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Act on European Works Councils*) (European Works Councils Act - EBRG)

EBRG

Date Issued: 10/28/1996 Full Citation:

"European Works Councils Act in the version published on 7 December 2011 (Federal Law Gazette I p. 2650), as last amended by Article 10 of the Act of 20 May 2020 (Federal Law Gazette I p. 1044)."

Status: Revised by Dec. 7, 2011 I 2650;
last amended by Art. 10 G v. 20.5.2020 I 1044

Indirect change by Art. 4 No. 1 and 2 G v. 3.12.2020 I 2691 is taken into account

*)This Act transposes Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 122, 16.5.2009, p. 28).

Footnote

(+++ Text reference as of: 1.11.1996 +++)

(+++ Official references of the standard setter to EC law:

Transposition of the

EC Directive 38/2009 (CELEX No: 32009L0038) cf. Decree of 7.12.2011 I 2650 +++)

The Act was passed by the Bundestag as Article 1 of the Act of 28.10.1996 I 1548 (EBRGEG). G v. 28.10.1996 I 1548 (EBRGEG) by the Bundestag and entered into force on 1.11.1996 pursuant to Art. 3 of this Act.

Part One General provisions

§ 1 Cross-border information and consultation

(1) In order to strengthen the right to transnational information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings, European Works Councils or procedures for informing and consulting employees shall be agreed. In the absence of an agreement, a European Works Council shall be established by operation of law.

(2) The European Works Council shall have competence in matters concerning the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two establishments or two undertakings situated in different Member States. In the case of undertakings and groups of undertakings in accordance with section 2(2), the European Works Council shall be competent only in matters which extend to the territory of the Member States, unless a wider scope is agreed.

(3) Transnational information and consultation of employees shall extend, in an undertaking, to all establishments situated in a Member State and, in a group of undertakings, to all undertakings which have their registered office in a Member State, unless a wider scope is agreed.

(4) For the purposes of this Act, information means the communication of information by central management or any other appropriate level of management to the employees' representatives in order to give them an opportunity to for information and consideration of the matter under consideration. The information shall be given at a time, in a manner and with a content appropriate to the purpose and enabling the employees' representatives to assess the possible effects in detail and to

prepare, where appropriate, consultations with the competent body of the Community-scale undertaking or
Community-scale group of undertakings.

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(5) Consultation within the meaning of this Law means the exchange of views and the establishment of a dialogue between the employees' representatives and the central management or another appropriate level of management at a time, in a manner and with a content which, on the basis of the information received, enables the employees' representatives to express an opinion within a reasonable period of time on the proposed measures which are the subject of the consultation, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings. The consultation must allow the employees' representatives to meet the central management and to receive a reasoned reply to any opinion they may express.

(6) For the purposes of this Act, central management means a Community-scale undertaking or the controlling undertaking of a Community-scale group of undertakings.

(7) Information and consultation of the European Works Council shall take place at the latest at the same time as that of the national employee representative bodies.

§ 2 Scope of application

(1) This Act shall apply to Community-scale undertakings which have their head office in the national territory and to Community-scale groups of undertakings in which the controlling undertaking has its head office in the national territory.

(2) Where the central management is not situated in a Member State but there is a subordinate management for establishments or undertakings situated in Member States, this Act shall apply if the subordinate management is situated within the country. Where there is no subordinate management, the law applies if the central management designates an establishment or undertaking situated within the country as its representative. If no representative the law shall apply if the establishment or undertaking is situated in the country which employs the greatest number of employees compared with other establishments of the undertaking or group of undertakings situated in the Member States. The aforementioned bodies shall be deemed to be the central management.

(3) Member States within the meaning of this Act are the Member States of the European Union and the other Contracting States to the Agreement on the European Economic Area.

(4) For the calculation of the number of employees employed in Germany (section 4), the right to information (section 5 (2) and (3)), the determination of the controlling enterprise (section 6), the forwarding of the application (section 9 (2) sentence 3), the joint and several liability of the employer (section 16 (2)), the appointment of the employee representatives attributable to Germany (sections 11, 23 (1) to (5) and section 18 (2) in connection with section 23) and the protective provisions applicable to them (section 40) as well as to the report to the local employee representative bodies in Germany (section 36, subsection 2), this Act shall also apply if the central management is not located in Germany.

