abusive; or
 2. if the continuation of the employment relationship imposes an unreasonable financial burden on the employer; or
 3. if the objection raised by the works council is manifestly unfounded.
- (6) The employer and the works council may make an agreement to the effect that any notice of dismissal requires the approval of the works council and that differences of opinion on whether a refusal of consent is justified are to be submitted to the decision of the conciliation committee.
- (7) The foregoing shall be without prejudice to the regulations relating to the participation of the works council made under the Protection against Dismissal Act.

Section 103 Exceptional dismissal and transfer in special cases

- (1) The exceptional dismissal of a member of the works council, the youth and trainee delegation, the ship's committee and the fleet works council, the electoral board or of candidates for election shall require the consent of the works council.
- (2) If the works council refuses its consent, the employer may apply to the labour court for a decision in lieu of consent if the exceptional dismissal is justified, all circumstances being taken into account. The employee concerned shall be a party to the proceedings in the labour court.
- (3) A transfer of the persons referred to in subsection (1), which would result in the loss of an office or of eligibility, shall require the approval of the works council; the foregoing shall not apply if the employee concerned agrees to the transfer. Subsection (2) shall apply, *mutatis mutandis*, subject to the proviso that the

employer may apply to the labour court for a decision in lieu of consent if the transfer is warranted by important operational reasons, even with due regard to the position of the employee concerned under the Works Constitution Act.

Section 104 Removal of employees causing trouble in the establishment

If an employee through unlawful conduct or gross violation of the principles laid down in section 75 (1), in particular, through racist or xenophobic activities, repeatedly causes serious trouble in the establishment, the works council may request the employer to dismiss or transfer him. If the labour court upholds an application by the works council to enjoin the employer to dismiss or transfer the said employee and the employer does not dismiss or transfer him in violation of a mandatory court order, the labour court shall, on application by the works council, compel the employer to comply with the order by the imposition of fines. The maximum fine shall be EUR 250 in respect of each day on which the violation continues.

Section 105 Executive staff

The works council shall be notified in good time of all prospective recruitments or staff movements affecting executive staff covered by section 5 (3).

Division Six

Financial matters

Subdivision One

Information on financial matters

Section 106 Finance committee

- (1) A finance committee shall be established in all companies that normally have more than 100 permanent employees. It shall be the duty of the finance committee to consult with the employer on financial matters and report to the works council.

- (2) The employer shall inform the finance committee in full and in good time of the financial affairs of the company and supply the relevant documentation in so far as there is no risk of disclosing the trade or business secrets of the company and demonstrate the implications for manpower planning. In the cases referred to in subsection 3, No. 9a, the relevant documentation shall include information regarding the potential acquirer and his/her intentions with respect to the company's future business activity and the resulting consequences for employees; the same shall apply in the case where a bidding process is conducted in the run-up to the takeover.
- (3) The following, inter alia, are financial matters covered by this provision:
1. the economic and financial situation of the company;
 2. the production and marketing situation;
 3. the production and investment programmes;
 4. rationalisation plans;
 5. production techniques and work methods, especially the introduction of new work methods;
 - 5a. issues concerning the establishment's environmental policy;
 6. the reduction of operations in or closure of establishments or parts of establishments;
 7. the transfer of establishments or parts of establishments;
 8. the amalgamation or split-up of establishments or parts of establishments;
 9. changes in the organization or objectives of establishments;

9a.the takeover of the company, if control is thereby obtained, and

10. any other circumstances and projects that may materially affect the interests of the employees of the company.

Section 107 Appointment and composition of the finance committee

- (1) The finance committee shall consist of not less than three and not more than seven members, who shall be employees of the company and at least one of whom shall be a works council member. The executives referred to in section 5 (3) are also eligible for membership on the finance committee. The committee members should have the necessary technical and personal qualifications for their functions.
- (2) The members of the finance committee shall be appointed by the works council for a period corresponding to its own term of office. Where a central works council has been established, the members of the finance committee shall be appointed by the said council; in this case the term of office of the committee members shall end on the expiration date for the term of office of the majority of the members of the central works council who were entitled to participate in making the appointments. Members of the finance committee may be removed from office at any time; the first and second sentences shall apply, *mutatis mutandis*, to removal from office.
- (3) The works council may decide by majority vote of its members to assign the functions of the finance committee to a committee of the works council. The membership of such committee shall not exceed the number of members of the works committee. The works council may, however, appoint additional employees including executive staff specified in section 5(3) to the committee but not more than the number of committee members; the decisions shall be taken in accordance with the first sentence of this subsection. The additional employees referred to in the third sentence shall be bound to secrecy in accordance with section 79, *mutatis mutandis*. For amending or annulling

decisions taken in accordance with the first to the third sentences of this subsection the same majority shall be required as for the adoption of decisions under the first to the third sentences of this subsection. If a company has a central works council, the said council shall decide on the assignment of functions of the finance committee to other committees; the first to the fifth sentences shall apply, *mutatis mutandis*.

Section 108 Meetings

- (1) The finance committee shall meet once a month.
- (2) The employer or his representative shall attend the meetings of the finance committee. He may be accompanied by competent employees of the company including members of the executive staff covered by section 5 (3). The participation of experts and their duty to observe professional secrecy shall be governed by section 80 (3) and (4), *mutatis mutandis*.
- (3) The members of the finance committee shall have access to the documents to be submitted under section 106 (2).
- (4) The finance committee shall without delay give a full report on each meeting to the works council.
- (5) The annual balance sheet shall be explained to the finance committee in conjunction with the works council.
- (6) Where the works council or central works council has decided to assign the functions of the finance committee to another committee, subsections (1) to (5) shall apply, *mutatis mutandis*.

Section 109 Settlement of differences

If despite a request from the finance committee information on financial matters as defined in section 106 is not furnished or not furnished in good time or if the

information given is inadequate and if no agreement on the matter is reached between the employer and the works council, the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council. The conciliation committee may call in experts if it needs their evidence to reach a decision; section 80 (4) shall apply, *mutatis mutandis*. Where the works council or the central works council has decided to assign the functions of the finance committee to another committee, the first sentence shall apply, *mutatis mutandis*.

Section 109a Takeover

In companies where no financial committee has been established, the works council shall be involved as stipulated in § 106 (1) and (2), in the case covered by in section 106 (3), No. 9a; section 109 shall apply *mutatis mutandis*.

Section 110 Information of employees

- (1) In companies that normally have more than 1.000 permanent employees, the employer shall report to the staff in writing on the financial situation and progress of the company at least once every calendar quarter after prior coordination with the finance committee or the bodies referred to in section 107 (3) and the works council.
- (2) The preceding subsection shall also apply to companies that do not meet the conditions laid down in the preceding subsection but normally have more than twenty permanent employees with voting rights, subject to the proviso that the employees of such companies may also be informed orally. If such company is under no obligation to set up a finance committee, the employees shall be informed after prior coordination with the works council.

Subdivision Two

Alterations

Section 111 Alterations

In establishments that normally have more than twenty employees with voting rights the employer shall inform the works council in full and in good time of any proposed alterations which may entail substantial prejudice to the staff or a large sector thereof and consult the works council on the proposed alterations. In establishment that have more than 300 employees, the works council may retain a consultant to support it; section 80 (4) shall apply, mutatis mutandis, the foregoing shall be without prejudice to section 80 (3). The following shall be considered as alterations for the purposes of the first sentence above:

1. reduction of operations in or closure of the whole or important departments of the establishment;
2. transfer of the whole or important departments of the establishment;
3. the amalgamation with other establishments or split-up of establishments;
4. important changes in the organization, purpose or plant of the establishment;
5. introduction of entirely new work methods and production processes.

Section 112 Reconciliation of interests in the case of alterations; social compensation plan

- (1) If the employer and the works council reach an agreement to reconcile their interests in connection with the proposed alterations, the said agreement shall be recorded in writing and signed by the employer and the works council. The foregoing shall also apply to an agreement on full or part compensation for any financial prejudice sustained by staff as a result of the proposed alterations

(social compensation plan). The social compensation plan shall have the effect of a works agreement. Section 77 (3) shall not apply to the social compensation plan.

- (2) If no reconciliation of interests can be achieved in connection with the proposed alterations or if no agreement is reached on the social compensation plan, the employer or the works council may apply to the Executive Board of the Federal Employment Agency for mediation, the Board may entrust other staff members of the Federal Employment Agency with this task. If mediation is not applied for or the attempt at mediation is unsuccessful, the employer or the works council may submit the case to the conciliation committee. The chairman of the conciliation committee may request a member of the Executive Board of the Federal Employment Agency or a staff member of the Federal Employment Agency appointed by the Board to take part in the proceedings.
- (3) The employer and the works council shall submit proposals to the conciliation committee for the settlement of differences on the reconciliation of interests and the social compensation plan. The conciliation committee shall attempt to reconcile the parties. If an agreement is reached, it shall be recorded in writing and signed by the parties and the chairman.
- (4) If no agreement is reached on the social compensation plan, the conciliation committee shall make a decision on the drawing up of a social compensation plan. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.
- (5) When making a decision in pursuance of subsection (4), the conciliation committee shall take into account the social interests of the employees concerned while taking care that its decision does not place an unreasonable financial burden on the company. In doing so and within the framework of equitable discretion, the conciliation committee shall be guided by the following principles, in particular:

1. When compensating in full or part any financial prejudices sustained, in particular by a reduction in income, the lapse of additional benefits or loss of entitlements to company pensions, removal costs or increased travelling costs, it shall provide for payments which generally make allowances for the circumstances of the individual case.
2. It shall take into account the prospects of the employees concerned on the labour market. It shall exclude from payments employees who may continue to work in reasonable employment in the same establishment or in another establishment of the company or of a company belonging to the combine, but refuse said continued employment; the possibility of continued employment at another location shall not alone be sufficient grounds for claiming unreasonableness.
- 2a. In particular, it shall duly consider the support schemes aimed at avoiding unemployment provided for in Book Three of the Social Code.
3. When calculating the total amount of the social compensation plan payments, it shall take care that the continuance of the company or the jobs remaining after the implementation of the alterations is not jeopardised.

Section 112a Enforceable social compensation plan in the event of staff cutbacks, establishment of new businesses

- (1) Where a planned alteration to the establishment in accordance with section 111, third sentence, clause 1, consists only in a reduction of staff, section 112 (4) and (5) shall only apply if the following numbers of employees are to be dismissed for operational reasons:
 1. In establishments with normally less than 60 employees, 20 % of the regularly employed employees, but not less than 6 employees;
 2. In establishments with normally more than 60 and less than 250 employees, 20 % of the regularly employed employees or not less than 37 employees;

3. In establishments with normally more than 250 and less than 500 employees, 15 % of the regularly employed employees or not less than 60 employees;
4. In establishments with normally more than 500 employees, 10 % of the regularly employed employees, but not less than 60 employees.

The leaving of employees on the basis of contract cancellation, occasioned by the employer due to reasons of alteration within the establishment, shall also count as dismissal.

- (2) Section 112 (4) and (5) shall not apply to establishments of a company in the first four years of its existence. This shall not apply to new businesses set up in conjunction with the legal restructuring of companies and combines. The start of gainful activity, of which the tax office is to be notified in accordance with section 138 of the Tax Code, shall be authoritative for the time of establishment.

Section 113 Indemnities

- (1) If the employer fails to comply with an agreement on the reconciliation of interests in connection with the alterations proposed without any compelling reasons to do so, the employees who are dismissed as a result of such non-compliance may bring an action in the labour court requesting that the employer should be condemned to pay indemnities; section 10 of the Protection against Dismissal Act shall apply, *mutatis mutandis*.
- (2) If employees sustain other financial prejudice as a result of a non-compliance covered by subsection (1), the employer shall make good such prejudice for a period not exceeding twelve months.
- (3) Subsections (1) and (2) shall apply, *mutatis mutandis*, where the employer carries out any proposed alterations within the meaning of section 111 without having attempted to reach an agreement with the works council on a reconciliation of interests and such action results in dismissals or other financial prejudice to employees.

Part Five

Special regulations for particular types of establishments

Division One

Maritime Shipping

Section 114 Basic principles

- (1) This Act shall apply to shipping companies and their fleets in so far as this Division does not contain anything to the contrary.
- (2) In this Act the term “shipping company” means a company engaged in merchant shipping and having its head office within the territorial scope of this Act. A person shall also be deemed to operate a shipping company within the meaning of this Division if he operates ships for profit by ocean trading as a corresponding shipowner, charterer, ship’s Chandler or on the basis of a similar legal relationship and is the employer of the master and crew or predominantly exercises the functions of an employer.
- (3) A shipping fleet within the meaning of this Act shall be deemed to comprise all of the ships operated by a shipping company including those covered by the second sentence of subsection (2).
- (4) In this Act the term “ship” means any merchant vessel flying the flag of the Federal Republic in virtue of the Law of the Flag Act. Ships which normally return to the base of a shore establishment within twenty-four hours of leaving port shall be treated as a part of such shore establishment of the shipping company.
- (5) Only shore establishments of shipping companies shall have youth and trainee delegations.
- (6) Crew members within the meaning of this Act shall be all persons in the service of a shipping company engaged in ocean shipping for the purpose of work or vocational training with the exception of the master.

Section 115 Ship's committee

- (1) A ship's committee shall be established on board every ship that normally has five crew members with voting rights, including three who are eligible. Unless this Act or other statutory instruments provide to the contrary, the provisions relating to the rights and obligations of the works council and the legal status of its members shall also apply to ships' committees.
- (2) The provisions relating to the election and composition of works councils shall apply with the following modifications:
 1. All members of the ship's crew shall have voting rights.
 2. All members of the ship's crew who are 18 years of age or over on the day of election and have served for not less than one year as crew members on board a ship flying the flag of the Federal Republic in virtue of the Law of the Flag Act shall be eligible to the ship's committee. The third sentence of section 8 (1) shall continue to apply.
 3. The membership of the ship's committee shall be as follows, according to the normal manning of the vessel:

5 to 20 crew members with voting rights: 1 person
21 to 75 crew members with voting rights: 3 members
Over 75 crew members with voting rights: 5 members
 4. (cancelled)
 5. Section 13 (1) and (3) shall not apply. In the conditions listed in section 13 (2), clauses (2) to (5), a new ship's committee shall be elected before the term of office of the incumbent committee expires.
 6. The crew members with voting rights may decide by majority vote to hold an election to the ship's committee within twenty-four hours.

