



Act on the Co-determination of Employees (Co-determination Act - MitbestG)

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MitbestG

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More information on the status can be found in the menu under [Notes](#)

Footnote

(+++ Wording as of: 1 July 1976 +++)
(+++ For application see Section 40 +++)

(+++ Requirements under the Unification Treaty (EinigVtr) no longer applicable pursuant to Article 109 no. 3 letter a clause ff of the Act of 8 December 2010 I 1864 effective 15 December 2010 +++)

Part One Scope

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Section 1 Affected companies

(1) In companies that

1. are operated in the legal form of a public limited company (*Aktiengesellschaft*), a partnership limited by shares (*Kommanditgesellschaft auf Aktien*), a limited liability company (*Gesellschaft mit beschränkter Haftung*) or a cooperative (*Genossenschaft*) and
2. usually employ more than 2,000 employees,

employees shall have a right of co-determination in accordance with this Act.

(2) This Act shall not apply to co-determination in bodies of companies in which the employees have a right of co-determination under

1. the Act on the Co-determination of Employees in the Supervisory and Management Boards of Companies in the Coal, Iron and Steel Industry of 21 May 1951 (Federal Law Gazette I p. 347) - *Montan-Mitbestimmungsgesetz* -, or
2. the Act Supplementing the Act on the Co-determination of Employees in the Supervisory and Management Boards of Companies in the Coal, Iron and Steel Industry of 7 August 1956 (Federal Law Gazette I p. 707) - *Mitbestimmungsergänzungsgesetz*.

(3) The representation of employees on the supervisory boards of companies in which the employees do not have a right of co-determination under paragraph 1 or under the acts referred to in paragraph 2 shall be governed by the provisions of the One-Third Participation Act (*Drittelbeteiligungsgesetz*, Federal Law Gazette 2004 I p. 974).

(4) This Act shall not apply to companies which pursue directly and essentially

1. political, professional organisational, religious, charitable, educational, scientific or artistic aims or
2. 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.

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Section 2 Shareholders

Shareholders within the meaning of this Act are shareholders, partners or members of a cooperative depending on the legal form of the companies referred to in Section 1 para. 1 no. 1.

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Section 3 Employees and establishments

(1) Employees within the meaning of this Act are

1. 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. the executive staff referred to in Section 5 para. 3 of the Works Constitution Act.

The persons referred to in Section 5 para. 2 of the Works Constitution Act are not employees within the meaning of this 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.

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Section 4 Limited partnerships

(1) If a company referred to in Section 1 para. 1 no. 1 is a personally liable partner of a limited partnership and if the majority of the limited partners of said limited partnership, calculated according to the majority of the shares or voting rights, holds the majority of the shares or voting rights in the company of the personally liable partner, for the application of this Act to the personally liable partner the employees of the limited partnership shall be considered as employees of the personally liable partner unless the personally liable partner has its own business usually employing more than 500 employees. If the limited partnership is a personally liable partner of another limited partnership, the employees of said partnership shall also be considered as employees of the company referred to in Section 1 para. 1 no. 1. This shall apply for as long as the limited partnerships are connected in this way.

(2) The company cannot be excluded from management of the limited partnership's businesses.

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Section 5 Groups

(1) If a company referred to in Section 1 para. 1 no. 1 is the controlling company of a group (Section 18 para. 1 of the Stock Corporation Act (*Aktiengesetz*)), for the application of this Act to the controlling company the employees of the group companies shall be considered as employees of the controlling company. This also applies to employees of a company referred to in Section 1 para. 1 no. 1 which is the personally liable partner of a controlled company (Section 18 para. 1 of the Stock Corporation Act) in the legal form of a limited partnership.

(2) If a limited partnership at which, for the application of this Act to the personally liable partner, the employees of the limited partnership are considered as employees of the personally liable partner pursuant to Section 4 para. 1, is the controlling company of a group (Section 18 para. 1 of the Stock Corporation Act), for the application of this Act to the personally liable partner of the limited partnership the employees of the group companies shall be considered as employees of the personally liable partner. Paragraph 1 sentence 2 and Section 4 para. 2 shall apply *mutatis mutandis*.

