

ACT OF 26 OCTOBER 1996

on European Works Council

The Bundestag has passed the following law :

ARTICLE 1

ACT ON EUROPEAN WORKS COUNCILS ***(Europäisches Betriebsräte-Gesetz - EBRG)***

PART I

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) 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.
- (3) For the purposes of this Act, 'central management' means a Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings.
- (4) For the purposes of this Act, 'consultation' means the exchange of views and establishment of dialogue between employees' representatives and the central management or other appropriate level of management.

§ 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 to which the Agreement on Social Policy annexed to the Treaty establishing the European Community is applicable 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)), 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 (§ 35 (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*)¹ The relevant date for the commencement of the period referred to in the first sentence shall be prior to 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).

¹ "For the purpose of this Act the term 'employees' comprises wage-earners and salaried employees, including persons employed for the purpose of vocational training"

§ 5

Entitlement to information

- (1) Upon request, the central management shall provide employee representatives with information on the average total number of employees and their distribution between the Member States, undertakings and establishments as well as 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 for this purpose from the central management.

§ 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 4064/89 of 21 December 1989 on the control of concentrations between undertakings² (OJEC No L 395, p. 1).

² “A concentration shall not be deemed to arise where:

a) credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the sale of all part of that undertaking or of its assets or the sale of those securities and that any such sale takes place within one year of the date of acquisition; that period may be extended by the Commission on request where such institutions or companies justify the fact that the sale was not reasonably possible within the period set; (...)

c) the operations (direct or indirect acquisition) carried out by the financial holding companies (...), provided however that the voting rights in respect of the holding are exercised, in particular in relation to the appointment of members of the management and supervisory bodies of the undertakings in which they have holdings, only to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of those undertakings.”

§ 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 II

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) An employee representative from each Member State in which the undertaking or group of undertakings has an establishment shall be appointed to the special negotiating body.
- (2) An additional representative shall be appointed from each Member State with at least 25% of the employees of the undertaking or group of undertakings. Two additional representatives shall be appointed from Member States with at least 50% of the employees and three additional representatives from a Member State with at least 75% of the employees.
- (3) 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 Act³). 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

³ “(1) If there are two or more works councils in an undertaking, a central work council shall be formed.

(2) Each works council shall delegate to the central works council two of its members if it includes representatives of both categories of employees or one of its members if it consists of representatives of only one category. If two members are delegated, they shall not belong to the same group. If the works council has been elected in separate ballots pursuant to § 14 (2) and if each category is represented by more than one tenth of the members of the works council, but at least five members thereof, each category shall elect its own delegate; this shall also apply if the works council has been elected in a joint ballot pursuant to § 14 (2) and each category is represented by more than one third of the members of the works council. The first, second and third sentences shall apply, *mutatis mutandis*, to the removal of delegates.

(3) Works councils shall appoint at least one substitute for each member of the central works council and determine the sequence in which substitutes shall act as such; § 25 (3) shall apply *mutatis mutandis*. Subpara. (2) shall apply to the appointment of substitutes *mutatis mutandis*.

(4) A collective agreement or works agreement may provide for a different number of members of the central works council from that prescribed in the first sentence of (2).

(5) If pursuant to the first sentence of (2) the central wks council has more than forty members and if no arrangement has been made under a collective agreement pursuant to (4), the central works council and the employer shall conclude a works agreement on the number of members in the central works council stipulating that the works councils of two similar interests shall jointly delegate members to the central works council.

(6) If, where (5) applies, no agreement is reached, a ruling shall be given by a conciliation committee to be set up for the whole undertaking. The decision of the conciliation committee shall supersede an agreement between the employer and central work council.

(7) Each member of the central works council shall have as many votes as there are members of his category of employees with voting rights entered in the list of voters in the establishment in which he was elected. If the works council delegates only one member to the central works council, he shall have as many votes as there are employees with voting rights entered in the list of voters in the establishment.

(8) If a member of the central works council has been delegated to represent two or more establishments, he shall have as many votes as there are members of his category of employees with voting rights entered in the list of voters in the establishments which he has been delegated to represent. If two or more members of a work council have been delegated to represent a category of employees, the votes to which they are entitled pursuant to the first sentence of (7) shall be apportioned among them. The second sentence of (7) shall apply *mutatis mutandis*.”

(§ 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.

⁴ "(1) In a group (konzern) the individual central works councils may resolve to form a group works council (§ 18 of the Joint Stock Companies Act) The formation of a group works council shall require the approval of the central works councils of the group undertakings in which a total of at least 75% of the employees of the group of undertakings are employed.

(2) If there is only one works council in a group, it shall perform the tasks of a central works council pursuant to the provisions of this division".