7. The period referred to in the first sentence of section 16 (1) shall be reduced to two weeks and the period referred to in the first sentence of section 16 (2) to one week.
 8. If the incumbent ship's committee does not appoint an electoral board in good time or if there is no ship's committee, the electoral board shall be appointed by the majority of crew members attending a crew meeting, section 17 (3) shall apply, *mutatis mutandis*. If a crew meeting cannot be held because it would interfere with the smooth running of the ship, the master may appoint the electoral board at the request of three persons with voting rights. If the master fails to appoint the electoral board, the fleet works council shall be entitled to do so in his stead. The foregoing shall be without prejudice to the provisions relating to the appointment of the electoral board by the labour court.
 9. In respect of crew members on board ship the period within which an election may be contested shall run from the date on which the vessel enters, for the first time after the election results have been announced, a port of call located within the territorial scope of this Act or in which there is a seamen's tribunal. The contestation of an election may also be placed on record with the seamen's tribunal. If the election to the ship's committee is contested, the seamen's tribunal shall seize the election records on board. The seamen's tribunal shall immediately transmit the declaration of contestation and the election records seized to the labour court competent to deal with the contestation.
- (3) The term of office of the ship's committee shall be governed by sections 21, 22 to 25, except that
1. the term of office shall be one year; and
 2. membership of the ship's committee shall also expire on the termination of the crew member's service on board, unless he resumes service on board before the expiry of the term of office under the preceding clause.

- (4) The conduct of business of the ship's committee shall be governed by sections 26 to 36, 37 (1) to (3) and sections 39 to 41, *mutatis mutandis*. Section 40 (2) shall apply with the additional proviso that the ship's committee may also make use of the telecommunication facilities between the ship and the shore office for the rapid transmission of news in so far as its activities so require.
- (5) Sections 42 to 46 relating to the works meeting shall apply, *mutatis mutandis*, to the meetings held by the members of the ship's crew (crew meeting). At the request of the crew meeting the master shall give a report on the ship's voyage and related matters. He shall answer questions concerning the operation of the ship, the voyage and safety on board.
- (6) Sections 47 to 59 relating to the central works council and the combine works council shall not apply to the ship's committee.
- (7) Sections 74 to 105 relating to collaboration by employees and co-determination shall apply to the ship's committee with the following modifications:
 - 1. The ship's committee shall be competent to deal with the matters in respect of which this Act provides for collaboration and co-determination by the works council in so far as they concern the ship's operations or the members of the ship's crew and are subject to the master's decision under statutory regulations or by virtue of the authority delegated to him by the shipowner.
 - 2. Where the master and the ship's committee fail to reach an agreement on a matter which is subject to the ship's committee's collaboration or co-determination, the ship's committee may refer the matter to the fleet works council. The fleet works council shall inform the ship's committee on any further action taken on the matter. The ship's committee and the master may apply to the conciliation committee or the labour court only where no fleet works council has been elected.
 - 3. The ship's committee and the master may conclude "ship's agreements" within the scope of their competence. The provisions relating to works

agreements shall apply, *mutatis mutandis*, to ship's agreements. No ship's agreements shall be made on any matter that is the subject of a works agreement between the fleet works council and the employer.

4. The master may take temporary arrangements on matters that are subject to the codetermination of the ship's committee even before an agreement has been reached with the ship's committee if such arrangements are urgently necessary to maintain the smooth operation of the ship. The crew members affected shall be informed of the temporary nature of the arrangement. In as far as the final arrangement differs from the temporary arrangement, the shipping company shall make good any prejudice incurred by crew members as a result of the temporary arrangement.
5. The ship's committee shall be entitled to be fully and regularly briefed on the ship's operations. The ship's committee shall be supplied with the relevant documentation. The term "ship's operations" shall be deemed to include, *inter alia*, safety on board, routes and voyages, prospective times of arrival and departure and the cargo to be carried on board.
6. The master shall at its request grant the ship's committee access to the ship's log books kept on board. Where the master has made an entry on matters that are subject to the collaboration or co-determination of the ship's committee, the latter may request a copy of the entry and enter comments into the ship's log. Where no agreement has been reached between the master and the ship's committee on a matter that is subject to the collaboration or co-determination of the ship's committee, the latter may make an entry to this effect into the ship's log and request a copy of such entry.
7. The competence of the ship's committee in occupational safety and health matters shall extend to the safety of the ship and collaboration with the competent authorities and other bodies concerned.

Section 116 Fleet works council

- (1) Fleet works councils shall be elected in fleets. The provisions relating to the rights and obligations of the works council and the legal status of its members shall also apply to the fleet works council, except in so far as this act or other statutory instruments provide to the contrary.
- (2) The provisions relating to the election, composition and term of office of works councils shall apply with the following modifications:
 1. All crew members in the employment of the shipping company shall have voting rights in respect of the fleet works council.
 2. Eligibility to the fleet works council shall be governed by section 8 with the following exceptions:
 - a) In shipping companies with a fleet of more than eight ships or a payroll of normally more than 250 crew members, a crew member to be eligible must fulfil the conditions for eligibility laid down in section 115 (2), clause 2.
 - b) In cases which do not meet the conditions laid down in subclause (a) only such employees shall be eligible as fulfil the conditions for eligibility in the shore office of the shipping company in application of section 8, unless the employer agrees to the election of crew members.
 3. The membership of the fleet works council shall be as follows, according to the number of crew members with voting rights normally employed in the fleet:

5 to 400 crew members with voting rights: 1 person
401 to 800 crew members with voting rights: 3 members
Over 800 crew members with voting rights: 5 members

4. To be valid, a list of candidates must be signed by at least three crew members with voting rights if the first phrase of the first sentence and the second sentence of section 14 (4) are applicable.
5. Section 14a shall not apply.
6. The time limit referred to in the first sentence of section 16 (1) shall be extended to three months and the time limit referred to in the first sentence of section 16 (2) shall be extended to two months.
7. Employees of the shore office of the shipping company may also be appointed to the electoral board. Section 17 (2) to (4) shall not apply. If no fleet works council exists, the central works council or, if inexistent, the combine works council shall appoint the electoral board. If an establishment has no central works council or combine works council, the electoral board shall be appointed jointly by the employer and the trade unions represented in the fleet. The same applies if the central works council or combine works council fails to appoint the electoral board as stipulated in the third sentence of this clause. If no agreement is reached between the employer and the trade unions, the electoral board shall be appointed by the labour court on application from the employer or a trade union represented in the fleet or at least three crew members with voting rights. The second and third sentences of section 16 (2) shall apply, *mutatis mutandis*.
8. In respect of crew members on board ship the period within which an election may be contested in application of section 19 (2) shall run as from the date on which the ship enters, for the first time after the election results have been announced, a port of call that is located within the territorial scope of this Act or in which there is a seamen's tribunal. A contestation of an election shall cease to be receivable on the expiry of three months after the election results have been announced. The contestation of an election may also be placed on record with the seamen's tribunal. The seamen's tribunal shall immediately transmit the declaration of contestation to the labour court competent to deal with the contestation.

9. If the fleet works council consists of crew members, a member of the fleet works council who ceases to be a crew member shall also cease to be a member of the fleet works council. The fact of holding office on the fleet works council or an employment covered by clause 2 of subsection (3) below shall not affect a person's status as crew member.
- (3) Sections 26 to 41 relating to the conduct of business of the works council shall apply to the fleet works council with the following modifications:
1. In matters in respect of which the fleet works council must take a stand within a specified time limit under this Act, the fleet works council may, notwithstanding section 33 (2), take a decision irrespective of the number of members present at the meeting, on condition that the members have been convened in the manner prescribed.
 2. To the extent that members of the fleet works council cannot be released from their work duties, they shall be assigned tasks that do not interfere with the discharge of their duties on the fleet works council. The job assigned shall be in keeping with the capacity and skills of the member of the fleet works council and with his previous post. The job to be assigned shall be determined in agreement with the fleet works council. If no agreement is reached on the assignment of the job the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the fleet works council.
 3. Crew members who serve on the fleet works council shall continue to receive their seamen's pay even if they are employed in the shore office. Benefits in kind shall be compensated at an appropriate rate. If the new job ranks higher than the previous job, the remuneration paid shall be that which corresponds to the new job.
 4. Where the workplace is located outside the place of residence an arrangement which should take account of local conditions shall be made

between the fleet works council and the employer as to the accommodation of the crew members elected to the fleet works council. If no agreement is reached the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the fleet works council.

5. The fleet works council shall have the right to board any ship of the fleet, perform its duties while on board and attend the meetings of the ship's committee. The first sentence of section 115 (7), clause 5, shall apply, *mutatis mutandis*.
 6. While a ship is berthed in a port located within the territorial scope of this Act, the fleet works council may, after notifying the master, appoint hours for consultation aboard and call crew meetings on board.
 7. If the ship does not call at a port located within the territorial scope of this Act within a calendar year, clauses 5 and 6 shall apply to European ports. The locks of the Kiel Canal shall not be considered as ports.
 8. Notwithstanding clauses 6 and 7 consultation hours and crew meetings may also be held in other ports of call, in cases of urgent need, if the employer agrees. If no agreement is reached the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the fleet works council.
- (4) Sections 42 to 46 relating to works meetings shall not apply to fleets.
 - (5) The tasks, powers and duties conferred on the works council under sections 47 to 59 shall be exercised by the fleet works council in respect of the fleet.
 - (6) Sections 74 to 113 relating to collaboration by employees and co-determination shall apply to the fleet works council with the following modifications:

1. The fleet works council shall be competent to deal with the matters in respect of which this Act provides for collaboration or co-determination by the works council in so far as such matters –
 - a) concern the whole fleet or two or more ships of the fleet or the crew members of the whole fleet or of two or more ships of the fleet;
 - b) have been referred to it by the ship's committee under section 115 (7), clause 2; or
 - c) do not fall within the competence of the ship's committee under section 115 (7), clause 1.
2. The fleet works council shall be kept fully and regularly informed on the shipping movements of the shipping company. It shall be supplied with the relevant documentation.

Division Two

Aviation

Section 117 Application to aviation

- (1) This Act shall apply to the ground establishments of aviation companies.
- (2) A body representing the flight personnel of aviation companies may be set up by collective agreement. The collective agreement may derogate from this Act with respect to the collaboration of such body with the bodies to be established under this Act for the representation of the employees of the ground establishments of the aviation company.

Division Three

Establishments for political, religious, charitable and other purposes; religious communities

Section 118 Application to ideological establishments and religious communities

- (1) The provisions of this Act shall not apply to companies and establishments that directly and predominantly
 1. pursue political, coalition, religious, charitable, educational, scientific or artistic objectives; or
 2. serve purposes of publishing or expressing opinions covered by the second sentence of section 5 (1) of the Basic Law in so far as their application would not be in keeping with the specific nature of the company or establishment. In such cases sections 106 to 110 shall not apply and sections 111 to 113 shall apply only in so far as they provide for the full or part compensation of employees for any financial prejudice sustained as a result of alterations.
- (2) This Act shall not apply to religious communities or to their charitable and educational institutions irrespective of their legal form.

Part Six

Offences punishable by imprisonment or fines

Section 119 Offences against bodies established under this Act and their members

- (1) The following offences shall be punishable by a term of imprisonment not exceeding one year or a fine, or both:
 1. interfering with an election to the works council, the youth and trainee delegation, the ship's committee, the fleet works council or the

representative bodies of the employees referred to in section 3 (1), clause 1 to 3 or 5, or influencing such elections by inflicting or threatening reprisals or granting or promising incentives,

2. obstructing or interfering with the activities of the works council, the central works council, the combine works council, the youth and trainee delegation, the central youth and trainee delegation, the combine youth and trainee delegation, the ship's committee, the fleet works council, the representative bodies of the employees referred to in section 3 (1), the conciliation committee, the arbitration body referred to in section 76 (8), the grievance committee referred to in section 86 or the finance committee, or
 3. prejudicing or favouring a member or substitute member of the works council, the central works council, the combine works council, the youth and trainee delegation, the central youth and trainee delegation, the combine youth and trainee delegation, the ship's committee, the fleet works council, the representative bodies of the employees referred to in section 3 (1), the conciliation committee, the arbitration body referred to in section 76 (8), the grievance committee referred to in section 86 or the finance committee or personnel providing information referred to in the third sentence of section 80 (2) by reason of his office.
- (2) Proceedings concerning the offence shall be instituted only on application by the works council, the central works council, the combine works council, the ship's committee, the fleet works council, the representative bodies of the employees referred to in section 3 (1), the electoral board, the employer or a trade union represented in the establishment. The application may be withdrawn.

Section 120 Breach of secrecy

- (1) Any person who, without being authorised to do so, divulges a third party's trade or business secret which the employer has expressly stated to be confidential and that has come to his knowledge while serving as

1. a member or substitute member of the works council or one of the bodies referred to in section 79 (2),
 2. a representative of a trade union or employers' association,
 3. an expert who has been called in by the works council under section 80 (3) or consulted by the conciliation committee under the third sentence of section 109,
 - 3a. a consultant retained by the works council under the second sentence of section 111,
 - 3b. personnel providing information to the works council in accordance with the third sentence of section 80 (2),
 4. an employee who has been called in by the works council in accordance with the third sentence of section 107 (3) or by the finance committee under the second sentence of section 108 (2) shall be liable to a term of imprisonment of up to one year or a fine.
- (2) A similar penalty shall be imposed on any person who without being authorised to do so divulges an employee's secret and specifically a personal secret which has come to his knowledge while he was serving as a member or substitute member of the works council or one of the bodies referred to in section 79 (2) and in respect of which he is bound to secrecy under the provisions of this Act.
- (3) Where an offender has acted for reward or with the intention of obtaining some advantage for himself or another person or of harming any other person, the penalty shall be a term of imprisonment of up to two years or a fine. A similar penalty shall be imposed on any person who, without being authorised to do so, exploits a third party's secret and specifically a trade or business secret in respect of which he is bound to secrecy under the provisions of subsections 1 or 2.

- (4) Subsections (1) to (3) shall also be applicable if the offender divulges or exploits the thirdparty secret after the death of the person concerned.
- (5) Proceedings for the offence shall be instituted only on application by the injured party. If the injured party dies, the right to apply shall pass to the relatives in accordance with section 77 (2) of the Criminal Code insofar as the secret belongs to the personal sphere of the injured party; in all other cases it shall pass to the heirs. Where the offender divulges the secret after the death of the party concerned, the second sentence of this subsection shall apply, *mutatis mutandis*.