(3) If the companies in a group are under the uniform management of a company other than one referred to in paragraph 1 or 2, but the group management controls other group companies via a company referred to in paragraph 1 or 2 or via more than one such company, the companies referred to in paragraph 1 or 2 which are the closest to the group management and via which the group management controls other group companies shall be considered as controlling companies for the purposes of this Act.

Part Two **Supervisory board**

Division One **Formation and composition**

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Section 6 Principle

(1) A supervisory board shall be established in the companies referred to in Section 1 para. 1 if this has not already taken place under other legislation.

(2) The formation and composition of the supervisory board and the appointment and removal from office of its members shall be determined in accordance with Sections 7 to 24 of this Act and, in so far as this has not already taken place under other legislation, in accordance with Section 96 para. 4, Sections 97 to 101 para. 1 and 3 and Sections 102 to 106 of the Stock Corporation Act, with the proviso that an authorised officer (*Prokurist*) is only ineligible to be a supervisory board member representing employees if he or she is directly subordinate to the body legally empowered to represent the company and is entitled to exercise a power of representation for the entire business of said body. Other statutory regulations and provisions of the articles of association on the composition of the supervisory board and the appointment and removal from office of its members shall remain unaffected in so far as provisions of this Act do not preclude this.

(3) Section 100, Section 101 para. 1 and 3 and Sections 103 and 106 of the Stock Corporation Act shall not apply to cooperatives. Section 9 para. 2 of the Cooperatives Act shall not apply to supervisory board members representing employees.

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Section 7 Composition of the supervisory board

(1) The supervisory board of a company that

1. usually has no more than 10,000 employees shall comprise six members representing shareholders and six members representing employees;
2. usually has more than 10,000 but no more than 20,000 employees shall comprise eight members representing shareholders and eight members representing employees;
3. usually has more than 20,000 employees shall comprise ten members representing shareholders and ten members representing employees.

In the case of companies referred to in sentence 1 no. 1, the articles of association may stipulate that sentence 1 no. 2 or 3 shall apply. In the case of companies referred to in sentence 1 no. 2, the articles of association may stipulate that sentence 1 no. 3 shall apply.

(2) The supervisory board members representing employees must include

1. in a supervisory board with six members representing employees, four employees of the company and two representatives of trade unions;
2. in a supervisory board with eight members representing employees, six employees of the company and two representatives of trade unions;
3. in a supervisory board with ten members representing employees, seven employees of the company and three representatives of trade unions.

(3) Among the supervisory board members representing employees at a listed company referred to in Section 1 para. 1, men and women must be represented with a share of at least 30% each in the case provided for in Section 96 para. 2 sentence 3 of the Stock Corporation Act.

(4) The company employees referred to in paragraph 2 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.

(5) The trade unions referred to in paragraph 2 must be represented in the company itself or in another company whose employees take part in the election of the company's supervisory board members pursuant to this Act.

Footnote

Section 7 para. 1 and 2: in conjunction with Section 31 consistent with the Basic Law pursuant to the Federal Constitutional Court decision (BVerfGE) of 1 March 1979 I 354 - 1 BvR 532/77, 1 BvR 533/77, 1 BvR 419/78, 1 BvL 21/78 -

Division Two Appointment of supervisory board members

Subdivision One Supervisory board members representing shareholders

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Section 8

(1) The supervisory board members representing shareholders shall be appointed by the body authorised by law or the articles of association to elect members of the supervisory board (electoral body) and, in so far as statutory provisions do not preclude this, in accordance with the articles of association.

(2) Section 101 para. 2 of the Stock Corporation Act shall remain unaffected.