⁵ " Unless this Act expressly provides otherwise it shall not apply to managerial staff who, by their status and under their contract of employment:

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 or full power of representation (Generalvollmacht) or power to sign (Prokura); or

3. normally carry out other duties that are of importance for the existence and development of the undertaking or establishment and the performance of which requires special experience and knowledge if, in doing so, they either take decisions substantially without instruction or have a major influence on such decisions; this may also be the case if there are certain pre-conditions such as provisions of law, fixed programmes or directives or if they are required to work as *ateam* with other managerial staff."

§ 12

Information concerning the members of the special negotiating body

The names of the members of the special negotiating body, 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.

§ 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 special negotiating body shall elect a chairperson from among its number and may adopt rules of procedure.
- (2) Before 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.

§ 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. the competence and tasks of the European Works Council and the procedure for informing and consulting it;
 4. venue, frequency and duration of meetings;
 5. the financial and material resources to be allocated to the European Works Council;
 6. clause concerning the adapting of the agreement to structural changes, the duration of the agreement and the procedure for its renegotiation, 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; it shall consist of a maximum of 30 members. Alternate members may be appointed.
- (2) An employer representative from each Member State in which the undertaking or group of undertakings has an establishment shall be appointed to the European Works Council.
- (3) Where the undertaking or group of undertakings has a total of up to 10 000 employees within the Member States, Member States with at least 20% of the employees shall be represented by an additional member. Member States with at least 30% of the employees shall be represented by two additional members, with at least 40% of the employees by three additional members, and with at least 50% of the employees by four additional members. A Member State with at least 60% of the employees shall be represented by five additional members, with at least 70% of the employees by six additional members, and with at least 80% of the employees by seven additional members.
- (4) If the undertaking or group of undertakings has a total of more than 10 000 employees within the Member States, Member States with at least 20% of the employees shall be represented by an additional member. Member States with at least 30% of the employees shall be represented by three additional members, with at least 40% of the employees by five additional members, with at least 50% of the employees by seven additional members. A Member State with at least 60% of the employees shall be represented by nine additional members, with at least 70% of the employees by eleven additional members, and with at least 80% of the employees by thirteen additional members.

§ 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 Act⁶). If there is only a works council, the latter shall appoint the members of the European Works Council.

⁶ “(1) If there are two or more works councils in an undertaking, a central work council shall be formed.

(2) Each works council shall delegate to the central works council two of its members if it includes representatives of both categories of employees or one of its members if it consists of representatives of only one category. If two members are delegated, they shall not belong to the same group. If the works council has been elected in separate ballots pursuant to § 14 (2) and if each category is represented by more than one tenth of the members of the works council, but at least five members thereof, each category shall elect its own delegate; this shall also apply if the works council has been elected in a joint ballot pursuant to § 14 (2) and each category is represented by more than one third of the members of the works council. The first, second and third sentences shall apply, *mutatis mutandis*, to the removal of delegates.

(3) Works councils shall appoint at least one substitute for each member of the central works council and determine the sequence in which substitutes shall act as such; § 25 (3) shall apply *mutatis mutandis*. Subpara. (2) shall apply to the appointment of substitutes *mutatis mutandis*.

(4) A collective agreement or works agreement may provide for a different number of members of the central works council from that prescribed in the first sentence of (2).

(5) If pursuant to the first sentence of (2) the central wks council has more than forty members and if no arrangement has been made under a collective agreement pursuant to (4), the central works council and the employer shall conclude a works agreement on the number of members in the central works council stipulating that the works councils of two similar interests shall jointly delegate members to the central 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) Men and women shall be appointed in proportion to their respective numbers.

(6) If, where (5) applies, no agreement is reached, a ruling shall be given by a conciliation committee to be set up for the whole undertaking. The decision of the conciliation committee shall supersede an agreement between the employer and central work council.

(7) Each member of the central works council shall have as many votes as there are members of his category of employees with voting rights entered in the list of voters in the establishment in which he was elected. If the works council delegates only one member to the central works council, he shall have as many votes as there are employees with voting rights entered in the list of voters in the establishment.

(8) If a member of the central works council has been delegated to represent two or more establishments, he shall have as many votes as there are members of his category of employees with voting rights entered in the list of voters in the establishments which he has been delegated to represent. If two or more members of a work council have been delegated to represent a category of employees, the votes to which they are entitled pursuant to the first sentence of (7) shall be apportioned among them. The second sentence of (7) shall apply *mutatis mutandis*.⁷

⁷“(1) In a group (konzern) (§ 18 of the Joint Stock Companies Act), the individual central works councils may resolve to form a combine works council. The formation of a combine works council shall require the approval of the central works councils of the group undertakings in which a total of at least 75% of the employees of the group of undertakings are employed.