§ 3 Community-wide activity

(1) An undertaking has Community-wide activities if it employs 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 deemed to operate throughout the Community if it employs at least 1 000 employees in the Member States and comprises at least two undertakings each employing at least 150 employees in different Member States and each having its registered office in a different Member State.

§ 4 Calculation of the number of employees

In establishments and undertakings in Germany, the number of employees to be taken into account within the framework of section 3 shall be calculated on the basis of the average number of employees within the meaning of section 5 subs. 1 of the Works Constitution Act employed during the last two years. The point in time at which the central management takes the initiative for the formation of the special negotiating body or at which the central management receives an application from the employees or their representatives meeting the requirements of section 9 subs. 2 shall be decisive for the commencement of the period pursuant to sentence 1.

§ 5 Right to information

(1) Central management shall, at the request of an employees' representative body, collect and forward to the employees' representative body the information necessary for the opening of negotiations on the establishment of a European Works Council. The information required shall include, in particular, the average total number of employees and their distribution among the Member States, undertakings and establishments and on the structure of the undertaking or group of undertakings.

(2) A works council or a central works council may assert the claim referred to in paragraph 1 against the local management or the management of the undertaking; the latter shall be obliged to obtain the necessary information and documents from the central management.

(3) Each management of an undertaking in a Community-scale group of undertakings and the central management shall be required to collect and make available the information referred to in paragraph 1.

§ 6 Dominating company

(1) An undertaking belonging to a Community-scale group of undertakings is a controlling undertaking if it can directly or indirectly exercise a dominant influence over another undertaking belonging to the same group (a controlled undertaking).

(2) A dominant influence is presumed when an undertaking, directly or indirectly, in relation to another undertaking

1. can appoint more than half of the members of the administrative, management or supervisory body of the other undertaking, or
2. holds a majority of the voting rights attached to the shares in the other undertaking, or
3. owns the majority of the subscribed capital of that undertaking.

If several enterprises meet one of the criteria set out in sentence 1, numbers 1 to 3, the controlling enterprise shall be determined in accordance with the order of precedence set out therein.

(3) For the purposes of applying paragraph 2, the voting and appointment rights of an undertaking must be added to the rights of any undertaking controlled by it and of any natural or legal person acting in his own name but on behalf of the undertaking or any undertaking controlled by it.

(4) Investment and holding companies within the meaning of Article 3(5)(a) or (c) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of Concentrations (OJ L 24, 29.1.2004, p. 1) shall not be considered as controlling undertakings in relation to another undertaking in which they hold shares but in the management of which they do not participate.

§ 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 in the controlling undertaking, unless otherwise agreed.

Part Two Special negotiating body

§ 8 Task

(1) The special negotiating body has the task of concluding an agreement with central management on cross-border information and consultation of employees.

(2) The central management shall provide the special negotiating body in good time with all the information and documents necessary for the performance of its tasks.

(3) The central management and the special negotiating body shall cooperate in a spirit of trust. The timing, frequency and location of negotiations shall be mutually agreed between the central management and the special negotiating body.

§ 9 Education

(1) The formation of the special negotiating body shall be requested in writing by the employees or their representatives to the central management or shall be at the initiative of the central management.

(2) The application shall be valid if it is signed by at least 100 employees or their representatives from at least two establishments or undertakings situated in different Member States and if it is received by the central management. Where several applications are made, the signatures shall be added together. Where an application is lodged with a management of an establishment or undertaking situated in the territory of a Member State, the latter shall immediately forward the application to the central management and inform the applicants accordingly.

(3) The central management shall inform the applicants, the local management of the establishment or undertaking, the employee representative bodies existing there and the trade unions represented in domestic establishments of the formation of a special negotiating body and its composition.

§ 10 Composition

(1) For each proportion of employees employed in a Member State which is equal to or a fraction of 10 % of the total number of employees employed in all Member States by Community-scale undertakings or Community-scale groups of undertakings, one member from that Member State shall be appointed to the special negotiating body.

(2) Substitute members may be appointed.

§ 11 Appointment of domestic employee representatives

(1) The members of the special negotiating body apportioned to the employees employed in Germany in accordance with this Act or the law of another member state shall be appointed by the central works council (section 47 of the Works Constitution Act) in Community-scale undertakings. If there is only one works council, it shall appoint the members of the special negotiating body.

