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Article 2

Act on the participation of employees in a European company (Participation of Employees (European Companies) Act) (*SE-Beteiligungsgesetz – SEBG*)

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Part 1

General provisions

§ 1

Purpose

(1) This Act shall regulate the involvement of employees in a European company which is the subject of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ L 294, p. 1). The purpose of this Act is to safeguard the acquired rights of employees in a European company to participate in company decisions. The existing rights of participation in the companies establishing the European company shall be definitive in determining the nature of the employees' rights of participation in the European company.

(2) In order to safeguard the right to cross-border information, consultation, participation and other forms of employee involvement, an agreement on the involvement of employees in the European company shall be concluded. Where no agreement is entered into, the involvement of employees in the European company shall be secured by operation of law.

(3) The provisions of this Act and the agreement as referred to in subparagraph (2) shall be interpreted in such a way as to promote the European Community's aims of securing the involvement of employees in the European company.

(4) The principles set out in subparagraphs (1) to (3) shall also apply to structural changes to an established European company, and to the effects of such changes on the concerned companies and their employees.

§ 2

Definitions

(1) The concept of an "employee" shall be based on the legal provisions and customs of the respective Member States. Employees of an undertaking or establishment within the country shall comprise manual and non-manual workers, including persons undergoing vocational training and the managerial employees referred to in § 5 subpara. (3), second sentence, of the Employee Representation Act (*Betriebsverfassungsgesetz - BetrVG*), irrespective of whether they are employed within or outside the firm's premises, or on the basis of teleworking. Home-workers who work primarily for the undertaking or establishment shall also be deemed to be employees.

(2) "Participating companies" shall mean the companies directly involved in the establishment of a European company.

(3) "Subsidiaries" shall mean legally independent undertakings over which another company may exercise a dominant influence within the meaning of Article 3(2) to (7) of Council Directive 94/45/EC of 22 September 1994 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 254, p. 64). § 6 subparas. (2) to (4) of the European Works Councils Act (*Europäische Betriebsräte-Gesetz*) of 28 October 1996 (published in the Federal Law Gazette (*Bundesgesetzblatt – BGBl.*) I p. 1548, 2022) shall apply.

(4) "Concerned subsidiaries or concerned establishments" shall mean subsidiaries or establishments of a participating company which are proposed to become subsidiaries or establishments of the European company.

(5) "Management" shall mean the body which is directly involved in the establishment of the companies participating in the European company, or of the European company itself, and which runs the affairs of the company and is entitled to represent it. This shall be the management or administrative body in the case of the participating companies, and the management body or executive directors in the case of the European company.

(6) The "body representing employees" shall mean any body representative of employees as provided for in the Employee Representation Act (works council (*Betriebsrat*), company works council (*Gesamtbetriebsrat*), group works council (*Konzernbetriebsrat*) or any representative entity formed pursuant to § 3 subpara. (1) Nos 1 to 3 of the Employee Representation Act).

(7) The "European Works Council" shall mean the body representing the employees of the European company which is set up under an agreement as referred to in § 21 or pursuant to §§ 22–33 in order to safeguard the rights of the employees of the European company, or its subsidiaries and establishments, to information and consultation and, where agreed upon, participation rights and other rights of involvement in the European company.

(8) "Involvement of employees" shall mean any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company.

(9) "Rights of involvement" shall mean the rights accruing to the employees and their representatives in relation to information, consultation, participation and other forms of involvement. This may also include the exercise of these rights in a European company's group undertakings.

(10) "Information" shall mean the informing of the European Works Council or other body representing employees by the management of the European company on questions which concern the European company itself or one of its subsidiaries or establishments situated in another Member State, or which exceed the powers of the competent bodies in a single Member State. Such information shall be provided at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the expected impact and, where appropriate, prepare consultations with the management of the European company.

(11) "Consultation" shall mean the establishment of a dialogue and the exchange of views between the European Works Council or other body representing employees, and the management of the European company or other competent body with its own decision-making powers. Such consultation shall be established at a time, in a manner and with a content which allows the European Works Council, on the basis of information provided, to express an opinion on measures envisaged by the management of the European company which may be taken into account in the decision-making process within the European company.

(12) "Participation" shall mean the influence of the employees in the affairs of a company by way of:

1. the right to elect or appoint some of the members of the company's supervisory or administrative board; or

2. the right to recommend or oppose the appointment of some or all of the members of the company's supervisory or administrative board.