Subdivision Two Supervisory board members representing employees, Principle

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Section 9

(1) The supervisory board members representing employees (Section 7 para. 2) of a company that usually has more than 8,000 employees shall be elected by delegates, unless the employees who are eligible to vote decide on direct elections.

(2) The supervisory board members representing employees (Section 7 para. 2) of a company that usually has no more than 8,000 employees shall be elected by direct election, unless the employees who are eligible to vote decide on election by delegates.

(3) A vote on whether to opt for election by delegates or direct election requires a petition signed by one-twentieth of the company employees eligible to vote. Voting shall take place in secret. A decision pursuant to paragraph 1 or 2 can only be taken with the participation of at least half of the employees who are eligible to vote and only if approved by a majority of the votes cast.

Subdivision Three Election of supervisory board members representing employees by means of delegates

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Section 10 Election of delegates

(1) Employees in each company establishment shall elect delegates in a secret ballot in accordance with the principles of proportional representation.

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

(3) The employees referred to in paragraph 2 sentence 1 who fulfil the other eligibility requirements laid down in Section 8 of the Works Constitution Act are eligible to stand for election as delegates.

(4) If only one list of candidates is proposed for a ballot, the employees listed therein shall be considered as elected in the specified order. Section 11 para. 2 shall apply.

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Section 11 Calculation of the number of delegates

(1) In each establishment there shall be one delegate for every 90 employees eligible to vote. If the calculation in sentence 1 results, at a given establishment, in more than

1. 25 delegates, the number of delegates to be elected shall be reduced to a half, with these delegates receiving two votes each;
2. 50 delegates, the number of delegates to be elected shall be reduced to a third, with these delegates receiving three votes each;
3. 75 delegates, the number of delegates to be elected shall be reduced to a quarter, with these delegates receiving four votes each;
4. 100 delegates, the number of delegates to be elected shall be reduced to a fifth, with these delegates receiving five votes each;
5. 125 delegates, the number of delegates to be elected shall be reduced to a sixth, with these delegates receiving six votes each;
6. 150 delegates, the number of delegates to be elected shall be reduced to a seventh, with these delegates receiving seven votes each.

When calculating the number of delegates, non-whole numbers shall be counted in full if they amount to at least half of the whole number.

(2) In each establishment, the employees referred to in Section 3 para. 1 no. 1 and the executive staff must be represented among the delegates in proportion to their numbers. If at least nine delegates are to be elected in an establishment, the employees referred to in Section 3 para. 1 no. 1 and the executive staff must have at least one representative each; this does not apply if there are no more than five employees referred to in Section 3 para. 1 no. 1 or executive staff who are eligible to vote in the establishment. If delegates are allotted to the employees

referred to in Section 3 para. 1 no. 1 and the executive staff only in accordance with sentence 2, the number of establishment delegates calculated pursuant to paragraph 1 shall be increased accordingly.

(3) If there is not at least one delegate each, pursuant to paragraph 2, for the employees referred to in Section 3 para. 1 no. 1 and the executive staff of an establishment, said employees and executive staff shall be considered as employees of the company's principal place of business for the purposes of electing delegates. If there is not at least one delegate each, pursuant to paragraph 2 and sentence 1, for the employees referred to in Section 3 para. 1 no. 1 and the executive staff of the principal place of business, said employees and executive staff shall be considered, for the purposes of electing delegates, as employees of the company establishment with the largest number of employees eligible to vote.

(4) If there are no delegates allotted to an establishment or a company whose employees take part in the election of company supervisory board members pursuant to this Act, paragraph 3 shall apply mutatis mutandis.

(5) A delegate's status as a delegate representing employees pursuant to Section 3 para. 1 no. 1 or Section 3 para. 1 no. 2 shall remain in place in the event of a change in his or her status as an employee pursuant to Section 3 para. 1 no. 1 or Section 3 para. 1 no. 2.