(2) The members of the special negotiating body referred to in the first sentence of paragraph 1 shall be appointed in Community-scale groups of undertakings by the group works council (section 54 of the Works Constitution Act) shall be appointed. If, in addition to the Group Works Council, there is a General Works Council or Works Council not represented therein, the Group Works Council shall be extended by their chairpersons and their deputies; the chairpersons and their deputies shall be deemed to be members of the Group Works Council in this respect.

(3) If there is no Group Works Council, the members of the Special Negotiating Body referred to in the first sentence of paragraph 1 shall be appointed as follows:

- a) If there are several central works councils, the members of the special negotiating body shall be appointed at a joint meeting of the central works councils to which the
The chairman of the central works council of the largest domestic company in terms of the number of employees entitled to vote shall be invited to the meeting. If, in addition, there is at least one works council not represented in the central works councils, the chairman of the works council and his deputy shall be invited to this meeting; to this extent, 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 in it, the central works council shall be extended to include the chairman of the works council and his deputy; the chairman of the works council and his deputy shall be deemed to be members of the central works council in this respect. 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 to which the chairman of the works council of the largest domestic establishment in terms of the number of employees entitled to vote shall issue an invitation. The chairmen of the works councils and their deputies shall be entitled to attend this meeting; section 47 (7) of the Works Constitution Act shall apply mutatis mutandis.
- d) If there is only one works council, it must appoint the members of the special negotiating body.

(4) The employees referred to in section 5(3) of the Works Constitution Act may also be appointed as members of the special negotiating body.

(5) Women and men shall be appointed in proportion to their numbers.

§ 12 Information on the members of the special negotiating body

The central management shall be informed without delay of the names of the members of the special negotiating body, their addresses and the length of service in each case. The central management shall inform the local management of the establishment or enterprise, the employee representative bodies existing there and the trade unions represented in domestic establishments of this information.

§ 13 Meetings, Rules of Procedure, Experts

(1) The central management shall issue invitations to the constituent meeting of the special negotiating body immediately after the members have been appointed and shall inform the local management. The central management shall at the same time inform the competent European trade unions and employers' associations of the commencement of negotiations and the composition of the special negotiating body in accordance with section 12, first sentence. The special negotiating body shall elect a chairperson from among its members and may adopt its own rules of procedure.

(2) Before and after each negotiation with the central management, the special negotiating body shall have the right to hold and invite to a meeting; section 8(3) sentence 2 shall apply mutatis mutandis.

(3) Decisions of the special negotiating body shall be taken by a majority of the votes of its members, except as otherwise provided in this Act.

(4) The special negotiating body may be assisted by experts of its choice to the extent necessary for the proper performance of its functions. Experts may also be representatives of trade unions. The experts and trade union representatives may, at the request of the special negotiating body, participate in the negotiations in an advisory capacity.

§ 14 Involvement of employee representatives from third countries

If the central management and the special negotiating body agree to extend the agreement to be negotiated in accordance with section 17 to establishments or undertakings which are not situated in a Member State (third country), they may agree to include employee representatives from these countries in the special negotiating body and to determine the number of members attributable to the respective third country and their legal status.

§ 15 Decision on the termination of the 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 them. The decision and the result of the vote shall be recorded in minutes to be signed by the chairperson and one other member. A copy of the minutes shall be forwarded to the central management.

(2) A new request for the establishment of a special negotiating body (§ 9) may be made no earlier than two years after the decision referred to in paragraph 1, unless the special negotiating body and the central management specify a shorter period in writing.

§ 16 Costs and material expenses

(1) The costs arising from the formation and activities of the special negotiating body shall be borne by the central management. If experts are consulted in accordance with section 13(4), the costs shall be limited to obligation to bear the costs to an expert. The central management shall provide the necessary rooms, equipment, interpreters and office staff for the meetings and shall bear the necessary travel and subsistence expenses of the members of the special negotiating body.

(2) The employer of a member of the special negotiating body seconded from within the country shall be jointly and severally liable with the central management for the latter's claim for reimbursement of expenses.

Part Three

Cross-border information and consultation arrangements

§ 17 Design freedom

The central management and the special negotiating body shall be free to agree on the arrangements for the transnational information and consultation of employees and shall not be bound by the provisions of Part Four of this Act. The agreement must cover all employees employed in the Member States in which the undertaking or the group of undertakings has an establishment. The parties shall agree whether the cross-border information and consultation is to take place through the establishment of a European Works Council or several European Works Councils in accordance with section 18 or through a procedure for the information and consultation of employees in accordance with section 19.