§ 3

Scope

(1) This Act shall apply to European companies based within the country. It shall also be applicable, irrespective of where a European company is based, to employees of the European company employed within the country, as well as to participating companies, concerned subsidiaries and concerned establishments based within the country.

(2) For the purposes of this Act, "Member States" shall mean the Member States of the European Union and the other states signatory to the Agreement on the European Economic Area.

Part 2

Special negotiating body

Chapter 1

Establishment and composition

§ 4

Notification of the management bodies

(1) The special negotiating body shall be established on the written request of the management bodies. It shall have the task of concluding a written agreement with the management bodies concerning the involvement of the employees in the European company.

(2) Where the management bodies intend to establish a European company, they shall give notification of the planned establishment to the bodies representing employees and the representative committees for executive staff (*Sprecherausschüsse*) in the participating companies, concerned subsidiaries and concerned establishments. Where no bodies representing employees are present, notification shall be given to the employees. Such notification shall be unsolicited and be provided without delay following disclosure of the planned merger, the plan to establish a holding company or the plan to change the company's corporate form (conversion plan), or following the conclusion of the agreement providing for the intended establishment of a subsidiary.

(3) The notification shall in particular specify:

1. the names and structure of the participating companies, concerned subsidiaries and concerned establishments, and their distribution among the Member States;
2. the bodies representing employees existing within these companies and establishments;
3. the number of persons employed in these companies and establishments, and the total number of persons employed in a given Member State determined on the basis thereof;
4. the number of employees enjoying participation rights in the bodies of these companies.

(4) The timing of the notification as referred to in subparagraph (2) shall be definitive for the purposes of ascertaining the number of persons employed.

§ 5

Composition of the special negotiating body

(1) Members shall be elected or appointed to the special negotiating body in order to represent the employees of the participating companies, concerned subsidiaries and concerned establishments in each Member State. For each 10% share of employees, or fraction thereof, in a given Member State as a proportion of the total number of persons employed throughout the Member States in the participating companies, concerned subsidiaries and concerned establishments, the Member State concerned shall be entitled to elect or appoint one member to the special negotiating body.

(2) Where a European company is established in the context of a merger, each Member State shall send as many additional members to the special negotiating body as is necessary to ensure that each participating company which is registered and has employees in the Member State concerned – and which will cease to exist as a legal entity in its own right as a result of the planned registration of the European company – is represented by at least one member in the special negotiating body. This may not lead to duplication of representation of the employees concerned.

(3) The number of additional members may not exceed 20% of the number of members provided for in subparagraph (1). Where not every company which is to be given special consideration under subparagraph (2) can be represented by an additional member in the special negotiating body, these companies shall be taken into consideration in descending order of the number of persons employed by them. It shall be ensured in this connection that no Member State shall receive more than one additional seat unless all other Member States in which the companies to be given special consideration under subparagraph (2) are located have been allocated a seat.

(4) Where, during the term of office of the special negotiating body, changes in the structure of or number of employees in the participating companies, concerned subsidiaries or concerned establishments occur which would alter the composition of the special negotiating body, the latter shall be reconstituted accordingly. Information regarding such changes shall be provided to the special negotiating body without delay by the competent management bodies. § 4 subparas. (2) to (4) shall apply *mutatis mutandis*.

§ 6

Personal requirements regarding the members of the special negotiating body allocated to Germany

(1) The personal requirements regarding the members of the special negotiating body shall be determined by the legal provisions applying in the Member States in which they are elected or appointed.

(2) Within the country, employees of the companies and establishments, and trade union representatives, shall be eligible for election as members of the special negotiating body. Men and women shall be elected in proportion to their relative shares of the total number of employees. A deputy shall be appointed for each member.

(3) Where more than two members from within the country have seats in the special negotiating body, every third member shall be a representative of a trade union represented in one of the companies involved in the establishment of the European company.

(4) Where more than six members from within the country have seats in the special negotiating body, at least every seventh member shall be a managerial employee.

§ 7

Distribution of seats allocated to Germany in the special negotiating body

(1) The election or appointment of members of the special negotiating body as referred to in § 5 shall be in accordance with the legal provisions applying in the respective Member States.

(2) When the members of the special negotiating body allocated to Germany are elected, all companies based within the country which are involved in the establishment of the European company, and which have employees within the country, shall be represented by at least one member in the special negotiating body.