Section 121 Minor offences

- (1) Any person who fails to comply with the obligation to supply information referred to in section 90 (1) and the first sentence of 90 (2), the first sentence of section 92 (1), also in connection with (3), section 99 (1), section 106 (2), section 108 (5), section 110 or 111, or fails to supply such information truthfully, completely or at the proper time shall be deemed to have committed a minor offence.
- (2) Minor offences may be punished by a fine not exceeding Euro 10,000.

Part Seven

Amendment of other laws

Section 122

(Amendment to the Civil Code)
(obsolete)

Section 123

(Amendment to the Protection against Dismissal Act)
(obsolete)

Section 124

(Amendment to the Labour Courts Act)
(obsolete)

Part Eight**Transitional and final provisions****Section 125 First elections under this Act**

- (1) The first elections to works councils in accordance with section 13 (1) shall be held in 1972.
- (2) The first elections to youth and trainee delegations in accordance with the first sentence of section 64 (1) shall be held in 1988. The term of office of the youth delegation shall end with the announcement of the election results of the newly elected youth and trainee delegation, at the latest on 30 November 1988.
- (3) The elections of the works council, the ship's committee, the fleet works council and the youth and trainee delegation which are initiated later than 28 July, 2001, shall be governed by the First Ordinance for the Implementation of the Works Constitution Act of 16 January 1972 ("Bundesgesetzblatt", Part I p. 49), last amended by the ordinance of 16 January 1995 ("Bundesgesetzblatt", Part I, p. 43), the Second Ordinance for the Implementation of the Works Constitution Act of 24 October 1972 ("Bundesgesetzblatt", Part I, p. 2029), last amended by the ordinance of 28 September 1989 ("Bundesgesetzblatt", Part I, p. 1795), and the Ordinance for the Performance of the Works Council Elections in the post establishments of 26 June 1995 ("Bundesgesetzblatt", Part I, p. 871), mutatis mutandis, until amendment thereof.
- (4) In addition, the First Ordinance for the Implementation of the Works Constitution Act, until amended, shall apply, mutatis mutandis, to the simplified electoral procedure under section 14a subject to the following proviso:

1. The time period for the invitation to the election meeting where the electoral board is to be elected in accordance with section 14a (1) of the Act shall not be shorter than seven days. The invitation shall include the place, day, and time of the election meeting as well as the information that lists of candidates for the works council elections may be submitted until the end of the election meeting (Section 14a (2) of the Act).
2. Section 3 shall apply with the following proviso:
 - a) If section 14a (1) of the Act is applicable, the electoral board shall adopt the declaration of the election at the election meeting. The time limit for raising objections under section 3 (2), clause 3 shall be reduced to three days. The information provided under section 3 (2) clause 4 shall include the minimum number of seats of the minority gender (section 15 (2) of the Act). The lists of candidates shall not be submitted as stipulated in section 3 (2) clause 7, but shall be submitted to the electoral board until the end of the election meeting for the election of the electoral board. In addition to section 3 (2) clause 10, the electoral board shall specify the place, day, and time of subsequent casting of votes (section 14a (4) of the Act).
 - b) If section 14a (3) of the Act is applicable, the electoral board shall immediately adopt the declaration of the election subject to the restrictions concerning section 3 (2) clauses 3, 4, and 10 listed under letter a) above. In derogation of section 3 (2) clause 7, the lists of candidates shall be submitted to the electoral board not later than one week prior to the election meeting in which the works council will be elected (second sentence of section 14a (3) of the Act).
3. The time limit for raising objections under section 4 (1) shall be reduced to three days.
4. Sections 6 to 8 and section 10 (2) shall apply, *mutatis mutandis*, with the modification that the elections shall be held on the basis of lists of

candidates. If section 14a (1) of the Act is applicable, the lists of candidates shall be submitted to the electoral board until the end of the election meeting in which the electoral board is elected; if section 14a (3) of the Act is applicable, the lists of candidates shall be submitted to the electoral board not later than one week prior to the election meeting for the election of the works council (second sentence of section 14a (3) of the Act).

5. Section 9 shall not apply.
6. Sections 21 ff shall apply, *mutatis mutandis*, to the electoral procedure. The candidates shall be listed on the ballot papers in alphabetical order including their surname, first name, and type of occupation in the establishment.
7. Section 25 (5) to (8) shall not apply.
8. Section 26 (1) shall apply subject to the proviso that a person entitled to vote shall have informed the electoral board of his request for a written note not later than three days prior to the date of the election meeting in which the works council is elected 9. Section 31 shall apply, *mutatis mutandis*, with the modification that the election of the youth and trainee delegation shall be held on the basis of lists of candidates.

Section 126 Authorisation to make rules for the elections

The Federal Minister of Labour and Social Affairs is hereby authorised to issue ordinances with the approval of the Bundesrat regulating the electoral procedure for the elections referred to in sections 7 to 20, 60 to 63, 115 and 116 concerning –

1. the preparation of elections, including in particular the establishment of voters' lists and the calculation of the number of representatives;
2. the time limit for inspection of voters' lists and for raising objections to them;

3. the lists of candidates and the time limits for their submission;
4. the declaration of the election and the time limit for its announcement;
5. the casting of votes;
- 5a. the allocation of seats in the works council, the ship's committee, the fleet works council and the youth and trainee delegation to the genders, even if the seats cannot be filled as stipulated in section 15 (2) and section 62 (3)
6. the determination of election results and the time limits for their announcement;
7. the safekeeping of election documents.

Section 127 References

Any reference in other enactments to provisions repealed or amended by this Act shall be construed as references to the corresponding provisions of this Act, and any expressions used in other enactments and amended by this Act shall be replaced by the corresponding expressions in this Act.

Section 128 Existing collective agreements containing provisions contrary to this Act

Any collective agreements concluded under section 20 (3) of the Works Constitution Act of 11 October 1952 that are operative on the date of commencement of this Act and provide for the setting up of some other body representing the employees in establishments of such character that there are particular difficulties in setting up works councils shall not be affected by this Act.

Section 129

(cancelled)

Section 130 Civil service

This Act shall not apply to the administrative organs and establishments of the Federal Republic, the Länder, the communes and other public corporations, institutions and foundations.

Section 131 Berlin clause

(obsolete)

Section 132

(Commencement)

1 In accordance with the second sentence of Article 14 of the Act Reforming the Works Constitution Act (BetrVerf-Reformgesetz) of 23 July 2001 ("Bundesgesetzblatt", Part I p. 1852), Section 9 (Article 1 clause 8 of BetrVerf-Reformgesetz) shall not be applicable to a works council prior to its re-election if it had been in office when the Act became effective.

2 In accordance with the second sentence of Article 14 of the Act Reforming the Works Constitution Act (BetrVerf-Reformgesetz) of 23 July 2001 ("Bundesgesetzblatt", Part I p. 1852), Section 15 (Article 1 clause 13 of BetrVerf-Reformgesetz) shall not be applicable to a works council prior to its re-election if it had been in office when the Act became effective.

3 This provision serves to implement Article 6 of Council Directive 2001/23/EEC of March 12, 2001, on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ EEC No. L 82 p. 16).

4 In accordance with the second sentence of Article 14 of the Act Reforming the Works Constitution Act (BetrVerf-Reformgesetz) of 23 July 2001 ("Bundesgesetzblatt", Part I p. 1852), Section 47 (2) (Article 1 clause 35 letter a of BetrVerf-Reformgesetz) shall not be applicable to a works council prior to its re-election if it had been in office when the Act became effective.

ACT ON EUROPEAN WORKS COUNCILS

ACT ON EUROPEAN WORKS COUNCILS ¹⁾ of 7. December 2011

Part 1

General Provisions

§ 1 Cross-border information and consultation

- (1) To reinforce the right to the cross-border information and consultation of employees in Community-scale undertakings and groups of undertakings, European works councils or procedures for informing and consulting employees shall be agreed. Where no such agreement is reached, a European works council shall be established by Act of law.
- (2) The European Works Council shall be competent for matters that affect the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two establishments or two undertakings in different Member States. In the case of undertakings and groups of undertakings referred to in § 2 (2), the European Works Council's competence shall cover only matters within the territory of the Member States unless a greater scope of application has been agreed.
- (3) Cross-border information and consultation shall cover, in the case of undertakings, all establishments located within a Member State and, in the case of groups of undertakings, all undertakings resident in a Member State, unless a wider scope is agreed.
- (4) For the purposes of this Act, 'information' means transmission of data through central management or other appropriate level of management to employees'

¹⁾ This Act serves to implement Directive 2009/38/EC of the European Parliament and the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Federal Law Gazette L 122 of 16 May 2009, p. 28)

representatives in order to enable them to acquaint themselves with the subject matter and to examine it. Information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings.

- (5) For the purposes of this Act, 'consultation' means the exchange of views and establishment of dialogue between employees' representatives and central management or other appropriate level of management at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings. Consultation shall allow the employees' representatives to meet central management and obtain a reasoned response to any opinion they have expressed.
- (6) For the purposes of this Act, 'central management' means a Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings.
- (7) The European Works Council shall be informed and consulted, at the latest, at the same time as the national employee representation bodies are informed and consulted.

§ 2

Scope

- (1) This Act shall apply to Community-scale undertakings resident in Germany and to Community-scale groups of undertakings where the controlling undertaking is resident in Germany.

- (2) If the central management is not located in a Member State, but there is a subordinate management for establishments or undertakings located in Member States, this Act shall apply if the subordinate management is located in Germany. If there is no subordinate management, this Act shall apply if the central management designates an establishment or undertaking in Germany as its representative. Where no such representative is designated, this Act shall apply if the establishment or undertaking with the most employees, compared with other establishments of the undertaking or undertakings in a group of undertakings located in the Member States, is located in Germany. The above-mentioned bodies shall be deemed to be the central management.
- (3) For the purpose of this Act, 'Member States' means the Member States of the European Union and the other States that are party to the Agreement on the European Economic Area.
- (4) For the calculation of the number of employees in Germany (§ 4), the entitlement to information (§ 5 (2) and (3)), the determination of the controlling undertaking (§ 6), the submission of the request (§ 9 (2), third sentence), the joint and several liability of the employer (§ 16 (2)), the appointment of the employee representatives for Germany (§§ 11, 23 (1) to (5) and § 18 (2) in conjunction with § 23), together with the protective provisions applying to them (§ 40), and the report submitted to the local employee representatives in Germany (§ 36 (2)), this Act shall apply even where the central management is not in Germany.

§ 3

Community-scale activity

- (1) An undertaking is active on a Community scale if it has at least 1 000 employees in the Member States and at least 150 employees in each of at least two Member States.
- (2) A group of undertakings is active on a Community scale if it has at least 1 000 employees in the Member States and includes at least two undertakings resident in different Member States each with at least 150 employees in different Member States.

§ 4

Calculation of employee numbers

In establishments and undertakings in Germany, the number of employees considered for the purposes of § 3 shall be calculated as the average number of employees during the past two years in accordance with § 5 (1) of the Works Constitution Act.(Betriebsverfassungsgesetz) The relevant date for the commencement of the period referred to in the first sentence shall be the date on which the central management takes the initiative to establish a special negotiating body or receives a request to do so from the employees or their representatives in accordance with the terms set out in § 9 (2).

§ 5

Entitlement to information

- (1) At the request of an employee representation body, the central management shall obtain the information required for commencing negotiations for the establishment of a European Works Council and to transmit that information to the employee representation body. The information in question shall include in particular the average total number of employees and their distribution between the Member States, undertakings and establishments as well as information on the structure of the undertaking or the group of undertakings.
- (2) A works council or central works council may assert the entitlement under paragraph 1 above vis-à-vis the management of the local establishment or undertaking; the latter shall be obliged to obtain the information and documentation required from the central management.
- (3) The management of every undertaking belonging to the Community-scale group of undertakings and the central management shall be responsible for obtaining and transmitting the information referred to in paragraph (1).

§ 6

Controlling undertaking

- (1) An undertaking forming part of a Community-scale group of undertakings is a controlling undertaking if it can exercise a dominant influence, directly or indirectly, over another undertaking in the same group (controlled undertaking).
- (2) A dominant influence shall be presumed if an undertaking, in relation to another undertaking, indirectly or directly
 1. can appoint more than half of the members of the other undertaking's administrative, management or supervisory body or
 2. controls a majority of the votes attached to the other undertaking's issued share capital or
 3. holds a majority of that undertaking's subscribed capital.

If more than one undertaking meets one of the criteria specified in the first sentence, items 1 to 3 the controlling undertaking shall be determined by applying the criteria in the order listed.

- (3) For the purposes of paragraph 2, an undertaking's rights as regards voting and appointment shall include the rights of any undertakings it controls and those of any person or body acting in his or its own name but on behalf of the undertaking or an undertaking controlled by the latter.
- (4) An undertaking shall not be deemed to be a controlling undertaking within the meaning of paragraphs 1 and 2 with respect to another undertaking in which it has holdings but does not participate in its management where the former undertaking is an investment or holding company as referred to in Article 3 (5)(a) or (c) of Council Regulation (EEC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).

§ 7

European Works Council in groups of undertakings

Where a Community-scale group of undertakings includes one or more Community-scale undertakings, a European Works Council shall be established only for the controlling undertaking of the group, unless otherwise agreed.

Part 2

Special negotiating body

§ 8

Task

- (1) The special negotiating body shall have the task of negotiating with the central management an agreement on the cross-border information and consultation of employees.
- (2) The central management shall provide the special negotiating body in good time with all the information it requires to carry out its tasks and with the necessary documentation.
- (3) The central management and the special negotiating body shall work together in a spirit of trust. The date, frequency and venue for negotiations shall be determined by agreement between the central management and the special negotiating body.

§ 9

Establishment

- (1) The special negotiating body shall be established upon a written request by the employees or their representatives addressed to the central management or at the initiative of the central management.

- (2) The request shall be effectively submitted if it is signed by at least 100 employees or their representatives from at least two establishments or undertakings in different Member States and is received by the central management. Where more than one request is submitted, the signatures shall be counted together. If the request is submitted to the management of an establishment or undertaking in Germany, the latter shall forward the request without delay to the central management and inform the requesting parties of this fact.
- (3) The central management shall inform the requesting parties, the management of the local establishments or undertakings, the employee representatives of the latter and the trade unions represented in establishments in Germany of the establishment of a special negotiating body and of its composition.