18 European Works Council by agreement

(1) If a European Works Council is to be established, it must be agreed in writing how it is to be structured. In particular, the following shall be regulated:

1. Designation of establishments and undertakings covered, including establishments situated outside the territory of the Member States if they are included in the scope,
2. Composition of the European Works Council, number of members, substitute members, allocation of seats and term of office,
3. the tasks and powers of the European Works Council and the procedure for informing and consulting it; this procedure may be coordinated with the participation rights of national employee representation bodies, provided that their rights are not affected thereby,
4. Location, frequency and duration of meetings,
5. the establishment of a European Works Council Committee, including its composition, the appointment of its members, its powers and working methods,
6. the financial and material resources to be made available to the European Works Council,
7. clause adapting the agreement to structural changes, the duration of the agreement and the procedure to be followed in the event of its renegotiation, amendment or termination, including a transitional arrangement.

(2) Section 23 shall apply accordingly.

§ 19 Information and consultation procedure

If a procedure for informing and consulting employees is to be introduced, it must be agreed in writing under which conditions the employees' representatives have the right to jointly discuss the information provided to them and how they can express their proposals or concerns with the central management or another appropriate level of management. The information must in particular cover cross-border matters which have a significant impact on employees' interests.

§ 20 Transitional provision

An agreement existing in accordance with section 18 or section 19 shall continue to apply if the right of petition or initiative in accordance with section 9(1) has been exercised prior to its termination. The right of petition may also be exercised by an employee representative body existing on the basis of an agreement. It shall cease to apply if the agreement has been replaced by a new agreement or a European Works Council has been established by operation of law. Continuity of application shall also cease if the special negotiating body adopts a resolution in accordance with

Section 15(1); Section 15(2) shall apply mutatis mutandis. Sentences 1 to 4 shall not apply if a transitional arrangement is contained in the existing agreement.

Part Four

European Works Council by operation of law

First section

Establishment of the European Works Council

§ 21 Prerequisites

(1) If the central management refuses to enter into negotiations within six months of the application being made (section 9), a European Works Council shall be established in accordance with sections 22 and 23. The same shall apply if no agreement is reached under section 18 or section 19 within three years of the application being made or if the central management and the special negotiating body declare the premature failure of the negotiations. Sentences 1 and 2 shall apply mutatis mutandis if the special negotiating body is established on the initiative of the central management.

(2) A European Works Council shall not be established if the special negotiating body takes a decision in accordance with section 15(1) before the expiry of the periods referred to in subsection (1).

§ 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. Substitute members may be appointed.

(2) For each proportion of employees employed in a Member State which is equal to 10 per cent of the total number of employees employed in all Member States by Community-scale undertakings or Community-scale groups of undertakings, or a fraction thereof, one member from that Member State shall be appointed to the European Works Council.

Section 23 Appointment of domestic employee representatives

(1) The members of the European Works Council apportioned to the employees employed in Germany in accordance with this Act or the law of another member state shall be appointed by the central works council (section 47 of the Works Constitution Act) in Community-scale undertakings. If there is only one works council, it shall appoint the members of the European Works Council.

(2) The members of the European Works Council referred to in subsection 1 sentence 1 shall be appointed by the group works council (section 54 of the Works Constitution Act) in Community-wide operating groups of undertakings. If, in addition to the group works council, there is a central works council or works council not represented in it, the group works council shall be expanded to include their chairpersons and their deputies; the chairpersons and their deputies shall be deemed to be group works council members to this extent.

(3) If there is no Group Works Council, the members of the European Works Council referred to in the first sentence of paragraph 1 shall be appointed as follows:

- a) If several central works councils exist, the members of the European Works Council shall be appointed at a joint meeting of the central works councils, to which the chairman of the central works council of the largest domestic undertaking in terms of the number of employees entitled to vote shall invite. If, in addition, there is at least one works council not represented in the central works councils, the chairman of the works council and his deputy shall be invited to this meeting; to this extent, 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 in it, the central works council shall be extended to include the chairman of the works council and his deputy; the chairman of the works council and his deputy shall be deemed to be members of the central works council in this respect. 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 are several works councils, the members of the European Works Council shall be appointed at a joint meeting to which the chairman of the works council of the largest domestic establishment in terms of the number of employees entitled to vote shall issue an invitation. The chairmen of the works councils and their deputies shall be entitled to attend this meeting; section 47 (7) of the Works Constitution Act shall apply mutatis mutandis.
- d) If there is only one works council, it shall appoint the members of the European Works Council.