(3) Where the number of members of the special negotiating body allocated to Germany is lower than the number of companies based within the country which are involved in the establishment of the European company, and which have employees within the country, the companies shall each be allocated one seat in descending order of the number of persons employed by them.

(4) Where the number of members of the special negotiating body allocated to Germany is higher than the number of companies based within the country which are involved in the establishment of the European company, and which have employees within the country, any seats remaining after the allocation in accordance with subparagraph (2) shall be distributed to the participating companies in accordance with the d'Hondt seat distribution system.

(5) Where no companies based within the country are involved in the establishment of the European company and only establishments of foreign companies are affected, subparagraphs (2) to (4) shall apply *mutatis mutandis*.

Chapter 2

Elective body

§ 8

Composition of the elective body; direct vote

(1) The members of the special negotiating body who, pursuant to this Act or the laws of another Member State, are allocated to the persons employed within the country in the companies participating in the establishment of the European company, concerned subsidiaries and concerned establishments shall be chosen by an elective body through a secret and direct ballot. In the circumstances referred to in § 6 subpara. (3), every third member to be elected shall be proposed by a trade union represented in one of the companies participating in the establishment of the European company. Where only one nomination for election is made, it shall contain at least twice as many candidates as

there are trade union representatives to be elected. Each nomination from a trade union shall be signed by a representative of that union. In the circumstances referred to in § 6 subpara. (4), every seventh member to be elected shall be proposed by the representative committees for executive staff; the third sentence shall apply *mutatis mutandis*. Where no representative committee for executive staff exists within a participating company or participating group of companies, the managerial employees may submit nominations for election; a nomination shall be signed by one twentieth or 50 of the managerial employees who are entitled to vote.

(2) Where only one group of companies from within the country is involved in the establishment of the European company, the elective body shall consist of the members of the group works council or, where no such body exists, the members of the company works councils or, where no such bodies exist, the members of the works council. Establishments and group companies with no works council shall also be represented by the group works council, the company works council, or the works council.

(3) Where only one company from within the country is involved in the establishment of the European company, the elective body shall consist of the members of the company works council or, where no such body exists, the members of the works council. Establishments of a company which have no works council shall also be represented by the company works council, or the works council.

(4) Where only one establishment from within the country is affected by the establishment of the European company, the elective body shall consist of the members of the works council.

(5) Where one or more groups of companies or non-affiliated companies are involved in the establishment of the European company, or where independent establishments are affected thereby, the elective body shall consist of the employee representatives at group, company and establishment levels. Subparagraphs (2) to (4) shall apply *mutatis mutandis*. Where, in the circumstances referred to in the first sentence, there are no employee representatives, the members of the elective body shall be elected by the employees by means of a direct vote. The election shall be initiated and conducted by an election committee chosen at a meeting of the employees to which the management of the group, company or establishment issues invitations to attend. The number of members of the elective body to be chosen shall be the same as the number of statutory members of an existing body representing the employees would be in the circumstances referred to in subparagraphs (2) to (4); subparagraph (7), third to fifth sentences, shall apply *mutatis mutandis* to the election procedure.

(6) The elective body shall consist of no more than 40 members. Where this maximum would be exceeded, the number of members of the elective body shall be reduced using the d'Hondt seat distribution system.

(7) Where, in the circumstances referred to in subparagraphs (2) to (5), there are no employee representatives, the members of the special negotiating body shall be elected by means of a secret and direct ballot. The election shall be initiated and conducted by an election committee chosen at a meeting of the employees to which the management of the group, company or establishment issues invitations to attend. The election of the members of the special negotiating body shall be in accordance with the principles of proportional representation. The principles of majority voting shall be applied where only one nomination for election is submitted. Each nomination by the employees shall be signed by one twentieth of the employees who are entitled to vote, but by no less than three and no more than 50 persons who are entitled to vote; in establishments which

normally have 20 or fewer employees entitled to vote, it shall be sufficient for the nomination to be signed by two persons who are entitled to vote. § 8 subpara. (1), second to sixth sentences, shall apply *mutatis mutandis*.

§ 9

Convening of the elective body

(1) On the basis of the notifications received by the management bodies, the chairman of the body representing employees at group level or, in the absence thereof, at company level or, in the absence thereof, at establishment level shall

1. stipulate the location, date and time of the meeting of the elective body;
2. stipulate the number of members from the respective bodies representing employees, in accordance with § 8 subpara. (6); and
3. issue invitations to attend the meeting of the elective body.