§ 10

Composition

- (1) For each portion of employees employed in a Member State amounting to 10%, or a fraction thereof, of the number of employees employed in all the Member States taken together by the Community-scale undertaking or Community-scale group of undertakings, one member from that Member State shall be appointed to the special negotiating body.
- (2) Alternate members may be appointed.

§ 11

Appointment of employee representatives for Germany

- (1) In Community-scale undertakings, the members of the special negotiating body who represent employees in Germany under this Act or the law of another Member State shall be appointed by the central works council (§ 47 of the Works Constitution Act). Where there is only a works council, the latter shall appoint the members of the special negotiating body.

- (2) In Community-scale groups of undertakings, the members of the special negotiating body referred to in the first sentence of paragraph 1 above shall be appointed by the combine works council (§ 54 of the Works Constitution Act⁴). If there is also a central works council or works council not represented on the combine works council, the combine works council shall be extended to include the chairpersons of these works councils and their deputies; these chairpersons and their deputies shall in this respect be deemed to be members of the combine works council.
- (3) If there is no combine works council, the members of the special negotiating body referred to in the first sentence of paragraph 1 above shall be appointed as follows:
- a) If there is more than one central works council, the members of the special negotiating body shall be appointed at a joint meeting of the central works councils, which shall be convened by the chairperson of the central works council of the largest undertaking in Germany in terms of the number of employees entitled to vote. If there is at least one works council not represented on the central works councils, its chairperson and his or her deputy shall be invited to this meeting; they shall in this respect be deemed to be members of a central works council.
 - b) If, in addition to a central works council, there is at least one works council not represented on the central works council, the latter shall be extended to include the chairperson of this works council and his or her deputy; the latter persons shall in this respect be deemed to be members of the central works council. The central works council shall appoint the members of the special negotiating body. If there is only one central works council, the latter shall appoint the members of the special negotiating body.
 - c) If there are several works councils, the members of the special negotiating body shall be appointed at a joint meeting convened by the chairperson of the works council of the largest establishment in Germany in terms of the number of employees entitled to vote. The chairpersons of the works

councils and their deputies shall be entitled to attend this meeting; § 47 (7) of the Works Constitution Act shall apply *mutatis mutandis*.

- d) If there is only one works council, the latter shall appoint the members of the special negotiating body.
- (4) The employees referred to in § 5 (3) of the Works Constitution Act⁵ may also be appointed as members of the special negotiating body.
- (5) Men and women shall be appointed in proportion to their respective numbers.

§ 12

Meetings, rules of procedure, experts

- (1) The central management shall convene a constitutive meeting of the special negotiating body as soon as the members have been appointed and shall inform the managements of the local establishments and undertakings of this fact. The central management shall, at the same time, inform the competent European trade unions and employers' organisations of the start of negotiations and the composition of the special negotiating body referred to in the first sentence of § 12. The special negotiating body shall elect a chairperson from among its number and may adopt rules of procedure.
- (2) Before and after any negotiations with the central management, the special negotiating body shall have the right to hold a meeting and invite persons to attend this meeting; § 8 (3), second sentence, shall apply *mutatis mutandis*.
- (3) Unless otherwise provided for in this Act, decisions of the special negotiating body shall be adopted by a majority of the votes of its members.
- (4) The special negotiating body may be assisted in negotiations by experts of its choice where this is necessary for it to carry out its tasks properly. Such experts may also be representatives of trade unions. Such experts and trade union representatives may participate in negotiation meetings in an advisory capacity at the request of the special negotiating body.

§ 13

Meetings, rules of procedure, experts

- (1) The central management shall convene a constitutive meeting of the special negotiating body as soon as the members have been appointed and shall inform the managements of the local establishments and undertakings of this fact. The central management shall, at the same time, inform the competent European trade unions and employers' organisations of the start of negotiations and the composition of the special negotiating body referred to in the first sentence of § 12. The special negotiating body shall elect a chairperson from among its number and may adopt rules of procedure.
- (2) Before and after any negotiations with the central management, the special negotiating body shall have the right to hold a meeting and invite persons to attend this meeting; § 8 (3), second sentence, shall apply *mutatis mutandis*.
- (3) Unless otherwise provided for in this Act, decisions of the special negotiating body shall be adopted by a majority of the votes of its members.
- (4) The special negotiating body may be assisted in negotiations by experts of its choice where this is necessary for it to carry out its tasks properly. Such experts may also be representatives of trade unions. Such experts and trade union representatives may participate in negotiation meetings in an advisory capacity at the request of the special negotiating body.

§ 14

Involvement of employee representatives from third countries

Where the central management and the special negotiating body agree to extend the agreement negotiated under § 17 to establishments or undertakings not in a Member State (third country), they may agree to include employee representatives from these countries on the special negotiating body and to determine the number of members for the third countries concerned and their status.

§ 15

Decision on the ending of negotiations

- (1) The special negotiating body may decide, by at least two-thirds of the votes of its members, not to open negotiations or to terminate negotiations. The decision and the result of the vote shall be recorded and the record shall be signed by the chairperson and one other member of the body. A copy of the decision shall be forwarded to the central management.
- (2) A new request to establish a special negotiating body (§ 9) may be made no sooner than two years after a decision taken in accordance with paragraph 1 above, unless the special negotiating body and the central management lay down a shorter period in writing.

§ 16

Costs and operating expenditure

- (1) The costs arising from the establishment and operation of the special negotiating body shall be borne by the central management. Where experts are called in under § 13 (4), the obligation to bear costs shall extend to only one expert. The central management shall provide the rooms, materials, interpreters and office staff necessary for the meetings and shall bear the necessary travelling and accommodation costs of the members of the special negotiating body.
- (2) The employer of a member appointed from Germany to the special negotiating body shall, together with the central management, be jointly and severally liable for this member's entitlement to the reimbursement of costs.

PART III**Agreements concerning cross-border information and consultation****§ 17****Freedom of organisation**

The central management and the special negotiating body shall be free to decide how the cross-border information and consultation of employees is to be organised; they shall not be bound by the provisions of Part IV of this law. The agreement shall cover all employees employed in those Member States where the undertaking or group of undertakings has establishments. The parties shall reach agreement on whether cross-border information and consultation is to be implemented by the establishment of one or more European Works Councils in accordance with § 18 or by a procedure for informing and consulting employees in accordance with § 19.

§ 18**European Works Council by agreement**

- (1) Where a European Works Council is to be established, a written agreement shall be reached as to how it is to be organised. The following, in particular, shall be regulated:
1. designation of the establishments and undertakings covered, including branches outside the territory of the Member States, where these are to be covered;
 2. composition of the European Works Council, number of members, alternate members, allocation of seats and term of office;
 3. tasks and powers of the European Works Council and the procedure for informing and consulting it; such procedure may be adjusted on the basis of the participatory rights of the national employees' representatives, provided their rights are not thereby restricted;

4. venue, frequency and duration of meetings;
5. the establishment of a European Works Council committee, including its composition, the appointment of its members, its powers and operation;
6. the financial and material resources to be allocated to the European Works Council;
7. clause concerning the adapting of the agreement to structural changes, the duration of the agreement and the procedure for its renegotiation, modification and termination, including transitional arrangements.

(2) § 23 shall apply *mutatis mutandis*.

§ 19

Procedure for information and consultation

Where a procedure for informing and consulting employees is to be introduced, an agreement shall be made in writing to regulate the conditions under which employee representatives have the right to confer together on the information conveyed to them and the procedure for the discussion of their proposals or concerns with the central management or other appropriate level of management. This information shall relate in particular to cross-border matters that significantly affect the interests of employees.

§ 20

Transitional provisions

An agreement pursuant to § 18 or 19 shall continue to apply if the right to submit a request or take an initiative under § 9 (1) is exercised before the agreement is terminated. The right to submit a request may also be exercised by an employee representation body established under an agreement. The application of the agreement shall end if it is replaced by a new agreement or if a European Works Council is established by act of law. The application of the

agreement shall also end where the special negotiating body takes a decision as provided for in § 15 (1); § 15 (2) shall apply *mutatis mutandis*. The first, second, third and fourth sentences shall not apply if the existing agreement incorporates transitional arrangements.

PART IV

European Works Council by act of law

CHAPTER 1

Establishment of the European Works Council

§ 21

Requirements

- (1) Should the central management refuse to enter into negotiations within six months of a request as referred to in § 9, a European Works Council shall be established in accordance with § 22 and 23. The same shall apply if no agreement can be reached under § 18 or 19 within three years after the request or the central management and the special negotiating body declare the negotiations failed. The first and second sentences shall apply *mutatis mutandis* if the special negotiating body is to be established upon the initiative of the central management.
- (2) A European Works Council shall not be established if the special negotiating body takes a decision as provided for in § 15 (1) before expiry of the deadlines in paragraph 1 above.

§ 22

Composition of the European Works Council

- (1) The European Works Council shall be composed of employees of the Community-scale undertaking or Community-scale group of undertakings. Alternate members may be appointed.

- (2) For each portion of employees employed in a Member State amounting to 10%, or a fraction thereof, of the number of employees employed in all the Member States taken together by the Community-scale undertaking or Community-scale group of undertakings, one member from that Member State shall be appointed to the European Works Council.

§ 23

Appointment of employee representatives in Germany

- (1) The members of the European Works Council appointed to represent employees in Germany under this Act or the law of another Member State shall be appointed in Community-scale undertakings by the central works council (§ 47 of the Works Constitution Act). If there is only a works council, the latter shall appoint the members of the European Works Council.
- (2) In Community-scale groups of undertakings, the European Works Council members referred to in paragraph 1 above, first sentence, shall be appointed by the combine works council (§ 54 of the Works Constitution Act⁷). If, in addition to the combine works council, there is a central works council or works council not represented on it, the combine works council shall be extended to include their chairpersons and deputies; these chairpersons and their deputies shall in this respect be deemed to be members of the combine works council.
- (3) If there is no combine works council, the European Works Council members referred to in paragraph 1 above, first sentence, shall be appointed as follows:
 - a) If there is more than one central works council, the members of the European Works Council shall be appointed at a joint meeting of the central works councils convened by the chairperson of the central works council of the largest undertaking in Germany in terms of the number of employees entitled to vote. If there is at least one works council not represented on the central works councils, the chairperson of this works council and his or her deputy shall be invited to attend the meeting; in this respect, they shall be deemed to be members of the central works council.

- b) If, in addition to a central works council, there is at least one works council not represented on the central works council, the latter shall be extended to include the chairperson of this works council and his or her deputy; the chairperson of the works council and his or her deputy shall, in this respect, be deemed to be members of the central works council. The central works council shall appoint the members of the European Works Council. If there is only one central works council, the latter shall appoint the members of the European Works Council.
 - c) If there is more than one works council, the members of the European Works Council shall be appointed at a joint meeting convened by the chairperson of the works council of the largest undertaking in Germany in terms of the number of employees entitled to vote. The chairpersons of the works councils and their deputies shall be entitled to attend this meeting; § 47 (7) of the Works Constitution Act shall apply *mutatis mutandis*.
 - d) If there is only one works council, the latter shall appoint the members of the European Works Council.
- (4) Paragraphs 1 to 3 shall apply *mutatis mutandis* to the recall of members.
- (5) Where possible, there should be a balanced representation of employees with regard to their activities; men and women shall be appointed in proportion to their respective numbers.
- (6) The competent executives' committee of a Community-scale undertaking or Community-scale group of undertakings which has its central management in Germany may designate one of the employees referred to in § 5 (3) of the Works Constitution Act⁸ who shall have the right to attend and address meetings for the consultation and information of the European Works Council, provided at least five representatives from Germany have been delegated to attend in accordance with § 22 (2). § 35 (2) and 39 shall apply *mutatis mutandis*.

§ 24

Information concerning the members of the European Works Council

The names of the members of the European Works Council, their addresses and the establishments to which they belong shall be communicated without delay to the central management. The central management shall pass on this information to the managements and employee representatives of the local establishments or undertakings and to the trade unions represented in establishments in Germany.

CHAPTER 2

Conduct of business of the European Works Council

§ 25

Constitutive meeting, chairperson

- (1) Immediately upon appointment of the members, the central management shall convene the constitutive meeting of the European Works Council. The European Works Council shall elect from among its number a chairperson and his or her deputy.
- (2) The chairperson of the European Works Council, or in the event of his or her absence, his or her deputy shall represent the European Works Council within the terms of the decisions taken by the latter. The chairperson or, in the event of his or her absence, his or her deputy shall have the right to accept statements addressed to the European Works Council.

§ 26

Committee

The European Work Council shall establish a Committee from its members. The Committee shall comprise the chairperson and at least two, but no more than four, other members to be elected. The other members of the Committee shall be employed in different Member States. The Committee shall conduct the ongoing business of the European Works Council.

§ 27

Meetings

- (1) The European Works Council shall have the right to hold a meeting and invite persons to attend in connection with the provision of information by the central management under § 29. The same shall apply in the case of information concerning extraordinary circumstances as provided for in § 30. The date and venue for meetings shall be agreed with the central management. With the consent of the central management, the European Works Council may hold additional meetings. The meetings of the European Works Council shall not be public.
- (2) Paragraph 1 shall apply *mutatis mutandis* to the exercise of the European Works Council's rights of participation by the Committee pursuant to § 26.

§ 28

Decisions, rules of procedure

Unless otherwise provided for in this Act, the decisions of the European Works Council shall be adopted by the majority of the votes of the members present. Other provisions relating to the conduct of business shall be incorporated in written rules of procedure adopted by the European Works Council with the majority of the votes of its members.

CHAPTER 3

Participation rights

§ 29

Annual information and consultation

- (1) Once every calendar year, the central management shall inform the European Works Council, providing it with the required documentation in good time, of the progress of the business of the Community-wide undertaking or Community-wide group of undertakings and its prospects and consult it on these matters.

(2) The progress of the business and prospects as referred to in paragraph 1 above relate in particular to:

1. structure and economic and financial situation of the undertaking or group of undertakings;
2. the likely development of the business and of production and sales;
3. the situation and probable trend of employment;
4. investments (investment programmes);
5. fundamental changes in organisation;
6. the introduction of new working and production processes;
7. the relocation of undertakings, establishments or significant parts thereof and transfers of production;
8. the merger or division of undertakings or establishments;
9. the cutting back or closure of undertakings, establishments or significant parts thereof;
10. collective redundancies.