(4) Paragraphs 1 to 3 shall apply mutatis mutandis to dismissal.

(5) A balanced representation of employees according to their activity should be taken into account as far as possible; women and men should be appointed in proportion to their numbers.

(6) The competent spokesperson committee of a Community-scale undertaking or a Community-scale group of undertakings with its central management based in Germany may designate one of the employees referred to in section 5(3) of the Works Constitution Act to participate with speaking rights in the meetings for the purpose of informing and consulting the European Works Council, provided that at least five domestic representatives are delegated in accordance with section 22 (2). Section 35 (2) and Section 39 shall apply accordingly.

§ 24 Information on the members of the European Works Council

The central management shall be informed without delay of the names of the members of the European Works Council, their addresses and their length of service. The central management shall inform the local management of the establishment or undertaking, the employee representative bodies existing there and the trade unions represented in domestic establishments of this information.

Second section

Management of the European Works Council

25 Constituent meeting, Chairman

(1) The central management shall invite to the constituent meeting of the European Works Council immediately after the members have been appointed. The European Works Council shall elect a Chairman and Deputy Chairman from among its members.

(2) The Chairman of the European Works Council or, if he is prevented, his deputy shall represent the European Works Council within the framework of the resolutions adopted by it. The Chairman or, if he is prevented, the Deputy Chairman shall be entitled to receive declarations to be made to the European Works Council.

§ 26 Committee

The European Works Council shall form a committee from among its members. The committee shall consist of the chairperson and at least two, at most four further committee members to be elected. The other committee members shall be employed in different member states. The committee shall manage the day-to-day business of the European Works Council.

§ 27 Meetings

(1) The European Works Council shall have the right to hold and invite a meeting in connection with the information provided by the central management in accordance with § 29. The same shall apply in the case of a briefing on exceptional circumstances in accordance with § 30. The time and place of the meetings shall be agreed with the central management. With the agreement of the central management, the European Works Council may hold further meetings. The meetings of the European Works Council are not public.

(2) Paragraph 1 shall apply mutatis mutandis to the exercise of the European Works Council's participation rights by the committee pursuant to section 26.

§ 28 Resolutions, Rules of Procedure

The decisions of the European Works Council shall be taken by a majority of the votes of the members present, unless otherwise provided for in this law. Other provisions concerning the conduct of business shall be laid down in written rules of procedure which the European Works Council shall adopt by a majority of the votes of its members.

Section Three

Rights of Participation

Section 29 Annual information and consultation

(1) The central management shall inform and consult the European Works Council once every calendar year on the development of the business and the prospects of the Community-scale undertaking or Community-scale group of undertakings, providing the necessary documentation in good time.

- (2) The development of the business situation and prospects referred to in paragraph 1 shall include in particular
1. the structure of the undertaking or group of undertakings and its economic and financial situation,
 2. the expected development of the business, production and sales situation,
 3. the employment situation and its probable development,
 4. Investments (investment programmes),
 5. fundamental changes to the organisation,
 6. the introduction of new working and production methods,
 7. the relocation of undertakings, establishments or important parts of undertakings, as well as the relocation of production,
 8. mergers or divisions of undertakings or establishments,
 9. the reduction or closure of undertakings, establishments or important parts thereof,
 10. Mass layoffs.

Section 30 Information and consultation

(1) The central management shall inform the European Works Council in good time of any exceptional circumstances or decisions which have a significant impact on the interests of the employees, submitting the necessary documents and to be heard upon request. Exceptional circumstances shall be deemed to include in particular

1. the relocation of undertakings, establishments or important parts of establishments,
2. the closure of undertakings, establishments or important parts of establishments,
3. Mass layoffs.

(2) If a committee exists in accordance with section 26, it shall be involved instead of the European Works Council in accordance with subsection 1 sentence 1. Section 27 (1) sentences 2 to 5 shall apply accordingly. Those members of the European Works Council who have been appointed for the establishments or undertakings directly affected by the planned measures or decisions shall also be invited to the meetings of the committee; to this extent, they shall be deemed members of the committee.