(2) Where more than one body representing employees exists at a particular level, the obligations set out in subparagraph (1) shall be incumbent upon the chairman of the body representing the most employees.

§ 10

Election of the members of the special negotiating body

(1) At least two thirds of the members of the elective body representing at least two thirds of the employees shall be present at the election. Each member of the elective body shall have as many votes as the number of employees they represent. Members shall be elected by a simple majority of the votes cast.

(2) In the elective body, the bodies representing employees and the members elected by direct vote shall each represent all employees in the organisational unit for which they are responsible, as provided for in § 8 subparas. (2) to (5). Employees who are not represented under the provisions of the first sentence shall be allocated in equal proportions to the bodies representing employees in the group of companies concerned.

(3) Where a body representing employees is represented by more than one member in the elective body, the votes to which they are entitled on the basis of the number of employees represented by them shall be divided up equally. This shall also apply to the members of the elective body elected in accordance with § 8 subpara. (5), third sentence.

Chapter 3

Negotiation procedure

§ 11

Notification concerning the members of the special negotiating body

(1) The members of the special negotiating body shall be elected or appointed within ten weeks following the notification as referred to in § 4 subparas. (2) and (3). The management bodies shall be notified without delay of the names of the members of the special negotiating body, their addresses and their length of service in the company concerned. The management bodies shall provide this information to the local managements of establishments and companies, the bodies representing employees and

the representative committees for executive staff in those establishments and companies, and to the trade unions represented in establishments within the country.

(2) The negotiation procedure as set out in §§ 12–17 shall also be used where the deadline referred to in the first sentence of subparagraph (1) is exceeded for reasons for which the employees are responsible. Members elected or appointed after expiry of this deadline may participate at any time in the negotiation procedure.

§ 12

Meetings; rules of procedure

(1) After the members have been appointed or, in the circumstances provided for in § 11, after expiry of the deadline referred to in § 11 subpara. (1), first sentence, the management bodies shall without delay issue invitations to attend the constituent meeting of the special negotiating body, and shall notify the local managements of establishments and companies. The special negotiating body shall elect a chairman and at least two deputies from among its members. The special negotiating body may adopt written rules of procedure.

(2) The chairman may convene further meetings.

§ 13

Collaboration between the special negotiating body and management bodies

(1) The special negotiating body shall conclude a written agreement with the management bodies concerning the participation of workers in the European company. To this end, the parties concerned shall collaborate in good faith.

(2) The management bodies shall, in good time, provide the special negotiating body with all necessary information, and shall make available all necessary documentation. The special negotiating body shall in particular be informed about the planned establishment of the European company and the procedure to be followed up until its registration. The timing, frequency and venue for the negotiations between the management bodies and the special negotiating body shall be determined by mutual agreement.

§ 14

Experts and representatives of suitable outside organisations

(1) The special negotiating body may draw on the assistance of experts of its choice in the negotiations, whereby these may also include representatives from relevant trade union organisations at Community level. These experts may, where the special negotiating body so requests, be invited to attend the negotiations in an advisory capacity.

(2) The special negotiating body may decide to inform the representatives of suitable outside organisations about the start of negotiations.

§ 15

Adoption of resolutions by the special negotiating body

(1) The members of the special negotiating body who are elected or appointed in a Member State shall represent all persons employed in that Member State. Where no members from a given Member State are elected or appointed to the special negotiating body (§ 11 subpara. (2)), the employees concerned shall de deemed to be unrepresented.

(2) Subject to the provisions of subparagraph (3) and § 16 subpara. (1), the special negotiating body shall adopt resolutions by a majority of its members, provided that this majority also represents a majority of the employees. Members representing employees from within the country shall each be allocated an equal number of employees.

(3) Where the negotiations would lead to a reduction of the employees' participation rights, any resolution approving such an agreement shall require a two-thirds majority of the members of the special negotiating body representing at least two thirds of the employees in at least two Member States. This shall apply where,

1. in the case of a European company to be established by way of merger, the participation covers at least 25% of the overall number of employees of the participating companies and concerned establishments; or
2. in the case of a European company to be established by way of creating a holding company or forming a subsidiary, the participation covers at least 50% of the overall number of employees of the participating companies and concerned establishments.

(4) The "reduction of participation rights" shall mean that

1. the proportion of employee representatives on the supervisory or administrative board of the European company is lower than the highest proportion of employee representatives in the participating companies; or
2. the right to elect, appoint, recommend or oppose members of the supervisory or administrative board of the company is removed or restricted.