§ 30

Information and consultation in exceptional circumstances

(1) In the event of exceptional circumstances affecting the employees' interests to a considerable extent, the central management shall inform the European Works Council in good time of these circumstances or decisions, providing it with the required documentation, and, on request, consult the European Works Council. Exceptional circumstances comprise in particular

1. the relocation of undertakings, establishments or important parts thereof;
 2. the closure of undertakings, establishments or important parts thereof;
 3. collective redundancies.
- (2) If there is a Committee within the meaning of § 26, this Committee shall be addressed instead of the European Works Council in accordance with paragraph (1), first sentence. § 27 (1), second to fifth sentences, shall apply *mutatis mutandis*. Those members of the European Works Council appointed for establishments or undertakings directly affected by the planned measures or decisions shall also be invited to meetings of the Committee; in this respect, they shall be deemed to be members of the Committee.

§ 31

“Tendenzunternehmen”

Only § 29 (2), items 5 to 10, and § 30 shall apply to undertakings and controlling undertakings of groups of undertakings that, for the most part, directly serve the purposes referred to in § 118 (1), first sentence, items 1 and 2, of Works Constitution Act⁹, subject to the proviso that information and consultation shall be required only with regard to compensation or alleviation of financial disadvantages suffered by the employees as a result of changes in the undertaking or establishment.

CHAPTER 4

Change of composition, transition to an agreement

§ 32

Duration of membership, appointment of new members

- (1) Membership of the European Works Council shall be for a period of four years unless terminated earlier by recall or for other reasons. This period shall start upon appointment.

- (2) Every two years, starting from the date of the constitutive meeting of the European Works Council (§ 25 (1)), the central management shall examine whether the numbers of employees in the individual Member States have changed to such an extent that the composition of the European Works Council would be calculated differently under § 22 (2). It shall inform the European Works Council of the results. Where the results require a different composition of the European Works Council, the latter shall call upon the competent bodies to appoint new members of the European Works Council for those Member States where a different number of employee representatives is required compared with the previous period; these new appointments end the membership of the employee representatives that have hitherto represented these Member States on the European Works Council. The first, second and third sentences shall apply *mutatis mutandis* in the case of a Member State hitherto not represented on the European Works Council.

§ 33

Opening of negotiations

Four years after the constitutive meeting (§ 25 (1)), the European Works Council shall decide, by a majority of the votes of its members, whether to negotiate an agreement with the central management as provided for in § 17. Should the European Works Council decide to open negotiations, it shall have the same rights and duties as the special negotiating body; § 8, 13, 14, 15 (1) and § 16 to 19 shall apply *mutatis mutandis*. The term of office of the European Works Council shall end when an agreement is reached under § 17.

PART V

Common provisions

§ 34

Cooperation in a spirit of trust

The central management and the European Works Council shall co-operate in a spirit of trust for the good of the employees and the undertaking or group of undertakings. The first sentence shall apply *mutatis mutandis* to cooperation between the central management and the employee representatives under an information and consultation procedure.

§ 35

Secrecy, confidentiality

- (1) The central management shall be obliged to provide information on the matters agreed under § 18 and 19 or as referred to in § 29 and § 30 (1) only where business or operating secrets of the undertaking or group of undertakings are not jeopardised as a result.
- (2) The members and alternate members of a European Works Council shall not divulge or make use of operating or business secrets that have come to their knowledge in connection with their membership of the European Works Council and have been expressly designated by the central management as confidential. This provision shall continue to apply to former members of the European Works Council. It shall not apply vis-à-vis other members of the European Works Council. In addition, it shall not apply vis-à-vis the employee representatives of local establishments or undertakings, where such persons are to be informed under an agreement in accordance with § 18 or under § 36 of the content of information and the outcome of consultations, vis-à-vis employee representatives on the supervisory board or vis-à-vis interpreters or experts called in to provide assistance.

(3) The obligation to preserve confidentiality under paragraph 2, first and second sentences, shall apply *mutatis mutandis* to

1. the members and alternate members of the special negotiating body,
2. the employee representatives in the case of an information and consultation procedure (§ 19),
3. the experts and interpreters,
4. the local employee representatives.

(4) The exceptions to the obligation to preserve confidentiality set out in paragraph 2, third and fourth sentences, shall apply *mutatis mutandis* to

1. the special negotiating body vis-à-vis experts and interpreters,
2. employee representatives in the case of an information and consultation procedure vis-à-vis interpreters and experts called in under an agreement to provide assistance and vis-à-vis local employee representatives where such persons are to be informed of the content of information and the outcome of consultations under the agreement (§ 19).

§ 36

Information of local employees' representatives

- (1) The European Works Council or the Committee (§ 30 (2)) shall report on information and consultation to the local employees' representatives or, if there are no such representatives, to the employees of the establishments or undertakings.
- (2) The member of the European Works Council or Committee who reports to the local employees' representatives at a domestic level shall give his report in establishments or undertakings with management representative committees

at a joint meeting within the meaning of § 2 (2) of the Representative Committee Act (Sprecherausschussgesetz). This shall not apply where an employee designated in accordance with § 23 (6) has participated at the meeting for the information and consultation of the European Works Council. Where the report referred to in paragraph (1) is given in written form only, it shall also be forwarded to the competent representative committee.

§ 37

Significant structural changes

- (1) Where the structure of the Community-scale undertaking or Community-scale group of undertakings changes significantly, and either in the absence of relevant provisions established by the agreements in force or in the event of conflicts between such provisions, the central management shall initiate the negotiations for an agreement referred to in § 18 or § 19 on its own initiative or at the request of the employees or of their representatives (§ 9 (1)). The significant structural changes referred to in the first sentence include in particular
 1. the merging of undertakings or groups of undertakings;
 2. the division of undertakings or a group of undertakings;
 3. the relocation of an undertaking or group of undertakings to another Member State or to a third country, or the closure of undertakings or a group of undertakings;
 4. the relocation or closure of establishments where such action may have an impact on the composition of the European Council.
- (2) By way of derogation from § 10, each European Works Council affected by the structural change shall appoint three of its members as additional members of the special negotiating body.

- (3) During negotiations, each European Works Council affected by the structural change shall remain in office until such time as a new European Works Council is established (transitional term of office). Agreement may be reached with the central management as to the provisions governing the operation and composition of the transitional term of office. Where no agreement is reached with the central management in accordance with the second sentence, the transitional term of office shall be assumed by the relevant European Works Council in accordance with the provisions governing it in the undertaking or group of undertakings. The transitional term of office shall also end if the special negotiating body adopts a decision pursuant to § 15 (1).
- (4) If no agreement is reached in accordance with § 18 or § 19, a European Works Council shall be established in accordance with § 22 and § 23 in the cases referred to in § 22 (1).

§ 38

Training

- (1) The European Works Council may designate members to take part in training and educational events where such events impart knowledge required for the work of the European Works Council. The European Works Council shall notify the central management in good time of participation and date. When the date of the event is being set, operational needs shall be taken into account. The European Works Council may transfer its tasks under this paragraph to the Committee referred to in § 26.
- (2) The first, second and third sentences of paragraph (1) shall apply *mutatis mutandis* to the special negotiating body and its members.

§ 39

Costs, operating resources and experts

- (1) Any expenses arising from the training and functioning of the European Works Council and the Committee shall be borne by the central management. The

central management shall, in particular, make available adequate rooms, material and human resources for the meetings and day-to-day business as well as interpreters for the meetings. The central management shall bear the necessary travel and accommodation expenses of members of the European Works Council and of the Committee. § 16 (2) shall apply *mutatis mutandis*.

- (2) The European Works Council and the Committee may obtain such support from experts of their choice as is necessary to enable them to discharge their duties properly. Experts may also be authorised trade union representatives. If experts are consulted, the obligation to bear costs shall be restricted to one expert unless otherwise agreed under § 18 or § 19.

§ 40

Protection of employee representatives in German

- (1) For members of a European Works Council employed in Germany, § 37 (1) to (5)¹¹, § 78¹² and § 103¹³ of the Works Constitution Act and § 15 (1), (3) to (5) of the Act on Protection against Unfair Dismissals¹⁴ (Kündigungsschutzgesetz) shall apply *mutatis mutandis*. The first and second sentences of § 37 (6) of the Works Constitution Act (Betriebsverfassungsgesetz) shall apply *mutatis mutandis* to the necessary training referred to in § 38.
- (2) Paragraph 1 shall apply *mutatis mutandis* to the members of the special negotiating body and to employee representatives in the case of an information and consultation procedure.

PART VI

Existing agreements

§ 41

Continued application

- (1) Where an agreement on cross-border information and consultation is in place before 22 September 1996, the provisions of this Act shall not apply except in the case referred to in § 37 to the undertakings and groups of undertakings as referred to in § 2 and 3 for as long as this agreement is in force. The agreement must cover all employees employed in the Member States and guarantee appropriate participation in information and consultation to employees from those Member States where the undertaking or group of undertakings has an establishment.
- (2) The conclusion of such an agreement on the part of the employees only by an employee representation as provided for in the Works Constitution Act shall not preclude the application of paragraph (1) above. The same shall apply where more than one agreement has been concluded for an undertaking or a group of undertakings.
- (3) Where the requirements of paragraph (1) are not satisfied because the agreement existing at the date referred to in paragraph (1), first sentence, does not cover all employees, the parties to the agreement may include all employees within a deadline of six months
- (4) Even after the date referred to in paragraph (1), first sentence, existing agreements may be adapted to changes in the structure of the undertaking or the group of undertakings and to the number of employees, except in the event of significant structural changes within the meaning of § 37.
- (5) Where an agreement has been concluded for a limited period of time, the parties may decide to continue to apply it under the terms of paragraphs (1), (3) and (4) above.

- (6) An agreement shall continue to apply where the right to submit a request or take an initiative under § 9 (1) has been exercised before its termination. The right to submit a request may also be exercised by an employee representation body established under the agreement. The application of the agreement shall end if it is replaced by a cross-border information and consultation procedure as provided for in § 18 or 19 or if a European Works Council has been established by act of law. The application of the agreement shall also end where the special negotiating body takes a decision as provided for in § 15 (1); § 15 (2) shall apply *mutatis mutandis*.
- (7) Except in the cases referred to in § 37, the provisions of this Act shall not apply to undertakings and groups of undertakings that meet the requirements referred to in § 2 and § 3 for the first time as a result of the inclusion of establishments and undertakings located in the United Kingdom of Great Britain and Northern Ireland, where in these undertakings and groups of undertakings an agreement on cross-border information and consultation is in place before 15 December 1999. Paragraphs (1) to (6) shall apply *mutatis mutandis*.
- (8) Except in the cases referred to in § 37, the provisions of this Act in the version dated 28 October 1996 (BGBl. I, pp. 1548, 2022), as last amended by Article 30 of the Act of 21 December 2000 (BGBl. I, p. 1983) shall apply to the undertakings and groups of undertakings referred to in § 2 and § 3 in which an agreement on cross-border information and consultation was signed or revised between 5 June 2009 and 5 June 2011. If an agreement within the meaning of the first sentence is concluded for a limited period of time, the parties may decide that it should continue to be valid as long as the agreement has effect; paragraph (4) shall apply *mutatis mutandis*.

PART VII

Special provisions: penalties and fines

§ 42

Protection of establishment and activity

No-one may

1. prevent or influence, by imposing or threatening disadvantages or by granting or promising advantages, the establishment of the special negotiating body (§ 9) or a European Works Council (§ 18, 21(1)) or the introduction of an information and consultation procedure (§ 19),
2. prevent or interfere with the activity of the special negotiating body, a European Works Council or the employee representatives in the case of an information and consultation procedure, or
3. disadvantage or favour, on account of his or her activity, a member or alternate member of the special negotiating body or of a European Works Council or an employee representative in the case of an information and consultation procedure.

§ 43

Penalties

- (1) 'A term of imprisonment of up to two years or a fine shall be imposed on anyone who makes use of a business or operating secret in breach of § 35 (2), first or second sentence, both in conjunction with paragraph (3).
- (2) Offences shall be prosecuted only upon request.

§ 44


Penalties

- (1) A term of imprisonment of up to one year or a fine shall be imposed on anyone who:
 1. reveals a business or operating secret in breach of § 35 (2), first or second sentence, both in conjunction with paragraph (3); or
 2. infringes a provision of § 42 concerning the establishment of the bodies referred to or the introduction of the procedure referred to, concerning the activity of the bodies referred to or of the employee representatives, or concerning the disadvantaging or favouring of a member or alternate member of the bodies referred to or an employee representative.
- (2) Where, in the cases referred to in paragraph (1), subparagraph 1., an offender acts in return for gain or with the intention of enriching himself/herself or another or of injuring another, the punishment shall be a term of imprisonment of up to two years or a fine.
- (3) Offences shall be prosecuted only upon request. In the cases referred to in paragraph (1), subparagraph 2., prosecution may be requested by the special negotiating body, the European Works Council, the majority of the employee representatives in the case of an information and consultation procedure, the central management or a trade union represented in the establishment.

§ 45

Fines

- (1) An administrative offence shall be committed by anyone who
 1. in breach of § 5 (1) fails to obtain or transmit information, obtains or transmits incorrect or incomplete information or does not obtain or transmit information in good time, or

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2. in breach of § 29 (1) or § 30 (1), first sentence, or (2), first sentence, fails to provide information, provides incorrect or incomplete information or does not provide information in the prescribed manner or in good time to the European Works Council or the Committee referred to in § 26.
- (2) Such an administrative offence may be punished by a fine of up to Euro 15.000.

Act on Co-determination by Employees (Co-determination Act)

dated 4 May 1976 ("Bundesgesetzblatt", Part I, p. 1153),
last amended by the Act dated 22. December 2011 ("Bundesgesetzblatt",
Part I, 2011 p. 3044)

PART I

Scope

Section 1

Companies covered

- (1) Subject to the provisions of this Act, employees shall have a right of co-determination in companies which –
 1. are run in the legal form of a company limited by shares, a partnership limited by shares, a limited liability partnership or a cooperative; and
 2. normally employ over 2,000 employees.
- (2) This Act shall not apply to co-determination in the boards of companies where the employees have a right of co-determination in accordance with –
 1. the Act of 21 May 1951 respecting co-determination by employees in the supervisory boards and management boards of companies in the mining industry and in the iron and steel production industry ("Bundesgesetz-blatt", Part I, p. 347) (Co-determination (Coal, Iron and Steel Industry) Act); or
 2. the Act of 7 August 1956 to supplement the Act respecting codeter-mination by employees in the supervisory boards and management boards of companies in the mining industry and in the iron and steel production industry (ibid., p. 707) (Supplementary Co-determination Act).
- (3) The representation of employees on the supervisory boards of companies in which they do not have a right of co-determination in accordance with subsection (1) or in accordance with the Acts mentioned in subsection (2) shall

be governed by the provisions of the One-Third Participation Act (Drittelbeteiligungsgesetz).”Bundesgesetzblatt” Part I, 2004, p. 974).

