

Act on One-Third Participation of Employees in the Supervisory Board (One-Third Participation Act - DrittelbG)

DrittelbG

Date of issue: 18 May 2004

Full citation:

"One-Third Participation Act of 18 May 2004 (Federal Law Gazette I p. 974), last amended by Article 8 of the Act of 24 April 2015 (Federal Law Gazette I p. 642)"

Status: Last amended by Article 8 of the Act of 24 April 2015 I 642

Footnote

(+++ wording as of: 1 July 2004 +++)

The Act was passed by the Bundestag as Article 1 d. of the Act of 18 May 2004 I 974 (WahlVereinfG 2). The Act, except for Section 13, enters into force on 1 July 2004 in accordance with Article 6 para. 2 sentence 1; Section 13 enters into force on 28 May 2004 in accordance with Article. 6 para. 1 of this Act.

Part 1 Scope

Section 1 Affected companies

- (1) Employees shall have a right of co-determination in the supervisory board in accordance with this Act in
1. a public limited company (*Aktiengesellschaft*) that usually has more than 500 employees. A right of co-determination in the supervisory board shall also exist in a public limited company that usually has fewer than 500 employees if said company was registered before 10 August 1994 and is not a family-owned company. Family-owned companies are public limited companies whose shareholder is a single individual or whose shareholders are related to each other by blood or marriage within the meaning of Section 15 para. 1 no. 2 to 8 and para. 2 of the Fiscal Code of Germany (*Abgabenordnung*);
 2. a partnership limited by shares (*Kommanditgesellschaft auf Aktien*) that usually has more than 500 employees. Number 1 sentences 2 and 3 shall apply mutatis mutandis;
 3. a limited liability company (*Gesellschaft mit beschränkter Haftung*) that usually has more than 500 employees. The company shall establish a supervisory board; its composition, rights and obligations shall be determined by Section 90 para. 3, 4, 5 sentences 1 and 2, by Sections 95 to 114, 116, 118 para. 3, Section 125 para. 3 and 4 and by Sections 170, 171, 268 para. 2 of the Stock Corporation Act (*Aktiengesetz*);
 4. a mutual insurance company (*Versicherungsverein auf Gegenseitigkeit*) that usually has more than 500 employees, if said company has a supervisory board;
 5. a cooperative (*Genossenschaft*) that usually has more than 500 employees. Section 96 para. 4 and Sections 97 to 99 of the Stock Corporation Act shall apply mutatis mutandis. The articles of association can only stipulate a number of supervisory board members that is divisible by three. The supervisory board must hold two meetings in each calendar half-year.
- (2) This Act shall not apply to
1. the companies referred to in Section 1 para. 1 of the Co-determination Act (*Mitbestimmungsgesetz*), in Section 1 of the Coal, Iron and Steel Co-determination Act (*Montan-Mitbestimmungsgesetz*) and in Sections 1 and 3 para. 1 of the Coal, Iron and Steel Co-determination Amending Act (*Montan-Mitbestimmungsergänzungsgesetz*);
 2. companies which pursue directly and essentially
 - a) political, professional organisational, religious, charitable, educational, scientific or artistic aims or
 - b) aims involving information and the expression of opinions, to which Article 5 para. 1 sentence 2 of the Basic Law is applicable.

This Act shall not apply to religious communities and their charitable and educational establishments irrespective of their legal form.

(3) The provisions of the Cooperatives Act (*Genossenschaftsgesetz*) concerning the composition of the supervisory board and the election and removal from office of supervisory board members shall not apply if said provisions contradict the provisions of this Act.

Section 2 Groups

(1) The employees of the other companies in a group shall also take part in the election of the supervisory board members representing employees of the controlling company of said group (Section 18 para. 1 of the Stock Corporation Act).

(2) If the participation of employees in the supervisory board of a controlling company pursuant to Section 1 depends on the existence or number of employees, the employees of a group company shall be considered as employees of the controlling company if the companies are parties to a control agreement or if the controlled company has been integrated into the controlling company.

Section 3 Employees, establishments

(1) Employees within the meaning of this Act are the persons referred to in Section 5 para. 1 of the Works Constitution Act (*Betriebsverfassungsgesetz*) with the exception of the executive staff referred to in Section 5 para. 3 of the Works Constitution Act.

(2) Establishments within the meaning of this Act are those referred to as such in the Works Constitution Act. Section 4 para. 2 of the Works Constitution Act shall apply.

(3) All of the ships operated by a company shall count as one establishment for the purposes of this Act. In this Act the term 'ship' means any merchant vessel flying the flag of the Federal Republic of Germany in accordance with the German Flag Act (*Flaggenrechtsgesetz*). Ships which normally return to the base of an onshore establishment within 48 hours of leaving port shall be treated as a part of said onshore establishment.