(5) Where a European company is to be established by way of conversion, no resolution as referred to in subparagraph (3) may be adopted.

§ 16

Decision not to open, or discontinuation of, negotiations

(1) The special negotiating body may resolve not to enter into negotiations or to break off negotiations already under way. A resolution to this effect shall require a majority of at least two thirds of the members representing at least two thirds of the employees in at least two Member States. The legal provisions on information and consultation of the persons employed in the Member States in which the European company has employees shall apply.

(2) A resolution as referred to in subparagraph (1) shall bring to an end the procedure for the conclusion of the agreement as referred to in § 21. Where such a resolution is adopted, the provisions of §§ 22–33 concerning the European Works Council by operation of law, and the provisions of §§ 34–38 concerning participation by operation of law, shall not apply.

(3) Where a European company is to be established by way of conversion, no resolution as referred to in subparagraph (1) may be adopted where the employees of the company to be converted enjoy participation rights.

§ 17

Written record

A written record, signed by the chairman and one further member of the special negotiating body, shall be drawn up containing details of

1. any resolution concerning the conclusion of an agreement as referred to in § 13 subpara. (1);
2. any resolution not to enter into negotiations or to break off negotiations already under way, as referred to in § 16 subpara. (1); and
3. the majorities by which these resolutions were adopted.

A copy of the written record shall be provided to the management bodies.

§ 18

Resumption of negotiations

(1) A special negotiating body shall be reconstituted at the written request of at least 10% of the employees of the European company, its subsidiaries and establishments, or their representatives, no earlier than two years after the resolution referred to in § 16 subpara. (1), subject to the proviso that the European company, its subsidiaries and establishments shall take the place of the participating companies, concerned subsidiaries and concerned establishments. The parties may agree to resume negotiations at an earlier date.

(2) Where the special negotiating body resolves to resume negotiations with the management of the European company, as referred to in subparagraph (1), but no agreement is reached in these negotiations, the provisions of §§ 22–33 concerning the European Works Council by operation of law, and the provisions of §§ 34–38 concerning participation by operation of law, shall not apply.

(3) Where structural changes to the European company are planned which are likely to lead to a reduction of the employees' participation rights, negotiations concerning the participation rights of the employees of the European company shall be held at the instigation of the management of the European company or the European Works Council. Instead of the special negotiating body due to be reconstituted, the negotiations with the management of the European company may, by mutual consent, be conducted by the European Works Council acting jointly with representatives of the employees affected by the planned structural changes who are not yet represented by the European Works Council. Where no agreement is reached in these negotiations, the provisions of §§ 22–33 concerning the European Works Council by operation of law, and the provisions of §§ 34–38 concerning participation by operation of law, shall apply.

(4) In the circumstances provided for in subparagraphs (1) and (3), the provisions of Part 2 shall apply subject to the proviso that the management of the European company shall take the place of the management bodies.

§ 19

Costs relating to the special negotiating body

The participating companies and, following its establishment, the European company shall be jointly and severally liable for the expenses incurred in connection with the establishment and activities of the special negotiating body. In particular, premises, material resources, interpreters and clerical staff required for meetings shall be provided, and the travel and subsistence expenses of the members of the special negotiating body shall be met.

§ 20

Duration of negotiations

(1) The negotiations shall commence when the special negotiating body is established, and may take up to six months. "Establishment" shall refer to the date on which the management bodies issued invitations to the constituent meeting of the special negotiating body.

(2) The parties may, by mutual consent, agree to extend the negotiations beyond the time-frame referred to in subparagraph (1) up to a period of one year following the establishment of the special negotiating body.

Part 3

Involvement of employees in the European company

Chapter 1

Involvement of employees pursuant to an agreement

§ 21

Content of the agreement

(1) Without prejudice to the autonomy of the parties in other respects, and subject to the provisions of subparagraph (6), the written agreement between the management bodies and the special negotiating body shall specify:

1. the scope of the agreement, including the companies and establishments located outside the territory of the Member States where these fall within its scope;
2. the composition of the European Works Council, the number of members and the allocation of seats, including the effects of significant changes in the number of persons employed in the European company;
3. the functions and the procedure for information and consultation of the European Works Council;
4. the frequency of meetings of the European Works Council;
5. the financial and material resources to be made available to the European Works Council;
6. the date of entry into force and the duration of the agreement, as well as the circumstances in which the agreement should be renegotiated, and the procedure to be used in this connection.