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Section 12 Lists of candidates for delegates

(1) For the election of delegates, establishment employees who are eligible to vote can propose lists of candidates. Each list of candidates must be signed by one-twentieth or 50 of the eligible employees referred to in Section 3 para. 1 no. 1 or of the executive staff of the establishment respectively.

(2) Each list of candidates should contain at least twice as many candidates as the number of delegates to be elected in the ballot.

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Section 13 Delegates' term of office

(1) Delegates are elected for a period corresponding to the term of office of the supervisory board members whom they are to elect. They shall perform the duties and exercise the powers conferred on them under the terms of this Act until the start of the next elections for supervisory board members representing employees.

(2) In the cases stipulated in Section 9 para. 1, delegates' term of office shall end if

1. the employees eligible to vote decide to hold direct elections pursuant to Section 9 para. 1;
2. the company no longer meets the conditions for the application of Section 9 para. 1, unless the employees eligible to vote decide that the term of office should continue until the time referred to in paragraph 1; Section 9 para. 3 shall apply mutatis mutandis.

(3) In the cases stipulated in Section 9 para. 2, the delegates' term of office shall end if the employees eligible to vote decide to hold direct elections; Section 9 para. 3 shall apply.

(4) By way of derogation from paragraph 1, the term of office of an establishment's delegates shall end if, after all the substitute delegates on the list of candidates containing the delegates being replaced have been called upon, the total number of the establishment's delegates has fallen below the prescribed number of delegates allotted to the establishment at the time of their election.

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Section 14 Early termination of the term of office or incapacity of delegates

(1) A delegate's term of office shall end before the date specified in Section 13 in the event of

1. resignation from the office,
2. termination of the delegate's employment in the establishment for which he or she is a delegate,
3. loss of eligibility.

(2) If a delegate's term of office ends prematurely or if the delegate is unable to exercise the office, a substitute delegate shall take over. Substitute delegates shall be appointed, in order, from the unelected employees on the lists of candidates containing the delegates being replaced.

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Section 15 Election of company supervisory board members representing employees

(1) The delegates shall elect the supervisory board members who are required to be employees of the company pursuant to Section 7 para. 2 by secret ballot and in accordance with the principles of proportional representation for the period defined by law or the articles of association for the supervisory board members to be elected by the shareholders' electoral body. The supervisory board must include an executive staff member.

(2) The election shall be based on lists of candidates. Each list of candidates for

1. supervisory board members representing employees pursuant to Section 3 para. 1 no. 1 must be signed by one-fifth or 100 of the company employees who are eligible to vote;
2. the supervisory board member representing executive staff shall be compiled on the basis of voting proposals approved by a decision of the executive staff who are eligible to vote. Each voting proposal must be signed by one-twentieth or 50 of the executive staff who are eligible to vote. The decision shall be taken by secret ballot. Each executive staff member shall have as many votes as there are candidates to be appointed to the list of candidates pursuant to paragraph 3 sentence 2. The number of candidates prescribed by paragraph 3 sentence 2 shall be included on the list of candidates in order according to the number of votes they received.

(3) By way of derogation from paragraph 1, the election shall be conducted by majority vote if only one list of candidates is submitted. In this case, the list of candidates must contain twice as many candidates as there are supervisory board members representing employees pursuant to Section 3 para. 1 no. 1 and executive staff.

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Section 16 Election of trade union representatives to the supervisory board

(1) The delegates shall elect the supervisory board members who are representatives of trade unions pursuant to Section 7 para. 2 by secret ballot and in accordance with the principles of proportional representation for the period defined in Section 15 para. 1.

(2) The election shall take place on the basis of lists of candidates submitted by the trade unions, which must be represented in the company itself or in another company whose employees take part in the election of the company's supervisory board members pursuant to this Act. If only one list of candidates is submitted, the election shall be conducted by majority vote by way of derogation from paragraph 1. In this case, the list of candidates must contain at least twice as many candidates as the number of trade union representatives to be elected to the supervisory board. [Unofficial table of contents](#)

Section 17 Substitute members

(1) In each list of candidates, a substitute member of the supervisory board may be proposed together with each candidate. For a candidate who is an employee pursuant to Section 3 para. 1 no. 1, only an employee pursuant to Section 3 para. 1 no. 1 may be proposed as a substitute member, and for an executive staff member pursuant to Section 3 para. 1 no. 2 only an executive staff member may be proposed as a substitute member. 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.