(2) If there is only one works council in a group, it shall perform the tasks of a central works council pursuant to the provisions of this division”.

- (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) to (4). § 30 and 39 (2) 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

Rules of procedure 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.

⁸ “ Unless this Act expressly provides otherwise it shall not apply to managerial staff who, by their status and under their contract of employment:

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 or full power of representation (*Generalvollmacht*) or power to sign (*Prokura*); or
3. normally carry out other duties that are of importance for the existence and development of the undertaking or establishment and the performance of which requires special experience and knowledge if, in doing so, they either take decisions substantially without instruction or have a major influence on such decisions; this may also be the case if there are certain pre-conditions such as provisions of law, fixed programmes or directives or if they are required to work as *ateam* with other managerial staff.”

§ 26

Committee

- (1) Where the European Works Council comprises nine or more members, it shall establish a committee of three members, comprising the chairperson and two other members to be elected. The members of the Committee shall be employed in different Member States. The Committee shall conduct the ongoing business of the European Works Council.
- (2) A European Works Council with fewer than nine members may delegate the conduct of ongoing business to the chairperson or another member 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 § 32. The same shall apply in the case of information concerning extraordinary circumstances as provided for in § 33. 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 (1).

§ 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.

§ 29

Experts

The European Works Council and the Committee may be assisted by experts of their choice where this is necessary for them to carry out their tasks properly. Such experts may also be representatives of trade unions.

§ 30

Costs and operating expenditure

The costs arising from the establishment and operation of the European Works Council and the Committee (§ 26 (1)) shall be borne by the central management. Where experts are called in under § 29, the obligation to bear costs shall extend to only one expert. In particular, it shall provide the rooms, material resources and office staff necessary for the meetings and the conduct of ongoing business and shall, in addition, provide interpreters for meetings.

It shall bear the necessary travelling and accommodation costs of the members of the European Works Council and the Committee. § 16 (2) shall apply *mutatis mutandis*.

CHAPTER 3

Competence and rights of participation

§ 31

Cross-border matters

- (1) The European Works Council shall have competence in the matters referred to in § 32 and 33 where these concern at least two establishments or two undertakings in different Member States.
- (2) For undertakings and groups of undertakings within the meaning of § 2 (2), the European Works Council shall have competence only in those matters that relate to the territory of the Member States and at least two establishments or two undertakings in different Member States.

§ 32

Annual information and consultation

- (1) At least 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.

§ 33

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, 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 (1), 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 shall also be invited to meetings of the Committee; in this respect, they shall be deemed to be members of the Committee.

§ 34

“Tendenzunternehmen”

Only § 32 (2), items 5 to 10, and § 33 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.

§ 35

Information of local employee representatives

- (1) The European Works Council or the Committee (§ 33 (2)) shall report to the local employee representatives or, where there are no such representatives, the employees in the establishments or undertakings on the information and consultation procedure.
- (2) The member of the European Works Council or the Committee who reports to the local employee representatives in Germany shall, in establishments and undertakings where executives' committees exist, deliver this report to a joint meeting within the meaning of § 2(2) of the Executives' Committee Act¹⁰. This shall not apply where an employee designated under § 23 (6) has attended the meeting to inform and consult the European Works Council. If the report as referred to in paragraph (1) above is delivered only in writing, it shall also be forwarded to the competent executives' committee.

⁹ “The provisions of this Act shall not apply to undertakings and establishments which are formed directly and predominantly for:

1. political, religious, charitable, educational, scientific or artistic purposes or

2. the purpose of reporting or of expressing opinions to which the second sentence of Article 5 (1) of the Basic Law applies, if their application would not be in keeping with the specific nature of the undertaking or establishment.”

¹⁰ “the committee of spokesmen may give the works council the right to attend its meetings. The works council may give the committee of spokesmen or its members the right to attend works council meetings. A joint meeting of the works council and the committee of spokesmen shall be held once a year.”

CHAPTER 4

Change of composition, transition to an agreement

§ 36

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) to (4). 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.

§ 37

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

Principles of cooperation and protective provisions

§ 38

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.

§ 39

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 § 32 and § 33 (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 § 35 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).

§ 40

Protection of employee representatives in Germany

- (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*.
- (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.

¹¹ “(1) The post of member of a works council shall be honorary and unpaid.

(2) The members of a works council shall be released from their works duties without loss of pay if and as far as this is 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 undertaken outside working hours members of a works council shall be entitled to equivalent time off without loss of pay. Such time off shall be granted within one month; if it is not possible on operational grounds; the time thus spent shall be remunerated as if it were overtime.

