

Act on the Co-determination of Employees in the Supervisory and Management Boards of Companies in the Coal, Iron and Steel Industry

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Status: Last amended by Article 5 of the Act of 24 April 2015 I 642

Footnote

Heading: Entered into force in Berlin on 4 April 1957, see Articles I and III of the Act of 22 March 1957 Berlin Law and Ordinance Gazette p. 316; enacted in Saarland by Act No. 560 of 22 December 1956 Saarland Official Gazette p. 1703, see also Section 2 IV A No. 7 of the Act of 30 June 1959 101-3

(+++ Wording effective as of: 1 July 1981 +++)

(+++ Requirements under the Unification Treaty (EinigVtr) no longer applicable pursuant to Article 109 no. 3 letter a clause gg of the Act of 8 December 2010 I 1864 effective 15 December 2010 +++)

Part One General

Section 1

(1) Employees shall have a right of co-determination in supervisory boards and in the bodies legally empowered to represent companies in accordance with this Act in

- a) companies whose predominant operational purpose is the production of coal, lignite or iron ore or the processing, coking, carbonisation or briquetting of these raw materials and whose operations are under the supervision of the mining authorities,
- b) companies in the iron and steel producing industry to the extent laid down in Law No. 27 of the Allied High Commission of 16 May 1950 (Official Gazette of the Allied High Commission for Germany p. 299), in so far as said companies are converted into 'unit companies' within the meaning of Law No. 27 or continue to operate in another form and are not liquidated,
- c) companies that are controlled by an aforementioned company or a company to be liquidated pursuant to Law No. 27 of the Allied High Commission, if they meet the conditions specified in a) or predominantly produce iron and steel.

The production of rolling mill products including wire rod, tubes, rolls, railway rolling stock, open-die forgings and foundry products made of iron or steel shall be considered as iron and steel production within the meaning of sentence 1 b) and c)

1. in a company whose supervisory board is composed in accordance with Section 4 or Section 9 on 1 July 1981, or
2. in another company following a merger with a company referred to in 1. or following the transfer of businesses or parts of businesses from a company referred to in 1. which manufacture the aforementioned products or produce pig iron or crude steel to the other company, if said company is affiliated to the company referred to in 1. (Section 15 of the Stock Corporation Act (*Aktiengesetz*)) and for as long after the merger or transfer as the predominant operational purpose of the other company is the manufacture of the aforementioned products or the production of pig iron or crude steel.

Sentence 2 no. 2 shall apply accordingly to any subsequent merger or transfer of businesses or parts of businesses.

(2) This Act shall only apply to those companies referred to in paragraph 1 which are operated in the form of a public limited company (*Aktiengesellschaft*) or a limited liability company (*Gesellschaft mit beschränkter Haftung*) and which usually employ more than one thousand employees or which are 'unit companies'.

(3) If a company no longer meets the conditions specified in paragraph 1 or no longer employs the required number of employees pursuant to paragraph 2, the provisions of this Act concerning the right of co-determination shall only cease to apply once one of these conditions has been absent in six consecutive financial years.

(4) If a company whose supervisory board must be composed pursuant to Section 4 or Section 9 is the controlling company of a group (Section 18 para. 1 of the Stock Corporation Act) and a group works council has been established for said group, for the application of Sections 4, 6 and 9 to the controlling company the employees of the group companies shall be considered as employees of the controlling company and the trade unions represented in group companies shall be considered as represented in the controlling company. If the conditions of sentence 1 are met, the group works council shall take the place of the works councils for the application of Sections 6 and 11 to the controlling company.

Section 2

The provisions of the Stock Corporation Act, the Act on Limited Liability Companies (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*), the Mining Acts (*Berggesetze*) and the Works Constitution Law (*Betriebsverfassungsgesetz*) shall not apply to the companies referred to in Section 1 if said provisions contradict the provisions of this Act.

Part Two Supervisory board

Section 3

(1) If a limited liability company operates a company within the meaning of Section 1, a supervisory board shall be established in accordance with this Act.

(2) The provisions of the Stock Corporation Act shall apply mutatis mutandis to the supervisory board, its rights and obligations.

Section 4

(1) The supervisory board shall comprise eleven members. It shall be composed of

- a) four representatives of the shareholders and one other member,
- b) four representatives of the employees and one other member,
- c) one other member.

(2) The other members referred to in paragraph 1 must not

- a) be representatives of a trade union or an employers' association or an umbrella organisation of the aforementioned organisations or be in the permanent employ or service of such organisations,
- b) have occupied a position referred to in a) during the year preceding the election,
- c) be active in the companies as an employee or employer,
- d) have a significant economic interest in the company.

(3) All supervisory board members shall have the same rights and obligations. They shall not be bound by orders and instructions.

Section 5

The supervisory board members referred to in Section 4 para. 1 a) shall be elected or appointed in accordance with the articles of association by the body authorised by law or the articles of association to elect members of the supervisory board (electoral body).

Section 5a

Among the supervisory board members referred to in Section 4 para. 1 b) at a listed company referred to in Section 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.

Section 6

(1) The supervisory board members referred to in Section 4 para. 1 b) must include two employees who are employed in an establishment of the company. Said members shall be elected by the works councils of the company establishments by secret ballot and proposed to the electoral body after consultation with the trade unions represented in the company establishments and their umbrella organisations.