(3) In the case provided for in Section 96 para. 2 sentence 3 of the Stock Corporation Act, a substitute member shall not be allowed to take over if as a result the proportion of women and men among the supervisory board members representing employees would no longer meet the requirements of Section 7 para. 3; Section 18a para. 2 sentence 2 shall apply mutatis mutandis.

Subdivision Four **Direct election of supervisory board members representing employees**

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Section 18

If the supervisory board members representing employees are to be directly elected pursuant to Section 9, company employees aged 18 or over shall be eligible to vote. Section 7 sentence 2 of the Works Constitution Act shall apply mutatis mutandis. Sections 15 to 17 shall apply to the election, but with the eligible company employees taking the place of the delegates.

Subdivision Five **Failure of the election to meet gender percentage requirements**

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Section 18a

(1) If, in the case provided for in Section 96 para. 2 sentence 3 of the Stock Corporation Act, the counting of votes and their allocation to the candidates results in the requirements of Section 7 para. 3 not being met, the following gender ratio for supervisory board seats for employee representatives must be brought about:

1. On supervisory boards pursuant to Section 7 para. 2 no. 1 and 2, the members representing employees pursuant to Section 3 para. 1 no. 1 must include at least one woman and at least one man and the members representing trade unions must include one woman and one man.
2. On a supervisory board pursuant to Section 7 para. 2 no. 3, the members representing employees pursuant to Section 3 para. 1 no. 1 must include at least two women and at least two men and the members representing trade unions must include one woman and one man.

(2) To achieve the gender distribution specified in paragraph 1, the election of candidates for a supervisory board seat representing employees shall be invalid where the gender of said candidates is in the majority in the ballot concerned following the distribution of votes to the candidates and where the candidates in question

1. in an election by majority vote, have received the lowest number of votes in the ballot concerned based on the order of votes allocated to the candidates, or
2. in an election by proportional representation, have received the lowest 'highest averages' in the ballot concerned based on the order of highest averages allocated to the candidates.

The supervisory board seats that are not filled owing to the invalidity of the election pursuant to sentence 1 shall be filled by court appointment pursuant to Section 104 of the Stock Corporation Act or by means of a by-election.

Subdivision Six **Further rules on the election procedure and the appointment and removal of supervisory board members**

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Section 19 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.

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Section 20 Protection against obstruction and election costs

(1) No person shall obstruct the elections held pursuant to Sections 10, 15, 16 and 18. 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 by the employer.

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Section 21 Contesting the election of delegates

(1) The election of an establishment's delegates 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 establishment employees who are eligible to vote,
2. the works council,
3. the executives' committee,

4. the body legally empowered to represent the company.

To be receivable the action must be brought within two weeks of the day on which the election results were announced.

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Section 22 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 company employees who are eligible to vote,
2. the company's central works council or, if the company only has one works council, the works council, as well as, if the company is the controlling company of a group, the group works council where one exists,
3. the central or company executives' committee or, if the company only has one executives' committee, the executives' committee, as well as, if the company is the controlling company of a group, the group executives' committee where one exists,
4. the central works council of another company whose employees take part in the election of the company's supervisory board members pursuant to this Act, or, if the other company only has one works council, the works council,
5. the central or company executives' committee of another company whose employees take part in the election of the company's supervisory board members pursuant to this Act, or, if the other company only has one executives' committee, the executives' committee,
6. any trade union entitled to propose candidates pursuant to Section 16 para. 2,
7. 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.