(2) Where no European Works Council is established, the parties shall specify the arrangements for implementing the procedure(s) for information and consultation. Subparagraph (1) shall apply *mutatis mutandis*.

(3) In the event that the parties conclude an agreement on employee participation, the content thereof shall be specified. The agreement shall in particular indicate the following:

1. the number of members of the supervisory or administrative board whom the employees may elect or appoint, or whose appointment they may recommend or oppose;
2. the procedure by which the employees may elect or appoint these members, or recommend or oppose their appointment; and
3. the rights of these members.

(4) It shall be stipulated in the agreement that negotiations concerning the involvement of employees in the European company shall also be opened prior to structural changes to the European company. The parties may determine the procedure to be used in this connection.

(5) The agreement may stipulate that the provisions of §§ 22–33 concerning the European Works Council by operation of law, and the provisions of §§ 34–38 concerning participation by operation of law shall apply in whole or in part.

(6) Irrespective of how this Act relates to other provisions concerning employee participation in the company, the agreement shall, where a European company is to be established by way of conversion, safeguard all aspects of employee involvement to at least the same extent as these are provided for in the company to be converted into a European company. This shall also apply where the company switches from a dualistic to a monistic management structure, or *vice versa*.

Chapter 2

Involvement of employees by operation of law

Section 1

European Works Council by operation of law

Sub-section 1

Establishment and management

§ 22

Underlying requirements

(1) The provisions of §§ 23–33 concerning the European Works Council by operation of law shall apply as from the date the European company is registered where

1. the parties so agree; or
2. no agreement is reached within the period provided for negotiations as referred to in § 20 and the special negotiating body has not adopted a resolution as referred to in § 16.

(2) In the circumstances provided for in § 18 subpara. (3), subparagraph (1) shall apply *mutatis mutandis*.

§ 23

Establishment of a European Works Council

(1) A European Works Council shall be established to safeguard the right to information and consultation in the European company. This shall be composed of employees of the European company, its subsidiaries and establishments, § 5 subpara. (1), § 6 subparas. (1) and (2), second and third sentences, §§ 7–10 and § 11 subpara. (1), second and third sentences, shall apply *mutatis mutandis* with respect to the establishment of the European Works Council, subject to the proviso that the European company, its subsidiaries and establishments shall take the place of the participating companies, concerned subsidiaries and concerned establishments. In the circumstances provided for in § 22 subpara. (1) No 2, the end of the period referred to in § 20 shall be definitive for determining the number of persons employed. Membership of the European Works Council shall commence upon election or appointment. The term of office of the members from within the country shall be four years, unless such term comes to an end prematurely owing to dismissal or for other reasons. §§ 8–10 shall apply *mutatis mutandis* with respect to dismissals, subject to the proviso that the European company, its subsidiaries and establishments shall take the place of the participating companies, concerned subsidiaries and concerned establishments.

(2) Invitations to attend the constituent meeting of the European Works Council shall be issued by the management of the European company without delay following the appointment of the members. The European Works Council shall elect a chairman and a deputy from among its members.

(3) The chairman or, if he is unavailable, his deputy shall represent the European Works Council on the basis of the resolutions adopted by it. The chairman or, if he is unavailable, his deputy shall be entitled to take receipt of declarations to be issued to the European Works Council.

(4) The European Works Council shall elect from among its number a committee of three members, consisting of two members to be elected in addition to the chairman. The committee shall be responsible for the day-to-day running of the European Works Council (executive committee).

§ 24

Meetings and resolutions

(1) The European Works Council shall adopt written rules of procedure by a majority vote of its members.

(2) Prior to meetings with the management of the European company, the European Works Council or the executive committee – where appropriate with additional persons attending as provided for in § 29 subpara. (3) – shall be entitled to convene in the absence of representatives from the management of the European company. The European Works Council may, with the consent of the management of the European company, hold further such meetings. The meetings of the European Works Council shall not be open to the public.

(3) The European Works Council shall have a quorum where at least half its members are present. Unless otherwise provided in this Act, resolutions shall be passed by a simple majority of the members present.