Part 2 Supervisory board

Section 4 Composition

(1) One-third of the members of the supervisory board of a company referred to in Section 1 para. 1 must be employee representatives.

(2) If one or two supervisory board members representing employees are to be elected, said member or members must be employees of the company. If more than two supervisory board members representing employees are to be elected, at least two supervisory board members must be employees of the company.

(3) The supervisory board members representing employees, who are themselves company employees, must be aged 18 or over and have been employees of the company for at least one year. Said one-year period shall include periods spent as an employee of another company whose employees take part in the election of the company's supervisory board members pursuant to this Act. Such periods must immediately precede the date from which the employees are entitled to elect the company's supervisory board members. The other eligibility requirements of Section 8 para. 1 of the Works Constitution Act must be met.

(4) Among the supervisory board members representing employees, women and men should be represented according to the gender ratio within the company.

Section 5 Election of supervisory board members representing employees

(1) The supervisory board members representing employees shall be elected according to the principles of majority voting by universal, secret, fair and direct ballot for the period defined by law or the articles of association for the supervisory board members to be elected by the general meeting.

(2) Company employees aged 18 or over shall be eligible to vote. Section 7 sentence 2 of the Works Constitution Act shall apply *mutatis mutandis*.

Section 6 Lists of candidates

The election shall be based on lists of candidates submitted by the works councils and employees. The candidate lists submitted by employees must be signed by at least one-tenth of the electorate or at least 100 eligible voters.

Section 7 Substitute members

(1) In each list of candidates, a substitute member of the supervisory board may be proposed together with each candidate. A candidate cannot be proposed as a substitute member for the same election.

(2) If a candidate is elected as a supervisory board member, the substitute member proposed with that candidate shall also be elected.

Section 8 Announcement of supervisory board members

Immediately after the members and substitute members of the supervisory board have been appointed, the body legally empowered to represent the company must announce their names in the company's establishments and publish them in the Federal Gazette. If the employees of another company also take part in the election of the company's supervisory board members, the body legally empowered to represent the other company shall also announce the names in its establishments.

Section 9 Protection of supervisory board members from disadvantage

Supervisory board members representing employees shall not be interfered with or obstructed in the discharge of their duties. They shall not be disadvantaged or favoured by reason of their duties on the supervisory board. This principle also applies to their professional development.

Section 10 Protection against obstruction and election costs

(1) No person shall obstruct the election of supervisory board members representing employees. In particular, no person shall be restricted in his or her right to vote or to stand for election.

(2) No person shall attempt to influence the elections by inflicting or threatening any unfavourable treatment or by granting or promising any advantage.

(3) The costs of the elections shall be borne by the company. Any loss of working time entailed by exercising the right to vote or performing duties on the electoral board shall not warrant a reduction in remuneration.

Section 11 Contesting the election of supervisory board members representing employees

(1) The election of a supervisory board member or substitute member representing employees 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

1. at least three eligible voters,
2. the works councils,
3. the body legally empowered to represent the company.

To be receivable the action must be brought within two weeks of the day of publication in the Federal Gazette.

Section 12 Removal of supervisory board members representing employees

(1) A supervisory board member representing employees may be removed from office before the end of his or her term of office upon petition of a works council or pursuant to a decision taken by at least one-fifth of the eligible voters. The decision of eligible voters shall be taken by universal, secret, fair and direct ballot and shall require a majority of three-quarters of the votes cast. Section 2 para. 1 shall apply to the decision-making process.

(2) Paragraph 1 shall apply mutatis mutandis to the removal of substitute members.

Part 3

Transitional and final provisions

Section 13 Authorisation to enact statutory ordinances

The Federal Government is authorised to enact provisions by statutory ordinance concerning the procedure for the election and removal from office of supervisory board members representing employees, and in particular concerning

1. the preparation of elections, in particular the establishment of voter lists and calculation of the number of supervisory board members representing employees;
2. the deadline for inspection of voter lists and for raising objections to them;
3. lists of candidates and the deadline for their submission;
4. the announcement of the election and the deadline for making said announcement;
5. participation in the election by employees of an establishment referred to in Section 3 para. 3;
6. the voting process;
7. the determination of election results and the deadlines for announcing them;
8. contestation of the election;
9. the safekeeping of election documents.

Section 14 References

In so far as other laws make reference to provisions that are repealed by Article 6 para. 2 of the Second Act on Simplification of the Election of Employee Representatives to the Supervisory Board (*Zweites Gesetz zur Vereinfachung der Wahl der Arbeitnehmersvertreter in den Aufsichtsrat*), said provisions shall be replaced by the corresponding provisions of this Act.