(4) During his term of office and one year thereafter the remuneration of a member of a works council shall not be set at a lower rate than the remuneration of comparable employees who have advanced within the the establishment in the normal way. The same shall apply to general benefits granted by the employer.

(5) During his term of office and one year thereafter a member of a works council shall be employed only in work equivalent to that performed by the employees referred in (4) unless this is prevented by imperative operating requirements.”

¹² “Members of works councils, central works councils, combine works councils, youth and trainee delegations, central youth and trainee delegations, economic committees, ship’s committees, fleet works councils, bodies rrepresenting employees as referred in § 3 (1), 1 and 2, conciliation committees, arbitration committees set up under collective agreements (§ 76 (8)) and grievance committees (§ 86) shall not be disturbed or obstructed in the performance of their duties. They shall not experience discrimination or favour because of their activities; the same shall apply to their occupational advancement.”

¹³ “(1) The dismissal of members of a work council, youth and trainee delegation, ship’s committee, fleet works council or election committee or candidates for election shall require the approval of the works council.

(2) If a works council refuses to give its approval, a labour court may, if petitioned by the employer, give a ruling superseding the work’s council approval if, all things considered, the dismissal on exceptional grounds is justified. The employee concerned shall be a party to the proceedings before the labour court.”

¹⁴ “ (1) A member of a work council, a youth and trainee delegation, a ship’s committee or a fleet works council shall not be dismissed unless circumstances entitle the employer to order the dismissal for an important reason without notice and unless the approval required under § 103 of the Works Constitution Act has been given or has been replaced with a judicial decision. On the completion of this term of office a member of a work council, a youth and trainee delegation or a fleet works council shall not be dismissed for six mounths, calculated in each case from the end of the term of office, unless circumstances entitle the employer to order the dismissal for an important reason without notice; this shall not apply where the termination of membership is based on a judicial decision.

(3) A member of an election committee shall not be dismissed from the time of his appointment and a candidate shall not be dismissed from the time of his nomination until the election result is announced unless circumstances entitle the employer to order the dismissal for an important reason without notice and unless the approval required under § 103 of the Works Constitution Act or the legislation concerning staff representation has been given or has been replaced with a judicial decision. Such persons shall not be dismissed for six mounths after the election result is announced unless circumstances entitle the employer to order the dismissal for an important reason without notice; this shall not apply to members of an election committee which has been replaced with another election committee by judicial decision.

(4) If an establishment is closed down, the persons referred to in (1) to (3) shall not be dismissed before the time of the closure unless earlier dismissal is necessited by imperative operating requirements.

(5) Where one of the persons referred to in (1) to (3) is employed in a department which is closed down, he shall be transferred to another department of the establishment. If this is prevented by operational factors, the provision of (4) concerning dismissals in the event of the closure of establishments shall apply to the dismissal *mutatis mutandis*.”

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 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 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.
- (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*.

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 § 39 (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 § 39 (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 provide information, provides incorrect or incomplete information or does not provide information in good time, or
 2. in breach of § 32 (1) or § 33 (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 (1).
- (2) Such an administrative offence may be punished by a fine of up to DM 30 000.

ARTICLE 2

AMENDMENT OF THE LABOUR COURTS ACT

The Labour Courts Act in the version of the notification of 2 July 1979 (Federal Law Gazette, p. 853, 1036), as last amended by the Law of 28 October 1996 (Federal Law Gazette, p. 1546) is hereby amended as follows:

- (1) In § 2a (1), a new paragraph 3b is inserted after paragraph 3a to read as follows:

"3b. Matters arising from the Act on European Works Councils, except where another court is competent in respect of the measures provided for in its § 43 to 45;"

- (2) § 10 is amended to read as follows:

a) The reference "3a" is replaced by the reference "3b".

b) After the word "*Rechtsverordnungen*" ('regulations') the phrase "*sowie dem Gesetz über Europäische Betriebsräte*" ('and the Act on European Works Councils') is inserted.

- (3) In § 82, the following fourth and fifth sentences are inserted after the third sentence:

"The Labour Court in whose district the undertaking or the controlling undertaking in accordance with § 2 of the Act on European Works Councils is resident has competence in matters relating to a European Works Council, an information and consultation procedure or a special negotiating body. In the case of an agreement under § 41 of the Act on European Works Councils, the residence of the undertaking concluding the agreement shall prevail."

- (4) In § 83 (3), the phrase "*sowie dem Gesetz über Europäische Betriebsräte*" ('and the Act on European Works Councils') is inserted after the word "*Rechtsverordnungen*" ('regulations').

ARTICLE 3

ENTRY INTO FORCE

This law shall enter into force on the day after its promulgation.