§ 31 Tendency company

In the case of undertakings and controlling undertakings of groups of undertakings which directly and predominantly serve the provisions or purposes referred to in section 118(1), first sentence, numbers 1 and 2 of the Works Constitution Act, only section 29(2), numbers 5 to 10, and section 30 shall apply, subject to the proviso that information and consultation need only be provided on the compensation or mitigation of economic disadvantages suffered by employees as a result of the changes in the undertaking or business.

Section Four

Change of composition, transition to an agreement

§ 32 Duration of membership, new appointment of members

(1) The duration of membership in the European Works Council shall be four years, unless it ends prematurely by dismissal or for other reasons. Membership shall commence upon appointment.

(2) Every two years, starting from the date of the constituent meeting of the European Works Council (section 25 (1)), the central management shall examine whether the number of employees in the individual member states has changed in such a way that a different composition of the European Works Council pursuant to section 22, paragraph 2. It shall inform the European Works Council of the result. If a different composition of the European Works Council is then required, the latter shall arrange with the competent bodies for the members of the European Works Council to be newly appointed in the Member States in which the number of employee representatives differs from the previous period; upon the new appointment, the membership of the members previously from these Member States shall end.

employee representatives on the European Works Council. Sentences 1 to 3 shall apply mutatis mutandis if a member state not previously represented on the European Works Council is taken into account.

§ 33 Opening of negotiations

Four years after the constituent meeting (section 25, subsection 1), the European Works Council shall pass a resolution by a majority of its members' votes on whether to negotiate an agreement with central management in accordance with section 17. If the European Works Council decides to include negotiations, it shall have the rights and duties of the special negotiating body; sections 8, 13, 14 and 15(1) and sections 16 to 19 shall apply mutatis mutandis. The office of the European Works Council shall end when an agreement has been concluded in accordance with section 17.

Part Five Common provisions

§ 34 Cooperation based on trust

Central management and the European Works Council shall cooperate in a spirit of trust for the benefit of the employees and the undertaking or group of undertakings. Sentence 1 shall apply mutatis mutandis to the cooperation between central management and employees' representatives within the framework of an information and consultation procedure.

§ 35 Secrecy, Confidentiality

(1) The duty of the central management to inform about matters agreed within the framework of §§ 18 and 19 or matters resulting from §§ 29 and 30 (1) shall only exist insofar as this does not jeopardise company or business secrets of the company or the group of companies.

(2) The members and substitute members of a European Works Council are obliged not to disclose and not to exploit any trade or business secrets which have become known to them due to their membership in the European Works Council and which have been expressly designated by the central management as requiring secrecy. This shall also apply after leaving the European Works Council. The obligation does not apply to members of a European Works Council. Furthermore, it shall not apply vis-à-vis the local employee representatives of the establishments or undertakings if they are to be informed of the content of the information and the results of the hearings on the basis of an agreement in accordance with Section 18 or in accordance with Section 36, vis-à-vis the employee representatives on the Supervisory Board and vis-à-vis interpreters and experts called in to assist.

(3) The duty of confidentiality pursuant to paragraph 2 sentences 1 and 2 shall apply mutatis mutandis to

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

(4) The exceptions to the duty of confidentiality pursuant to paragraph 2, sentences 3 and 4 shall apply mutatis mutandis to

1. the special negotiating body vis-à-vis experts and interpreters,
2. the employee representatives in the context of a procedure for information and consultation vis-à-vis interpreters and experts called in to assist in accordance with the agreement and vis-à-vis local employee representatives, insofar as the latter are to be informed of the content of the information and the results of the consultations in accordance with the agreement (Section 19).

Section 36 Information of the local employee representatives

(1) The European Works Council or the Committee (section 30(2)) shall report on the information and consultation to the local employee representatives or, where there are none, to the employees of the establishments or undertakings.

(2) The member of the European Works Council or of the committee reporting to the local employee representative bodies in Germany shall submit the report at a joint meeting within the meaning of section 2(2) of the Spokespersons' Committee Act in establishments or undertakings where spokespersons' committees of senior employees exist. This shall not apply if a committee determined in accordance with section 23, paragraph 6.

employee has participated in the information and consultation meeting of the European Works Council. If the report referred to in paragraph 1 is only made in writing, it shall also be forwarded to the competent committee of spokespersons.