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Section 23 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. Such petitions may be brought for the removal of a

1. supervisory board member representing employees pursuant to Section 3 para. 1 no. 1, by three-quarters of the employees pursuant to Section para. 1 no. 1 who are eligible to vote,
2. supervisory board member representing executive staff, by three-quarters of the executive staff who are eligible to vote,
3. supervisory board member who is a representative of a trade union pursuant to Section 7 para. 2, by the trade union that proposed said member.

(2) A supervisory board member elected by delegates shall be removed from office by a decision of the delegates. Said decision shall be taken by secret ballot and shall require a majority of three-quarters of the votes cast.

(3) A supervisory board member directly elected by employees shall be removed from office by a decision of the employees who are eligible to vote. Said decision shall be taken by secret, direct ballot and shall require a majority of three-quarters of the votes cast.

(4) Paragraphs 1 to 3 shall apply mutatis mutandis to the removal of substitute members.

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Section 24 Loss of eligibility and change to the allocation of supervisory board members belonging to the company

(1) If a supervisory board member who must be an employee of the company pursuant to Section 7 para. 2 ceases to be eligible, his or her office shall expire.

(2) A change in the allocation of a supervisory board member to the employees referred to in Section 3 para. 1 no. 1 or Section 3 para. 1 no. 2 shall not result in the termination of his or her office.

Division Three

Internal organisation, rights and obligations of the supervisory board

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Section 25 Principle

(1) The internal organisation, decision-making process and rights and obligations of the supervisory board shall be determined in accordance with Sections 27 to 29, 31 and 32 and, in so far as these provisions do not preclude it, with

1. the Stock Corporation Act, in the case of public limited companies and partnerships limited by shares,
2. Section 90 para. 3, 4 and 5 sentences 1 and 2, Sections 107 to 116, Section 118 para. 3, Section 125 para. 3 and 4 and Sections 170, 171 and 268 para. 2 of the Stock Corporation Act, in the case of limited liability companies,
3. the Cooperatives Act, in the case of cooperatives.

Section 4 para. 2 of the Act on the Transfer of Shares in Volkswagenwerk GmbH to Private Partnership of 21 July 1960 (Federal Law Gazette I p. 585), last amended by the Second Act Amending the Act on the Transfer of Shares in Volkswagenwerk GmbH to Private Partnership of 31 July 1970 (Federal Law Gazette I p. 1149), shall remain unaffected.

(2) Other statutory regulations and provisions of the articles of association or the rules of procedure of the supervisory board regarding the internal organisation, decision-making process and rights and obligations of the supervisory board shall remain unaffected, in so far as paragraph 1 does not preclude this.

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Section 26 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 by reason of their duties on the supervisory board of a company of which they are employees or of which they are considered to be employees pursuant to Section 4 or 5. This principle also applies to their professional development.

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Section 27 Chairmanship of the supervisory board

(1) The supervisory board shall elect a chairman and a vice-chairman from among its members by a majority of two-thirds of the total number of members which it is required to comprise.

(2) If the majority required by paragraph 1 is not attained in the election of the chairman or vice-chairman of the supervisory board, a second vote shall be held to elect the chairman and the vice-chairman. In said second vote, the supervisory board members representing the shareholders shall elect the chairman and those representing the employees shall elect the vice-chairman, in each case by a majority of the votes cast.

(3) Immediately after the election of the chairman and vice-chairman, the supervisory board shall set up a committee to carry out the task referred to in Section 31 para. 3 sentence 1. The members of this committee shall be the chairman and vice-chairman of the supervisory board and one supervisory board member each representing the employees and the shareholders, elected by a majority of the votes cast.

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Section 28 Quorum

The supervisory board shall only constitute a quorum if at least half of the total number of members which it is required to comprise take part in the decision-making process. Section 108 para. 2 sentence 4 of the Stock Corporation Act shall apply.

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Section 29 Votes

(1) Supervisory board decisions shall require a majority of the votes cast unless stipulated otherwise in paragraph 2 and Sections 27, 31 and 32.