- (4) This Act shall not apply to companies which directly and chiefly serve –
1. political, trade union, denominational, charitable, educational, scientific or artistic purposes; or
 2. purposes of reporting or expressing opinions and to which the second sentence of subsection (1) of section 5 of the Basic law applies.

This Act shall not apply to religious communities and the charitable and educational institutions of such communities, irrespective of their legal form.

Section 2

Shareholders

For the purposes of this Act the expression “shareholder” means any stockholder, partner or member of a co-operative, depending on the legal form of the companies mentioned in clause 1 of subsection (1) of section 1.

Section 3

Employees and establishments

- (1) For the purposes of this Act the expression “employee” means
1. any person covered by subsection (1) of section 5 of the Works Constitution Act with the exception of the executive staff covered by subsection (3) of section 5 of the Works Constitution Act;
 2. the executive staff covered by subsection (3) of section 5 of the Works Constitution Act.

The persons covered by subsection (2) of section 5 of the Works Constitution Act shall not be deemed to be employees for the purposes of this Act.

- (2) For the purposes of this Act the expression “establishment” means those covered by the Works Constitution Act. Subsection (2) of section 4 of the Works Constitution Act shall apply.

Section 4

Limited partnerships

- (1) Where a company covered by clause 1 of subsection (1) of section 1 is the personally responsible partner of a limited partnership and where the majority of the limited partners in this partnership, as determined on the basis of the majority of their shares or votes, hold a majority of the shares or votes in the company of the personally responsible partner, the employees of the limited partnership shall be deemed, for the purposes of the application of this Act to the personally responsible partner, to be employees of that partner, in so far as the latter does not run a business of his own normally employing more than 500 employees. Where the limited partnership is the personally responsible partner of another limited partnership, the employees of the latter shall also be deemed to be employees of the company covered by clause 1 of subsection (1) of section 1. The foregoing shall apply, *mutatis mutandis*, where the links between limited partnerships are continued in this way.
- (2) The company may not be excluded from the running of the business of the limited partnership.

Section 5

Combines

- (1) Where a company covered by clause 1 of subsection (1) of section 1 is the controlling company of a combine (subsection (1) of section 18 of the Joint Stock Act), the employees of the constituent companies shall be deemed, for the purposes of the application of this Act to the controlling company, to be employees of that company. The foregoing shall also apply to the employees of a company covered by clause 1 of subsection (1) of section 1 which is a personally responsible partner of a subsidiary (subsection (1) of section 18 of the Joint Stock Act) constituted in the legal form of a limited partnership.

- (2) Where a limited partnership in which the employees of the partnership are deemed, in accordance with subsection (1) of section 4 and for the purposes of the application of this Act to the personally responsible partner, to be employees of that partner, is the controlling company of a combine (subsection (1) of section 18 of the Joint Stock Act), the employees of the constituent companies shall be deemed, for the purposes of the application of this Act to the personally responsible partner of the limited partnership, to be employees of that partner. The second sentence of subsection (1) of this section and subsection (2) of section 4 shall apply, *mutatis mutandis*.
- (3) Where the constituent companies of a combine are under the sole management of a company other than that referred to in subsection (1) or (2) but the management of the combine has control over other constituent companies through a company referred to in subsection (1) or (2) or through two or more such companies, the company or companies referred to in subsection (1) or (2) which is or are closest to the management of the combine and through which that management controls other constituent companies shall be deemed, for the purposes of this Act, to be the controlling company or companies.

PART II

Supervisory boards

Division I

Establishment and membership

Section 6

Principle

- (1) A supervisory board shall be set up in all companies covered by subsection (1) of section 1 in so far as no such board is already required to be set up under other statutory provisions.

- (2) The establishment and membership of the supervisory board and the appointment and removal from office of its members shall be governed by sections 7 to 24 of this Act and, in so far as no relevant stipulations are already contained in other statutory provisions, by subsection (2) of section 96, sections 97 to 101 subsections (1) and (3) and sections 102 to 106 of the Joint Stock Act, subject to the proviso that a person with a power of signature shall be ineligible for election as an employees' member of the supervisory board only if he is immediately subordinate to the body responsible for the legal representation of the company and is entitled to exercise his power of signature in relation to the entire field of business covered by that body. Unless otherwise provided in this Act, the foregoing shall be without prejudice to other statutory provisions and provisions in the by-laws (the shareholders' agreement, the articles of association) as to the membership of the supervisory board and the appointment and removal from office of its members.
- (3) Section 100, subsections (1) and (3) of section 101 and sections 103 and 106 of the Joint Stock Act shall not apply to co-operatives. Subsection (2) of section 9 of the Cooperatives Act (Genossenschaftsgesetz) shall not apply to the employees' members of a supervisory board.

Section 7

Membership of supervisory boards

- (1) The supervisory board of a company –
1. normally employing not more than 10,000 employees shall consist of six shareholders' members and six employees' members;
 2. normally employing more than 10,000 but not more than 20,000 employees shall consist of eight shareholders' members and eight employees' members;
 3. normally employing more than 20,000 employees shall consist of ten shareholders' members and ten employees' members.

In the case of companies covered by clause 1 of the first sentence of this subsection, provision may be made in the by-laws (the shareholders' agreement) for clause 2 or 3 of the first sentence of this subsection to apply. In the case of companies covered by clause 2 of the first sentence of this subsection, provision may be made in the by-laws (the shareholders' agreement) for clause 3 of the first sentence of this subsection to apply.

- (2) The employees' members of a supervisory board must include –
 1. four employees of the company and two trade union representatives, where the board has six employees' members;
 2. six employees of the company and two trade union representatives, where the board has eight employees' members;
 3. seven employees of the company and three trade union representatives, where the board has ten employees' members.
- (3) The employees of the company referred to in subsection (2) must have reached the age of 18 years and belonged to the company for one year. The said period of one year shall be deemed to include periods during which such employees belonged to another company whose employees participate in accordance with this Act in the election of members of the supervisory board of the company. These periods must immediately precede the point in time when the employees become entitled to take part in the election of members of the supervisory board of the company. The other conditions for eligibility stipulated in subsection (1) of section 8 of the Works Constitution Act must be fulfilled.
- (4) The trade unions referred to in subsection (2) must be represented either in the company itself or in some other company whose employees participate in accordance with this Act in the election of members of the supervisory board of the company.

Division II

Appointment of members of supervisory boards

Subdivision I

Shareholders' members of supervisory boards

Section 8

- (1) The shareholders' members of the supervisory board shall be appointed by the body empowered by law or by the by-laws or the shareholders' agreement to elect members of the board (electoral body) and, save as stipulated to the contrary in statutory provisions, in accordance with the by-laws or the shareholders' agreement.
- (2) The foregoing shall be without prejudice to subsection (2) of section 101 of the Joint Stock Act.

Subdivision II

Employees' members of supervisory boards; principle

Section 9

- (1) The employees' members (subsection (2) of section 7) of the supervisory board of a company normally employing more than 8,000 employees shall be elected by delegates, unless the employees who have the right to vote decide on a direct election.
- (2) The employees' members (subsection (2) of section 7) of the supervisory board of a company normally employing not more than 8,000 employees shall be elected by means of a direct election, unless the employees who have the right to vote decide on an election to be held through delegates.

- (3) For a vote to be taken on whether the election is to be held through delegates or directly, an application must be made to that effect, which must be signed by one-twentieth of the employees who have the right to vote in the company. The voting shall be secret. A decision for the purposes of subsection (1) or (2) may be taken only if at least one-half of the employees who have the right to vote have taken part and then only in accordance with the majority of the votes cast.

Subdivision III

Election of employees' members of supervisory boards by delegates

Section 10

Election of delegates

- (1) In each establishment of a company the employees shall elect delegates by secret ballots conducted in accordance with the principles of proportional representation.
- (2) Every employee in a company who has reached the age of 18 years shall have the right to vote in the election of delegates. The second sentence of section 7 of the Works Constitution Act shall apply *mutatis mutandis*.
- (3) Every employee covered by the first sentence of subsection (2) who fulfils the further conditions of eligibility specified in section 8 of the Works Constitution Act shall be eligible to stand for election as a delegate.
- (4) Where only one list of candidates is proposed for election, the employees mentioned in it shall be deemed to have been elected in the order in which their names appear in the list. Subsection (2) of section 11 shall apply.

Section 11

Calculation of the number of delegates

- (1) In each establishment there shall be one delegate for every 90 employees who have the right to vote. Where the calculation made in accordance with the first sentence of this subsection yields for an establishment more than –
 1. 25 delegates, the number of delegates to be elected shall be reduced to one-half, each delegate then being entitled to two votes;
 2. 50 delegates, the number of delegates to be elected shall be reduced to one-third, each delegate then being entitled to three votes;
 3. 75 delegates, the number of delegates to be elected shall be reduced to one-quarter, each delegate then being entitled to four votes;
 4. 100 delegates, the number of delegates to be elected shall be reduced to one-fifth, each delegate then being entitled to five votes;
 5. 125 delegates, the number of delegates to be elected shall be reduced to one-sixth, each delegate then being entitled to six votes;
 6. 150 delegates, the number of delegates to be elected shall be reduced to one-seventh, each delegate then being entitled to seven votes.

For the purpose of calculating the number of delegates, fractions of at least one-half shall be reckoned as whole numbers.

- (2) In each establishment the employees covered by clause 1 of subsection (1) of section 3 and the executive staff must be represented among the delegates in accordance with their numerical importance. Where at least nine delegates are required to be elected in an establishment, there shall be at least one delegate for the employees covered by clause 1 of subsection (1) of section 3 and at least one for the executive staff; the foregoing shall not apply in so far as not more

than five employees covered by clause 1 of subsection (1) of section 3 or members of the executive staff have the right to vote in the establishment. Where it is solely by virtue of the second sentence of this subsection that there are delegates for the employees covered by clause 1 of subsection (1) of section 3 and the executive staff, the number of delegates for the establishment, as calculated in accordance with subsection (1), shall be increased accordingly.

- (3) In so far as there is not, in accordance with subsection (2), at least one delegate for the employees covered by clause 1 of subsection (1) of section 3 and at least one for the executive staff of the establishment, such persons shall be treated, for the purposes of the election of delegates, as employees of the establishment forming the head office of the company. In so far as there is not, in accordance with subsection (2) and the first sentence of this subsection, at least one delegate for the employees covered by clause 1 of subsection (1) of section 3 and at least one for the executive staff of the establishment forming the head office, such persons shall be treated, for the purposes of the election of delegates, as employees of the largest establishment of the company in terms of the number of employees who have the right to vote.
- (4) Where there is no delegate for an establishment or for a company whose employees participate in accordance with this Act in the election of members of the supervisory board of the company, subsection (3) shall apply, *mutatis mutandis*.
- (5) A delegate shall retain his status as a delegate of the employees under clause 1 of subsection (1) of section 3 or clause 2 of subsection (1) of section 3 if he changes his status as an employee under clause 1 of subsection (1) of section 3 or clause 2 of subsection (1) of section 3.

Section 12

Lists of candidates for election as delegates

- (1) For the purposes of the election of delegates employees who have the right to vote in an establishment may submit lists of candidates. Every such list of

candidates must be signed by one twentieth or 50, of the employees covered by clause 1 of subsection (1) of section 3 or of the executive staff who have the right to vote in the establishment.

- (2) Every list of candidates should contain the names of at least twice as many candidates as there are delegates to be elected.

Section 13

Term of office of delegates

- (1) Delegates shall be elected for a period corresponding to the term of office of the members of the supervisory board that they are to elect. They shall discharge the duties and exercise the powers imposed and conferred upon them in accordance with this Act until fresh elections are opened for the employees' members of the supervisory board.
- (2) In cases covered by subsection (1) of section 9 the term of office of delegates shall end if –
 1. the employees who have the right to vote decide on a direct election in accordance with subsection (1) of section 9;
 2. the company no longer fulfils the conditions required for the application of subsection (1) of section 9, unless the employees who have the right to vote decide that such term of office is to continue until the date specified in subsection (1); subsection (3) of section 9 shall apply, *mutatis mutandis*.
- (3) In cases covered by subsection (2) of section 9 the term of office of delegates shall end if the employees who have the right to vote decide on a direct election. Subsection (3) of section 9 shall apply.
- (4) Notwithstanding subsection (1) the term of the delegates in an establishment shall end if, after the assumption of office by all the substitutes appearing on the list of candidates to which the delegates who have to be replaced belong, the

total number of delegates in the establishment falls below the number fixed at the time of their election for the delegates to be elected in the establishment.

Section 14

Premature conclusion of the term of office of delegates; inability of delegates to perform their duties

- (1) A delegate's term of office shall end before the date specified in section 13 if –
 1. he resigns;
 2. his employment is terminated in the establishment for which he is a delegate;
 3. he ceases to be eligible for election.
- (2) Where a delegate's term of office ends prematurely or where he is unable to perform his duties, a substitute shall take his place. The substitutes shall be taken in turn from the employees who were not elected on the list of candidates to which the delegates who have to be replaced belong.

Section 15

Election of employees' members of the supervisory board from among employees belonging to the company

- (1) The delegates shall elect the members of the supervisory board who are required by subsection (2) of section 7 to be employees belonging to the company by means of a secret ballot conducted in accordance with the principles of proportional representation; the election shall be valid for the period specified by law or in the by-laws (in the shareholders' agreement) for the members of the supervisory board who are required to be elected by the shareholders' electoral body. The supervisory board must include a member of the executive staff.