§ 37 Significant structural change

(1) If the structure of the Community-scale undertaking or the Community-scale group of undertakings changes significantly and there are no provisions to this effect in existing agreements or if these contradict each other, the central management shall, on its own initiative or at the request of the employees or their representatives (section 9(1)), initiate negotiations on an agreement in accordance with section 18 or section 19. Material structural changes within the meaning of sentence 1 shall be deemed to include in particular

1. Merger of undertakings or groups of undertakings,
2. Splitting of companies or the group of companies,
3. transfer of undertakings or the group of undertakings to another Member State or third country or closure of undertakings or the group of undertakings,
4. the transfer or closure of establishments in so far as they may affect the composition of the European Works Council.

(2) By way of derogation from § 10, each European Works Council affected by the structural change shall delegate three further members from among its members to the special negotiating body.

(3) For the duration of the negotiation, each European Works Council affected by the structural change shall remain in office until the establishment of a new European Works Council (transitional mandate). It may be agreed with the central management according to which provisions and in which composition the transitional mandate shall be exercised. If no agreement is reached with the central management pursuant to sentence 2, the transitional mandate shall be exercised by the respective European Works Council in accordance with the provisions applicable to it in the enterprise or group of enterprises. The transitional mandate shall also end if the special negotiating body adopts a resolution in accordance with section 15 (1).

(4) If no agreement is reached in accordance with section 18 or section 19, a European Works Council shall be established in accordance with sections 22 and 23 in the cases referred to in section 21(1).

§ 38 Continuing education

(1) The European Works Council may designate members to participate in training and educational events insofar as these impart knowledge which is necessary for the work of the European Works Council. The European Works Council shall inform the central management in due time of the participation and the time schedule. Operational necessities shall be taken into account when determining the time schedule. The European Works Council may transfer the tasks under this paragraph to the committee pursuant to Section 26.

(2) Paragraph 1 sentences 1 to 3 shall apply mutatis mutandis to the special negotiating body and its members.

§ 39 Costs, material expenses and experts

(1) The costs arising from the formation and operation of the European Works Council and the Committee shall be borne by the central management. In particular, the central management shall provide the necessary rooms, material resources and office staff for the meetings and the day-to-day management, and interpreters for the meetings. It shall bear the necessary travel and accommodation expenses of the members of the European Works Council and the Committee. Section 16 paragraph 2 shall apply accordingly.

(2) The European Works Council and the Committee may be assisted by experts of their choice to the extent necessary for the proper performance of their duties. Experts may also be representatives of trade unions. If experts are called in, the obligation to bear the costs shall be limited to one expert, unless an agreement according to § 18 or § 19 provides otherwise.

§ 40 Protection of domestic employee representatives

(1) Sections 37 (1) to (5) and sections 78 and 103 of the Works Constitution Act and section 15 (1) and (3) to (5) of the

Dismissal Protection Act accordingly. Section 37 (6) sentences 1 and 2 of the Works Constitution Act shall apply mutatis mutandis to further training required under section 38.

(2) Paragraph 1 shall apply mutatis mutandis to the members of the special negotiating body and to the employees' representatives in an information and consultation procedure.

Part Six

Existing agreements

§ 41 Continued validity

(1) In respect of the undertakings and groups of undertakings referred to in §§ 2 and 3 in which a transnational information and consultation agreement is in existence before 22 September 1996, the provisions of this Act shall not apply, except in the cases referred to in § 37, as long as the agreement is effective. The agreement shall cover all employees employed in the Member States and shall enable employees from those Member States in which the undertaking or group of undertakings has an establishment to participate appropriately in the information and consultation.

(2) The application of paragraph 1 shall not be precluded by the fact that the agreement has been concluded on the part of the employees by only one employee representative body provided for in the Works Constitution Act. The same shall apply if several agreements have been concluded for an undertaking or a group of undertakings instead of one agreement.

(3) If the requirements of subsection (1) are not met because the agreement existing on the reference date referred to in the first sentence of subsection (1) does not cover all employees, the parties may subsequently include them within a period of six months.

(4) Existing agreements may also be adapted to changes in the structure of the enterprise or group of enterprises and the number of employees after the cut-off date specified in the first sentence of subsection (1) above, provided that such changes do not constitute material structural changes within the meaning of section 37.

(5) Where an agreement has been concluded for a limited period, the parties may decide on its continuation, taking into account paragraphs 1, 3 and 4.