(2) If a supervisory board vote results in a tie, the chairman shall have a casting vote if a second vote on the same subject also results in a tie. Section 108 para. 3 of the Stock Corporation Act shall also apply to said casting vote. The vice-chairman shall not have a casting vote.

Part Three **Legal representative body**

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Section 30 Principle

The composition, rights and obligations of the body legally empowered to represent the company and the appointment of its members shall be determined by the rules applicable to the legal form of the company, unless otherwise stipulated in Sections 31 to 33.

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Section 31 Appointment and revocation

(1) The appointment of the members of the body legally empowered to represent the company and the revocation of said appointment shall be determined by Sections 84 and 85 of the Stock Corporation Act, unless otherwise stipulated in paragraphs 2 to 5. This does not apply to partnerships limited by shares.

(2) The supervisory board shall appoint the members of the body legally empowered to represent the company with a majority of at least two-thirds of its members' votes.

(3) If an appointment pursuant to paragraph 2 is not achieved, the supervisory board committee referred to in Section 27 para. 3 shall, within one month of the vote in which the majority prescribed in paragraph 2 was not reached, submit a proposal for the appointment to the supervisory board; said proposal shall not exclude other proposals. The supervisory board shall appoint the members of the body legally empowered to represent the company with a majority of its members' votes.

(4) If an appointment pursuant to paragraph 3 is not achieved, the chairman of the supervisory board shall have a casting vote when another vote is held; paragraph 3 sentence 2 shall apply. Section 108 para. 3 of the Stock Corporation Act shall apply to said casting vote. The vice-chairman shall not have a casting vote.

(5) Paragraphs 2 to 4 shall apply mutatis mutandis to the revocation of the appointment of a member of the body legally empowered to represent the company.

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Section 32 Exercise of ownership rights

(1) The rights of a company in which the employees have a right of co-determination under this Act, on the basis of shareholdings in another company in which the employees have a right of co-determination under this Act, in connection with the appointment, revocation of appointment or discharge of governing bodies and in taking decisions regarding the dissolution or transformation of the other company, the conclusion of business contracts (Sections 291 and 292 of the Stock Corporation Act) with the other company, regarding its continuation after its dissolution or regarding the transfer of its assets, may only be exercised by the body legally empowered to represent the company on the basis of decisions by the supervisory board. Said decisions shall only require a majority of the votes of the supervisory board members representing shareholders; they shall be binding on the body legally empowered to represent the company.

(2) Paragraph 1 shall not apply if the company's shareholding in the other company is less than one-quarter.

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Section 33 Labour director

(1) A labour director shall be appointed as an equal member of the body legally empowered to represent the company. This does not apply to partnerships limited by shares.

(2) Like the other members of the body legally empowered to represent the company, the labour director shall perform his or her tasks in the closest possible agreement with the whole body. Further details shall be laid down in the rules of procedure.

(3) In cooperatives, Section 9 para. 2 of the Cooperatives Act shall not apply to the labour director.

Part Four **Maritime shipping**

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Section 34

(1) All of the ships operated by a company shall count as one establishment for the purposes of this Act.

- (2) 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.
- (3) In an establishment referred to in paragraph 1, only the captains shall be classified as executive staff within the meaning of Section 3 para. 1 no. 2 of this Act.
- (4) The employees of an establishment referred to in paragraph 1 shall not take part in votes pursuant to Section 9 and shall not be included when calculating the number of employees required for submitting petitions and taking decisions.
- (5) If the supervisory board members representing employees are elected by delegates, no delegates shall be elected at an establishment referred to in paragraph 1, by way of derogation from Section 10. By way of derogation from Section 15 para. 1, the employees of said establishment shall take part directly in the election of the supervisory board members representing employees with the proviso that the vote of one such employee shall be counted as one-ninetieth of the vote of a delegate; Section 11 para. 1 sentence 3 shall apply mutatis mutandis.
- (6) (repealed)