- (2) The election shall be held on the basis of lists of candidates. Every such list of candidates for election as –
1. supervisory board members of the employees covered by clause 1 of subsection (1) of section 3 must be signed by one-fifth, or 100, of the employees who have the right to vote in the company;
 2. the supervisory board member of the executive staff shall be drawn up, on the basis of nominations, by decision of the executive staff who have the right to vote. Nominations must be signed by one-twentieth, or 50, of the executive staff who have the right to vote. The decision shall be taken in a secret ballot. Each member of the executive staff shall have as many votes as there are persons to be chosen for the list of candidates in accordance with the second sentence of subsection (3). The number of persons prescribed in the second sentence of subsection (3) shall be included in the list of candidates in the order of the number of votes cast for them.
- (3) Notwithstanding subsection (1) a majority election shall be held in so far as only one list of candidates is put forward. In this case, the list of candidates must contain twice as many names as there are members of the supervisory board corresponding to the employees covered by clause 1 of subsection (1) of section 3 and to the executive staff.

Section 16

Election of trade union representatives to sit on supervisory boards

- (1) The delegates shall elect the members of the supervisory board who represent the trade unions in terms of subsection (2) of section 7 by means of a secret ballot conducted in accordance with the principles of proportional representation; the election shall be valid for the period specified in subsection (1) of section 15.
- (2) The election shall be conducted on the basis of lists of candidates put forward by the trade unions represented in the company itself or in some other company

whose employees take part in the election of members of the supervisory board of the company in accordance with this Act. Where only one list of candidates is put forward, a majority election shall be held notwithstanding sentence 1. In this case the list of candidates must contain at least twice as many names as there are trade union representatives to be elected to the supervisory board.

Section 17

Substitutes

- (1) Each list of candidates may, together with each candidate, nominate a substitute for him on the supervisory board. For a candidate who is an employee covered by clause 1 of subsection (1) of section 3, only an employee covered by clause 1 of subsection (1) of section 3 may be nominated as a substitute, and for a member of the executive staff covered by clause 2 of subsection (1) of section 3 only a member of the executive staff may be nominated as a substitute. No candidate may be simultaneously nominated as a substitute.
- (2) Where a candidate is elected as a member of the supervisory board, the substitute nominated with him shall also be deemed to be elected.

Subdivision IV

Direct election of employees' members of supervisory boards

Section 18

Where the employees' members of the supervisory board are to be elected by means of a direct election in accordance with section 9, every employee in the company who has reached the age of 18 years shall have the right to vote. The second sentence of section 7 of the Works Constitution Act shall apply *mutatis mutandis*. Sections 15 to 17 shall apply to the election, subject to the proviso that the employees who have the right to vote in the company shall be substituted for the delegates.

Subdivision V

Further provisions as to the election procedure and the appointment and removal from office of members of supervisory boards

Section 19

Announcement of the members of supervisory boards

The body responsible for the legal representation of the company shall announce the names of the members of the supervisory board and their substitutes immediately after their appointment in the establishments of the company and shall publish them in the “Bundesanzeiger“. Where the employees of any other company also take part in the election of the members of the supervisory board, the body responsible for the legal representation of the other company shall also be required to make such an announcement in its establishments.

Section 20

Protection of elections and election expenses

- (1) No person shall obstruct elections held in accordance with sections 10, 15, 16 and 18. No person shall more particularly be restricted in the exercise of his right to vote or stand for election.
- (2) No person shall influence elections by causing or threatening to cause prejudice or by granting or promising to grant advantages.
- (3) Election expenses shall be defrayed by the company. The fact that an employee loses working time through his having to exercise his right to vote or through his taking part in the work of an election committee shall not afford grounds for the employer to reduce his remuneration.

Section 21

Objections to the election of delegates

- (1) An objection to the election of delegates in an establishment may be lodged with the labour court if any breach of essential provisions relating to the right to vote or stand for election or the election procedure has occurred and the breach has not been remedied, unless the result of the election could not have been altered or affected by the breach.
- (2) The right to object to the election shall be vested in –
 1. at least three employees who have the right to vote in the establishment;
 2. the works council;
 3. the executives' committee;
 4. the body responsible for the legal representation of the company.

To be receivable the objection must be lodged within two weeks reckoned from the date on which the results of the election are announced.

Section 22

Objections to the election of employees' members of supervisory boards

- (1) An objection to the election of an employees' member of the supervisory board or his substitute may be lodged with the labour court if a breach of essential provisions relating to the right to vote or stand for election or the election procedure has occurred and the breach has not been remedied, unless the result of the election could not have been altered or affected by the breach.
- (2) The right to object to the election shall be vested in –
 1. at least three employees who have the right to vote in the company;

2. the central works council of the company, or where there is only a works council in the company, the works council, or where the company is the controlling company of a combine, the combine works council, if any;
3. the central or company executives' committee of the company, or where there is only an executives' committee in the company, the executives' committee, or where the company is the controlling company of a combine, the combine executives' committee, if any;
4. the central works council of any other company whose employees take part in the election of members of the supervisory board in accordance with this Act, or where there is only a works council in such other company, that works council;
5. the central or company executives' committee of any other company whose employees take part in the election of members of the supervisory board in accordance with this Act, or where there is only an executives' committee in such other company, that executives' committee;
6. any trade union which is entitled to nominate candidates in accordance with subsection (2) of section 16;
7. the body responsible for the legal representation of the company.

To be receivable the objection must be lodged within two weeks reckoned from the date on which the results of the election are published in the "Bundesanzeiger".

Section 23

Removal of employees' members of supervisory boards from office

- (1) An employees' member of the supervisory board may be removed from office before the expiry of his term if application is made to that effect. Application for the removal of a member from office may be made –

1. in the case of a supervisory board member of the employees covered by clause 1 of subsection (1) of section 3, by three-quarters of the employees covered by clause 1 of subsection (1) of section 3 who have the right to vote;
 2. in the case of a supervisory board member of the executive staff, by three-quarters of the members of the executive staff who have the right to vote;
 3. in the case of a member of the supervisory board who represents a trade union in accordance with subsection (2) of section 7, by the trade union which nominated him.
- (2) A member of the supervisory board who has been elected by delegates shall be removed from office by decision of the delegates. This decision shall be taken by secret ballot; it shall require a three-quarters majority of the votes cast.
- (3) A member of the supervisory board who has been elected directly by the employees shall be removed from office by decision of the employees who have the right to vote. This decision shall be taken by a secret and direct ballot; it shall require a three-quarters majority of the votes cast.
- (4) Subsections (1) to (3) shall apply, *mutatis mutandis*, to the removal of substitutes from office.

Section 24

Loss of right to stand for election and change in the classification of supervisory board members belonging to the company

- (1) Where a member of the supervisory board who is required to be an employee of the company in accordance with subsection (2) of section 7 loses his right to stand for election, he shall forfeit his office.
- (2) Where there is a change in the classification of a supervisory board member as an employee specified in clause 1 of subsection (1) of section 3 or clause 2 of subsection (1) of section 3, that person shall not forfeit his office as a result of such change.

Division III

Internal procedure, rights and obligations of supervisory boards

Section 25

Principle

- (1) The internal procedure, decision-making, rights and obligations of a supervisory board shall be governed by sections 27 to 29, 31 and 32 and, in so far as no provision to the contrary is made in those sections, –
 1. in the case of companies limited by shares and partnerships limited by shares, by the Joint Stock Act;
 2. in the case of limited liability partnerships, by subsections (3) and (4) and the first and second sentences of subsection (5) of section 90, sections 107 to 116, subsection (3) of section 118, subsection (3) and (4) of section 125 and sections 170, 171 and subsection (2) of section 268 of the Joint Stock Act;
 3. in the case of cooperatives by the Cooperatives Act.

The foregoing shall be without prejudice to subsection (2) of section 4 of the Act of 21 July 1960 on the transfer of shares in the Volkswagen Co. Ltd. to private ownership ("Bundesgesetzblatt", Part I, p. 585), as last amended by the Act (no. 2) of 31 July 1970 to amend the Act on the transfer of shares in the Volkswagen Co. Ltd. to private ownership (ibid., p.1149).

- (2) In so far as no provision to the contrary is made in subsection (1), the foregoing shall be without prejudice to other statutory provisions and provisions in the by-laws (the shareholders' agreement) or in the rules of the supervisory board concerning the internal procedure, decision-making, rights and obligations of the board.

Section 26

Protection of members of supervisory boards against prejudice

Employees' members of the supervisory board shall not be disturbed or obstructed in their activities. They shall not suffer prejudice as a result of their activities on the supervisory board of a company whose employees they are or are deemed to be in accordance with section 4 or section 5. The foregoing shall also apply to their career prospects.

Section 27

Chairmanship of supervisory boards

- (1) The supervisory board shall elect a chairman and vice-chairman from among its own number by a majority of two-thirds of the total number of members of which it is required to be composed.
- (2) Where the requisite majority under subsection (1) is not attained during the election of the chairman or vice-chairman of the supervisory board, a second vote shall be taken. In this vote the shareholders' members of the supervisory board shall elect the chairman and the employees' members shall elect the vice-chairman, in each case by a majority of the votes cast.
- (3) Immediately after electing the chairman and vice-chairman the supervisory board shall set up a committee to discharge the duty referred to in the first sentence of subsection (3) of section 31, whose membership shall include the chairman and vice-chairman of the board, one member elected by the employees' members of the board by a majority of the votes cast and one member elected by the shareholders' members of the board by a majority of the votes cast.

Section 28

Quorum

The supervisory board shall have a quorum if at least half the total number of members of which it is required to be composed take part in the adoption of its decisions. The fourth sentence of subsection (2) of section 108 of the Joint Stock Act shall apply.

Section 29

Voting

- (1) The decisions of the supervisory board shall be taken by a majority of the votes cast, save as otherwise provided in subsection (2) and in sections 27, 31 and 32.
- (2) Where voting in the supervisory board results in a tie and a further vote on the same subject also results in a tie, the chairman of the board shall have a casting vote. Subsection (3) of section 108 of the Joint Stock Act shall also apply to the casting vote. The vice-chairman shall not have a casting vote.

PART III

Body responsible for the legal representation of a company

Section 30

Principle

The membership, rights and obligations of the body responsible for the legal representation of a company and the appointment of its members shall be governed by the provisions applicable to the legal form of the company concerned, unless provision to the contrary is made in sections 31 to 33.

Section 31

Appointment and revocation

- (1) The appointment of the members of the body responsible for the legal representation of the company and the revocation of such appointment shall be governed by sections 84 and 85 of the Joint Stock Act, unless provision to the contrary is made in subsections (2) to (5). The foregoing shall not apply to partnerships limited by shares.
- (2) The members of the body responsible for the legal representation of the company shall be appointed by the supervisory board by a majority of at least two-thirds of the votes cast by its members.
- (3) Where no appointment is made in accordance with subsection (2), the committee of the supervisory board referred to in subsection (3) of section 27 shall place proposals for appointments before the supervisory board within one month after the vote in which the majority prescribed in subsection (2) was not attained; such proposals shall not exclude other proposals. The supervisory board shall appoint the members of the body responsible for the legal representation of the company by a majority of the votes cast by its members.
- (4) Where no appointment is made in accordance with subsection (3), the chairman of the supervisory board shall have a casting vote when a further vote is taken; the second sentence of subsection (3) shall apply. Subsection (3) of section 108 of the Joint Stock Act shall apply to the casting vote. The vice-chairman shall not have a casting vote.
- (5) Subsections (2) to (4) shall apply, *mutatis mutandis*, to the revocation of a member of the body responsible for the legal representation of a company.

Section 32

Exercise of rights deriving from financial participation

- (1) The rights which a company where the employees have a right of co-determination in accordance with this Act enjoys as a result of its financial participation in another company where the employees have a right of co-determination in accordance with this Act may, to the extent that such rights relate to the appointment, revocation or discharge of administrative bodies or to the taking of decisions in connection with the dissolution or transformation of the other company, the conclusion of contracts with that other company (sections 291 and 292 of the Joint Stock Act), its continuation after its dissolution or the transfer of its assets, be exercised by the body responsible for the legal representation of the company only on the basis of decisions taken by the supervisory board. Such decisions shall only require the majority vote of the shareholders' members of the supervisory board; they shall be binding on the body responsible for the legal representation of the company.
- (2) Subsection (1) shall not apply if the financial participation of the company in the other company represents less than a quarter.

Section 33

Labour director

- (1) A labour director shall be appointed as a full member of the body responsible for the legal representation of the company. The foregoing shall not apply to partnerships limited by shares.
- (2) The labour director shall, like the other members of the body responsible for the legal representation of the company, discharge his duties in the closest co-ordination with the body as a whole. Further details shall be laid down in the rules of procedure.
- (3) In the case of co-operatives, subsection (2) of section 9 of the Cooperatives Act shall not apply to the labour director.

PART IV

Seafaring

Section 34

- (1) For the purposes of this Act the total number of ships operated by a company shall be treated as one establishment.
- (2) For the purposes of this Act, the expression “ships” means merchant ships flying the federal flag in accordance with the Law of the Flag Act. Ships which normally return to the headquarters of a shore-based establishment within 48 hours of their departure shall be treated as a part of that establishment.
- (3) In an establishment covered by subsection (1) only the masters shall be deemed to be members of the executive staff in terms of clause 2 of subsection (1) of section 3 of this Act.
- (4) The employees of an establishment covered by subsection (1) shall not take part in votings held in accordance with section 9 and shall be disregarded for the purpose of calculating the number of employees required for the submission of applications and the taking of decisions.
- (5) Where the employees’ members of the supervisory board are elected by delegates, no delegates shall be elected by way of exception to section 10 in an establishment covered by subsection (1). Notwithstanding subsection (1) of section 15 the employees in such an establishment shall participate directly in the election of the employees’ members of the supervisory board, subject to the proviso that the vote cast by one such employee shall be reckoned as equal to one-ninetieth of the vote cast by a delegate; the third sentence of subsection (1) of section 11 shall apply, *mutatis mutandis*.

PART V

Transitional and final provisions

Section 35

Amendment of laws

(repealed)

Section 36

References

- (1) Where reference is made in other provisions to provisions of the Works Constitution Act 1952 relating to the representation of employees on the supervisory boards of companies, such references shall be construed, in the case of companies covered by subsection (1) of section 1 of this Act, as references to this Act.
- (2) Where the title “Co-determination Act” is used in other provisions to refer to the Act of 21 May 1951 respecting co-determination by employees in the supervisory boards and management boards of companies in the mining industry and in the iron and steel production industry (“Bundesgesetzblatt”, Part I, p. 347), it shall be replaced by the title “Co-determination (Coal, Iron and Steel Industry) Act”.