(6) An agreement shall continue to apply if the right of request or initiative under section 9(1) has been exercised prior to its termination. The right of application may also be exercised by an employee representation body existing on the basis of the agreement. The agreement shall cease to apply if it has been replaced by transnational information and consultation pursuant to section 18 or section 19 or if a European Works Council has been established by operation of law. The agreement shall also cease to apply if the special negotiating body adopts a resolution in accordance with section 15(1); section 15(2) shall apply mutatis mutandis.

(7) The provisions of this Act shall apply to undertakings and groups of undertakings which, by reason of the taking into account of establishments and undertakings situated in the United Kingdom of Great Britain and Northern Ireland, for the first time fulfil the conditions laid down in sections 2 and 3, except in cases of § 37 shall not apply if an agreement on cross-border information and consultation exists in these enterprises and enterprise groups before 15 December 1999. Paragraphs 1 to 6 shall apply mutatis mutandis.

(8) The provisions of this Act in the version of 28 October 1996 (Federal Law Gazette I p. 1548, 2022), as last amended by Article 30 of the Act on Information and Consultation, shall apply to the undertakings and groups of undertakings referred to in §§ 2 and 3 in which an agreement on cross-border information and consultation was signed or revised between 5 June 2009 and 5 June 2011, except in the cases referred to in § 37. of 21 December 2000 (Federal Law Gazette I p. 1983). If an agreement pursuant to sentence 1 has been concluded for a limited period, the parties may decide that it shall continue to apply for as long as the agreement is effective; subsection (4) shall apply mutatis mutandis.

Part Seven

Special provisions, penalties and fines

§ 41a Special regulations for crew members of seagoing vessels

(1) If a member of the special negotiating body, of a European Works Council or of an employee representation within the meaning of § 19 or his deputy is a crew member of a seagoing ship, the meetings shall be scheduled in such a way as to facilitate the participation of the crew member.

(2) Where a crew member is at sea or in a port situated in a country other than that in which the shipping company has its place of business and is therefore unable to attend a meeting as referred to in paragraph 1, participation in the meeting may be effected by means of new information and communication technologies if

1. this is provided for in the rules of procedure of the competent body, and
2. it is ensured that third parties cannot take note of the content of the meeting.

§ 42 Establishment and activity protection

No one may

1. obstruct the formation of the special negotiating body (section 9) or the establishment of a European Works Council (sections 18, 21(1)) or the introduction of a procedure for information and consultation (section 19), or influence such a procedure by inflicting or threatening disadvantages or by granting or promising advantages,
2. hinder or interfere with the activities of the special negotiating body, a European Works Council or the employees' representatives in an information and consultation procedure, or
3. discriminate against or favour a member or substitute member of the special negotiating body or of a European Works Council or an employees' representative for the purposes of an information and consultation procedure.

Section 43 Penal provisions

(1) A custodial sentence not exceeding two years or a monetary penalty shall be imposed on anyone who exploits a trade or business secret in contravention of section 35(2), first or second sentence, in each case also in conjunction with subsection (3).

(2) The offence shall be prosecuted only on complaint.

§ 44 Penal provisions

(1) A custodial sentence not exceeding one year or a monetary penalty shall be imposed on anyone who

1. discloses a trade or business secret in contravention of section 35, paragraph 2, sentence 1 or 2, in each case also in conjunction with paragraph 3, or
2. contravenes any provision of section 42 relating to the establishment of the bodies referred to therein or the institution of the procedure referred to therein, the activities of the bodies referred to therein or of the employees' representatives or to the discrimination or favouring of a member or substitute member of the bodies referred to therein or of an employees' representative.

(2) If, in the cases referred to in paragraph 1(1), the offender acts for remuneration or with the intention of enriching himself or another or of causing damage to another, the penalty shall be a custodial sentence not exceeding two years or a monetary penalty.

(3) The offence shall be prosecuted only upon application. In the cases referred to in paragraph 1(2), the special negotiating body, the European Works Council, the majority of the employees' representatives in an information and consultation procedure, the central management or a trade union represented in the undertaking shall be entitled to submit an application.

§ 45 Rules on fines

(1) It shall be an offence for any person

1. in contravention of section 5(1), fails to collect or pass on information or does not do so correctly,

completely or in good time, or

2. contrary to section 29(1) or section 30(1), first sentence, or (2), first sentence, fails to inform the European Works Council or the committee referred to in section 26, or fails to do so correctly, fully, in the prescribed manner or in good time.

(2) The administrative offence may be punished by a fine of up to fifteen thousand euros.

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