Part Five **Transitional and final provisions**

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Section 35

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Section 36 References

- (1) Any references in other enactments to provisions of the Works Constitution Act 1952 concerning employee representation on company supervisory boards shall be construed as references to this Act for the companies referred to in Section 1 para. 1 of this Act.
- (2) *In so far as other enactments use the term 'Co-determination Act' (Mitbestimmungsgesetz) to refer to the Act on the Co-determination of Employees in the Supervisory and Management Boards of Companies in the Coal, Iron and Steel Industry of 21 May 1951 (Federal Law Gazette I p. 347), this shall be replaced by the term 'Coal, Iron and Steel Co-determination Act' (Montan-Mitbestimmungsgesetz).*

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Section 37 First-time application of the Act to a company

- (1) Any provisions of the articles of association other than those referred to in Section 97 para. 2 sentence 2 of the Stock Corporation Act which are incompatible with the provisions of this Act shall cease to be effective at the time stipulated in Section 97 para. 2 sentence 2 of the Stock Corporation Act or, in the case of a judicial decision, at the time stipulated in Section 98 para. 4 sentence 2 of the Stock Corporation Act. A general meeting (shareholders' meeting, AGM) held up to this time may, by simple majority, substitute new provisions for those provisions in the articles of association that cease to be effective.
- (2) Sections 25 to 29 and 31 to 33 shall apply for the first time when the supervisory board is composed in accordance with the provisions of this Act.
- (3) The appointment of a member of the body legally empowered to represent the company who was appointed before the entry into force of this Act and to whom this Act applies as of its entry into force may, if said member's term of office does not end earlier for other reasons, be revoked at any time by the supervisory board set up pursuant to this Act at any time after a period of five years following the Act's entry into force. Said revocation shall require a majority of the votes cast by the supervisory board members, all the votes of the members representing shareholders or all the votes of the members representing employees. The general rules shall apply to claims arising from the employment contract. Until the revocation, the provisions of the articles of association relating to the term of office shall remain in force for such members by way of derogation from paragraph 1 sentence 1. Said provisions shall apply mutatis mutandis if this Act applies for the first time to a company only after the time at which this Act enters into force.
- (4) Paragraph 3 does not apply to personally liable partners in a partnership limited by shares.

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Section 38

(repealed)

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Section 39 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 or votes, the appointment of electoral boards and voting boards and the establishment of voter lists,
2. the ballots to determine whether supervisory board members should be elected directly or by delegates,
3. the deadline for inspection of voter lists and for raising objections to them,
4. calculation of the number of supervisory board members representing employees and their allocation to the employees referred to in Section 3 para. 1 no. 1, the executive staff and the trade union representatives as well as the procedure for taking account of gender,
5. calculation of the number of delegates,
6. lists of candidates and the deadline for their submission,
7. the announcement of elections or votes and the deadlines for making such announcements,
8. the participation of employees of an establishment referred to in Section 34 para. 1 in elections and votes,
9. the voting process,
10. the determination of election or vote results and the deadlines for announcing them,
11. the safekeeping of election and vote documents.

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Section 40 Transitional arrangements

- (1) Elections of supervisory board members representing employees which are completed by 31 December 2015 shall be subject to the Co-determination Act of 4 May 1976 (Federal Law Gazette I p. 1153) as amended by Article 2 para. 113 of the Act of 22 December 2011

(Federal Law Gazette I p. 3044).

(2) Elections of supervisory board members representing employees which are not completed by 31 December 2015 shall, in the case provided for in Section 96 para. 2 sentence 3 of the Stock Corporation Act, be subject to the Co-determination Act as amended by Article 7 of the Act of 24 April 2015 (Federal Law Gazette I p. 642).

(3) An election of supervisory board members representing employees shall be considered to be completed if the body legally empowered to represent the company has announced the members of the supervisory board pursuant to Section 19 sentence 1.

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Section 41 Entry into force

This Act comes into force on 1 July 1976.

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