(2) The persons elected pursuant to paragraph 1 shall, within two weeks after the election and before the proposals are passed on to the electoral body, be made known to the umbrella organisations of the trade unions represented in the company's establishments. Each umbrella organisation may, within two weeks after receiving the notification, raise an objection with the works councils if there are reasonable grounds to suspect that one of the proposed candidates cannot be guaranteed to work as a responsible member of the supervisory board for the good of the company and the economy as a whole. If the works councils reject the objection by a simple majority of votes, the works councils or the umbrella organisation that raised the objection may refer the matter to the Federal Ministry of Labour and Social Affairs, which shall take the final decision.

(3) Two of the members referred to in Section 4 para. 1 b) shall be proposed to the works councils by the umbrella organisations following prior consultation with the trade unions represented in the establishment. The umbrella organisations shall be entitled to submit proposals according to the ratio of their representation in the establishments; their proposals should take appropriate account of the minorities that exist within the workforce.

(4) Paragraph 3 shall apply mutatis mutandis to the other member referred to in Section 4 para. 1 b).

(5) The members of the works councils of company establishments shall elect the candidates by secret ballot based on the proposals submitted pursuant to paragraphs 3 and 4 and shall propose said candidates to the electoral body. If an umbrella organisation only proposes one candidate for a supervisory board member, the proposal to the electoral body shall require a majority of the votes of works councils' members.

(6) At listed companies, a proposal can only be made to the electoral body in the case provided for in Section 96 para. 2 sentence 3 of the Stock Corporation Act if the requirements of Section 5a have been fulfilled by an election pursuant to paragraphs 1 and 5.

(7) The electoral body shall be bound by the works councils' proposals.

Section 7

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Section 8

(1) The other supervisory board member referred to in Section 4 para. 1 c) shall be elected by the electoral body based on a proposal by the other supervisory board members. Said supervisory board members shall adopt the proposal by a majority of all votes. However, the proposal must be approved by at least three members elected pursuant to Section 5 and three members elected pursuant to Section 6.

(2) If a proposal pursuant to paragraph 1 is not adopted or if a proposed candidate is not elected, a conciliation committee shall be formed, consisting of four members. Two members shall be elected by the supervisory board members elected pursuant to Section 5 and two by the supervisory board members elected pursuant to Section 6.

(3) Within one month the conciliation committee shall propose to the electoral board three persons for election, from whom the electoral board shall elect the supervisory board member. If the election based on the conciliation committee's proposal does not materialise for important reasons, in particular if none of the proposed candidates can be guaranteed to work productively for the benefit of the company, a decision must be adopted confirming the rejection. Said decision must be reasoned.

Upon petition of the conciliation committee, the higher regional court competent for the company shall rule on the validity of the rejection of the election. If the rejection is upheld, the conciliation committee shall propose another three persons to the electoral body; the aforementioned provisions (sentences 2 to 4) shall apply mutatis mutandis to this second proposal. If the court finds the rejection of the election to be unjustified, the electoral body shall elect one of the proposed candidates. If the court upholds the rejection of the second election or if no proposal is submitted, the electoral body shall elect the other member on its own initiative.

(4) If the required number of conciliation committee members pursuant to paragraph 2 have not been elected or if members of the conciliation committee fail to attend a meeting without offering an adequate excuse and despite receiving an invitation in good time, the conciliation committee may proceed with its business if at least two of its members are present.

Section 9

(1) In companies with a nominal capital of more than ten million euros, the articles of association may require the supervisory board to comprise fifteen members. The provisions of Sections 4 to 8 shall apply mutatis mutandis with the proviso that the number of employees to be elected pursuant to Section 6 para. 1 and 2 and the number of employee representatives referred to in Section 6 para. 3 shall be three in both cases.

(2) In companies with a nominal capital of more than twenty-five million euros, the articles of association may require the supervisory board to comprise twenty-one members. The provisions of Sections 4 to 8 shall apply mutatis mutandis with the proviso that the number of other members referred to in Section 4 para. 1 a) and b) shall be two in both cases, and the number of employees to be elected pursuant to Section 6 para. 1 and 2 and the number of employee representatives referred to in Section 6 para. 3 shall be four in both cases.

Section 10

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

Section 11

(1) Section 103 of the Stock Corporation Act shall apply to the supervisory board members referred to in Section 5.

(2) Paragraph 1 shall apply mutatis mutandis to the removal by the electoral board of a supervisory board member referred to in Section 6 with the proviso that said removal takes place on the proposal of the works councils of the company's establishments. The removal of a member referred to in Section 6 para. 3 or 4 can only be proposed by the works councils upon petition of the umbrella organisation that proposed the member.

(3) Removal of the supervisory board member referred to in Section 8 can be effected by court order for good cause upon petition of at least three supervisory board members.

Part Three Management board

Section 12

The appointment of the members of the body legally empowered to represent the company and the revocation of their appointment shall be effected by the supervisory board in accordance with Section 76 para. 3 and Section 84 of the Stock Corporation Act.

Section 13

(1) A labour director shall be appointed as an equal member of the body legally empowered to represent the company. The labour director cannot be appointed if the majority of supervisory board members elected pursuant to Section 6 vote against the appointment. The same applies to the revocation of the appointment.

(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.

Part Four

Final provisions

Section 14

The Federal Government is authorised to enact provisions by statutory ordinance concerning

- a) the amendment of articles of association in line with the provisions of this Act,
- b) the procedure for preparing the election proposals referred to in Section 6.