Section 37

Initial application of the Act to companies

- (1) Any provisions in the by-laws (the shareholders’ agreement) other than those covered by the second sentence of subsection (2) of section 97 of the Joint Stock Act shall, if they are incompatible with the provisions of this Act, cease to have effect on the date indicated in the second sentence of subsection (2) of section 97 of the Joint Stock Act or, where a judicial decision is taken, on the date indicated in the second sentence of subsection (4) of section 98 of the Joint Stock Act. A general meeting or shareholders’ meeting may, if it is held by this date,

adopt new provisions by a simple majority in place of the provisions that are to cease to have effect.

- (2) Sections 25 to 29 and 31 to 33 shall be applied for the first time when the supervisory board is constituted in accordance with the provisions of this Act.
- (3) The appointment before the date of commencement of this Act of any member of the body responsible for the legal representation of a company to which this Act is to apply from the date of its commencement may, in so far as the term of office of such member does not end earlier for any other reason, be revoked at any time after the expiry of five years from the commencement of this Act by the supervisory board constituted in accordance with this Act. Such revocation shall require a majority of the votes cast by the members of the supervisory board, all votes of the shareholders' members of the supervisory board or all votes of the employees' members of the supervisory board. The normal provisions shall apply to claims arising out of the contract governing the appointment. Notwithstanding the first sentence of subsection (1) the provisions of the by-laws relating to the term of office shall remain in force in the case of such members until their appointments are revoked. Such provisions shall apply, *mutatis mutandis*, where this Act is to be applied for the first time to a company only after the date of commencement of this Act.
- (4) Subsection (3) shall not apply to personally responsible partners of a partnership limited by shares.

Section 38

(repealed)

Section 39

Authorization to issue ordinances

The Federal Government shall be authorized to make provision by ordinances regarding the procedure for the election and the removal from office of employees' members of the supervisory board, particularly regarding

1. the preparation of the election or ballot, the appointment of the electoral boards and the establishment of voters' lists;
2. the ballot to decide on whether the election of the supervisory board members should be direct or by delegates;
3. the time limit for the inspection of the voters' lists and for raising objections to them;
4. the calculation of the number of employees' representatives on the supervisory board as well as their distribution between employees as specified in clause 1 of subsection (1) of section 3, executive staff and trade union representatives;
5. the calculation of the number of delegates;
6. the lists of candidates and the time limit for their submission;
7. the declaration of the election or ballot and the time limits for its announcement;
8. the participation of employees of an establishment specified in subsection 1 of section 34 in elections and ballots;
9. the casting of votes;
10. the determination of the result of the election and the time limits for its announcement;
11. the safekeeping of the election documents and the ballot files.

Section 40

Transitional provision

- (1) The Co-determination Act dated 4 May 1976 ("Bundesgesetzblatt", Part I, p. 1153) as amended by Article 12 of the Works Constitution Reform Act dated 23 July 2001 ("Bundesgesetzblatt", Part I, p. 1852) shall apply to the election or removal from office of employees' members of the supervisory board initiated after 28

July 2001 and not later than 26 March 2002. Notwithstanding the preceding sentence, section 11 of the Co-determination Act dated 4 May 1976 ("Bundesgesetzblatt", Part I, p. 1153) as amended by Article 1 of the Act to simplify the election of the employees' representatives to the supervisory board dated 23 March 2002 ("Bundesgesetzblatt", Part I, p. 1130) shall apply if it has been established that the employees' members of the supervisory board are to be elected by delegates and the number of delegates has not yet been calculated by 26 March 2002.

- (2) The First Election Regulations on the Co-determination Act of 23 June 1977 ("Bundesgesetzblatt", Part I, p. 861) as amended by Article 1 of the Ordinance of 9 November 1990 ("Bundesgesetzblatt", Part I, p. 2487), the Second election regulations on the Co-determination Act of 23 June 1977 ("Bundesgesetzblatt", Part I, p. 893) as amended by Article 2 of the Ordinance of 9 November 1990 ("Bundesgesetzblatt", Part I, p. 2487) and the Third election regulations on the Co-determination Act of 23 June 1977 ("Bundesgesetzblatt", Part I, p. 934) as amended by Article 3 of the Ordinance of 9 November 1990 ("Bundesgesetzblatt", Part I, p. 2487) shall apply, until amendment thereof, analogously to the election or removal from office of employees' members of the supervisory board initiated after 28 July 2001. As regards the election or removal from office of employees' members of the supervisory board initiated after 28 July 2001 and not later than 26 March 2002, the Co-determination Act dated 4 May 1976 ("Bundesgesetzblatt", Part I, p. 1153) in the version to be applied pursuant to subsection (1) shall be the relevant law for analogous application; as regards the election or removal from office of employees' members of the supervisory board initiated after 26 March 2002 the Co-determination Act dated 4 May 1976 ("Bundesgesetzblatt", Part I, p. 1153) as amended by Article 1 of the Act to simplify the election of the employees' representatives to the supervisory board dated 23 March 2002 ("Bundesgesetzblatt", Part I, p. 1130) shall be the relevant law.

Section 41

Commencement

This Act shall come into operation on 1 July 1976.

Law on One-Third Employee Representation in the Supervisory Board

Law on One-Third Employee Representation in the Supervisory Board

(One-Third Employee Representation Act - DrittelbG)

of 18 May 2004 (Federal Law Gazette I p. 974), last amended by Article 2(114) of the Act of 22 December 2011 (Federal Law Gazette I p. 3044)

Part 1

Scope of application

Section 1 Companies under the scope of the Act

- (1) In accordance with this Act, employees have a right to co-determination in the supervisory board of
 1. a public limited company with over 500 employees as a rule. There is also a right to co-determination in the supervisory board of a public limited company with fewer than 500 employees as a rule that has been registered before 10 August 1994 and is not a family enterprise. Public limited companies whose shareholder is a natural, individual person or whose shareholders are related to each other through kinship or marriage are regarded as family enterprises as defined in Section 15(1) nos. 2 to 8 and (2) of the Fiscal Code;
 2. a partnership limited by shares with over 500 employees as a rule. Number 1, second and third sentences shall apply accordingly;
 3. a limited liability company with over 500 employees as a rule. The company must appoint a supervisory board whose membership and rights and duties are specified in Section 90(3)(4)(5) first and second sentence, in Sections 95 to 114, 116, 118(3), in Section 125(3) and (4) and in Sections 170, 171, 268(2) of the Companies Act;
 4. a mutual insurance association with over 500 employees as a rule, provided it has a supervisory board;

5. a co-operative society with over 500 employees as a rule. Section 96(2) and Sections 97 to 99 of the Companies Act shall apply accordingly. The articles of association may only stipulate a number of supervisory board members that is divisible by three. The supervisory board must convene two meetings per calendar half-year.

(2) This Act shall not apply for

1. companies designated in Section 1(1) of the Co-determination Act, in Section 1 of the Coal and Steel Co-determination Act and in Sections 1 and 3(1) of the Supplementary Coal and Steel Co-determination Act;
2. companies that directly and essentially serve
 - a) political, coalition, religious, charitable, educational, scientific or artistic purposes or
 - b) purposes of reporting or expression of opinion subject to Article 5(1) second sentence of the Basic Law.

This Act shall not apply for religious communities and their charitable and educational institutions regardless of legal status.

- (3) The provisions of the Cooperative Societies Act on the membership of the supervisory board and the election and dismissal of its members shall not apply in cases where they contravene the provisions of this Act.

Section 2 Group

- (1) In a group, the employees of the other affiliated companies shall also take part in the election of employee representatives to the supervisory board of the controlling company (Section 18(1) of the Companies Act).
- (2) Where there is a control agreement among the companies or the subsidiary company is incorporated into the controlling company and where under Section 1 the representation of employees in the supervisory board of a

controlling company depends on the availability or number of employees, the employees of a group company shall be considered as those of the controlling company.

Section 3 Employees; establishment

- (1) Under this Act, employees are persons designated in Section 5(1) of the Works Constitution Act with the exception of executive staff as designated in Section 5(3) of said Act.
- (2) Under this Act, establishments are those designated as such in the Works Constitution Act. Section 4(2) of the Works Constitution Act shall apply.
- (3) For the application of this Act, all ships of a company are considered as an establishment. Ships under this Act are merchant ships that fly the federal flag under the Law of the Flag Act. Ships that as a rule return within 48 hours after leaving port to the base of a shore establishment shall be treated as part of said shore establishment.

Part 2

Supervisory board

Section 4 Membership

- (1) A third of the supervisory board of a company designated in Section 1(1) must consist of employee representatives.
- (2) If one or two employee representatives are to be elected to the supervisory board, these must be engaged as employees in the company. If more than two employee representatives are to be elected to the supervisory board, at least two employee representatives in the supervisory board must be engaged as employees in the company.

- (3) Employee representatives on the supervisory board who are employees of the company must be over 18 years of age and have been engaged in the company for a year. The one-year tenure in the company can also include periods of tenure in another company whose employees take part in the election of the company's supervisory board members under this Act. These periods must directly precede the date on which the employees are entitled to elect members of the company's supervisory board. The other criteria for election eligibility under Section 8(1) of the Works Constitution Act must be met.
- (4) Women and men shall be represented among the employee representatives of the supervisory board in proportion to their numerical ratio in the company.

Section 5 Election of employee representatives to the supervisory board

- (1) Employee representatives shall be elected to the supervisory board in keeping with the principles of majority voting in universal, secret, equal and direct ballot for the period specified in the Act or in the articles of association for the supervisory board members to be elected by the general assembly.
- (2) All employees of the company over the age of 18 shall have a right to vote. Section 7 second sentence of the Works Constitution Act shall apply accordingly.

Section 6 Election nominations

The election shall take place based on election nominations by the members of the works council and the employees. The election nominations of the employees must be signed by at least one tenth of those with voting rights or at least 100 persons with voting rights.

Section 7 Alternate members

- (1) In each election nomination, an alternate member of the supervisory board may be proposed together with each candidate. A candidate may not also be nominated as an alternate member.
- (2) If a candidate has been elected to the supervisory board, the alternate member nominated with him has also been elected.

Section 8 Announcement of members of the supervisory board

The body authorised to legally represent the company must announce without delay the names of members and alternate members of the supervisory board after their appointment in the establishments of the company and publish them in the electronic Federal Gazette. If the employees of another company also take part in the election of supervisory board members of the company, the body authorised to legally represent the other company is obliged to make such announcement in its establishments.

Section 9 Protection of supervisory board members from discrimination

Employee representatives on the supervisory board may not be hindered in or prevented from the performance of their duties. They may not be placed at an advantage or disadvantage on account of their activities in the supervisory board. This also holds for their occupational career.

Section 10 Election protection and costs

- (1) No-one may prevent the election of employee representatives to the supervisory board. In particular, no-one may be hindered in exercising his active and passive right to vote.
- (2) No-one may influence the elections by inflicting or threatening any unfavourable treatment or by granting or promising any advantage.

- (3) The company shall bear the costs of the elections. Employees may take leave from work to exercise their right to vote or perform tasks in the election committee without loss of pay.

Section 11 Contesting the election of employee representatives to the supervisory board

- (1) The election of an employee representative or an alternate member to the supervisory board can be contested before a labour court, if major provisions on the right to vote, the eligibility for election or electoral procedure have been breached and no correction has been made, unless the breach of provisions was not able to alter or influence the electoral outcome.
- (2) Those entitled to contest an election are
 1. at least three persons with a right to vote,
 2. the members of the works council,
 3. the body authorised to legally represent the company.

Contestation is only permissible within a period of two weeks from the day of publication in the electronic Federal Gazette.

Section 12 Dismissal of employee representatives on the supervisory board

- (1) An employee representative on the supervisory board can be dismissed before completion of the term of office at the request of a works council member or by resolution of at least a fifth of those with voting rights. The resolution of those with voting rights shall be passed in universal, secret, equal and direct ballot; it requires a majority of three-quarters of the votes cast. The passage of the resolution is subject to Section 2(1).
- (2) Paragraph 1 shall apply accordingly for the dismissal of alternate members.

Part 3

Transitional and final provisions

Section 13 Authorisation to issue statutory orders

The Federal Government is authorised by statutory order to enact provisions on procedures for the election and dismissal of employee representatives to the supervisory board, particularly on

1. the preparation of the election, particularly drawing up the electoral roll and the specification of the number of employee representatives on the supervisory board;
2. the period for perusal of the electoral roll and raising objections to it;
3. the election nominations and the period for their submission;
4. the call for election and the period for its announcement;
5. the participation of employees of an establishment designated in Section 3(3) in the election;
6. casting votes;
7. the determination of the electoral outcome and the periods for its announcement;
8. contesting the election;
9. keeping electoral files.

Section 14 References

Where reference is made in other laws to provisions that have been revoked by Article 6(2) of the Second Act on the Simplification of Electoral Procedure for Employee Representatives to the Supervisory Board, they shall be replaced by the relevant provisions of this Act.

Section 15 Transitional provision

The Works Constitution Act of 1952 published in the revised version under classification number 801-1 in the Federal Gazette Part III, last amended by Article 9 of the Act of 23 July 2001 (Federal Law Gazette I p. 1852) shall apply for elections or dismissals commenced before 1 July 2004 also after its expiry.

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

Date of issue: 22 December 2004

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).

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 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.





Das deutschsprachige Buch „Mitbestimmung“ gibt einen kurzen historischen Rückblick und informiert anschließend über das Betriebsverfassungsgesetz incl. der Reform von 2001. Detailliert wird außerdem der rechtliche Rahmen der Mitbestimmung dargelegt und die europäische Mitbestimmung erklärt.

Der Abdruck des Betriebsverfassungsgesetzes, des Sprecherausschussgesetzes, des Montan-Mitbestimmungsgesetzes, des Mitbestimmungsergänzungsgesetzes, des Drittelbeteiligungsgesetzes, des Mitbestimmungsgesetzes, des Gesetzes über Europäische Betriebsräte, des Gesetzes über die Beteiligung der Arbeitnehmer in einer Europäischen Gesellschaft, des Gesetzes über die Beteiligung der Arbeitnehmerinnen und Arbeitnehmer in einer Europäischen Genossenschaft und des Gesetzes über die Mitbestimmung der Arbeitnehmer bei einer grenzüberschreitenden Verschmelzung schließen das Buch ab.

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