§ 25

Review of the composition of the European Works Council

Every two years with effect as from the date of the constituent meeting of the European Works Council, the management of the European company shall examine whether changes have occurred in the European company, its subsidiaries or establishments, particularly as regards the number of employees in the individual Member States. It shall inform the European Works Council of its findings. Where it emerges that the European Works Council requires a different composition, the latter shall arrange with the competent agencies in the respective Member States for the members of the European Works Council in those Member States to be re-elected or reappointed. Such re-election or reappointment shall bring to an end the membership of the previous employee representatives from these Member States.

§ 26

Resolution to re-open negotiations

(1) Four years after its establishment, the European Works Council shall adopt a resolution by a majority of its members on whether an agreement as referred to in § 21 is to be negotiated, or whether the previous arrangements shall continue to apply.

(2) Where a resolution to negotiate an agreement as referred to in § 21 is adopted, §§ 13–15, § 17, § 20 and § 21 shall apply *mutatis mutandis*, subject to the proviso that the European Works Council shall take the place of the special negotiating body. Where no agreement comes about, the previous arrangements shall continue to apply.

Sub-section 2

Tasks

§ 27

Responsibilities of the European Works Council

The European Works Council shall be responsible for matters which affect the European company itself, one of its subsidiaries or one of its establishments in another Member State, or which go beyond the powers of the competent bodies at the level of the individual Member States.

§ 28

Annual information and consultation

(1) At least once every calendar year, the management of the European company shall, for the purposes of information and consultation, hold a joint meeting with the European Works Council in order to discuss the development of the business situation and the future prospects of the European company, whereby the necessary documentation shall be provided in good time. The documentation required shall in particular include:

1. business reports;

2. the agendas of all meetings of the management body and of the supervisory or administrative board;
3. copies of all documents submitted to the general meeting of shareholders.

(2) The development of the business situation and the future prospects of the European company as referred to in subparagraph (1) shall in particular include:

1. the structure of the European company and its economic and financial situation;
2. the likely development of the business, production and sales situations;
3. the employment situation and its likely development;
4. capital expenditure (investment programmes);
5. fundamental organisational changes;
6. the introduction of new working and production methods;
7. relocation of companies, establishments or important parts of such units, or of production operations;
8. mergers or splitting-up of companies or establishments;
9. the reduction of operations in, or closing-down of, companies, establishments or important parts of such units, and
10. mass dismissals.

(3) The management of the European company shall notify the management bodies of the time and place for the meeting.

§ 29

Information and consultation on extraordinary circumstances

(1) Where extraordinary circumstances arise which may significantly affect the interests of the employees, the management of the European company shall notify the European Works Council thereof in good time, and shall provide any necessary documentation. "Extraordinary circumstances" shall in particular be understood to mean

1. the transfer or relocation of companies, establishments or important parts of such units;
2. the closure of companies, establishments or important parts of such units; or
3. mass dismissals.

(2) The European Works Council shall have the right, on request, to meet with the management of the European company, or with the representatives of other levels of managements vested with decision-making powers within the European company, in order to be consulted with respect to the extraordinary circumstances.

(3) The rights as referred to in subparagraph (2) shall, upon a resolution by the European Works Council, be assigned to the executive committee (§ 23 subpara. (4)). Where a meeting is held with the executive committee, the members of the European Works Council representing employees directly affected by these measures shall also be entitled to take part.

(4) Where the management of the European company decides on action which is not in line with European Work Council's or the executive committee's position, the European

Works Council shall be entitled to again meet with the management of the European company in order to reach a settlement.

§ 30

Notification by the European Works Council

The European Works Council shall notify the representatives of employees in the European company, its subsidiaries and establishments about the content and outcome of the information and consultation procedure. Where there are no employee representatives, the employees shall be notified.

Sub-section 3

Time off work, costs

§ 31

Further training

The European Works Council may designate members to take part in education and training events where the knowledge/skills concerned are necessary for the work of the European Works Council. The European Works Council shall notify the management of the European company in good time about any participation in, and the timing of, such events. When determining the timing, the needs of the company shall be taken into consideration.

§ 32

Experts

The European Works Council or the executive committee may draw on the assistance of experts of their choice where this is necessary to enable them to properly carry out their tasks. Representatives of trade unions may also act as experts.

§ 33

Costs and material expenses

The costs occasioned by the establishment and activities of the European Works Council and the executive committee shall be borne by the European company. § 19, second sentence, shall otherwise apply *mutatis mutandis*.

Section 2

Participation by operation of law

§ 34

Special requirements

(1) Where the conditions of § 22 are fulfilled, the provisions on the participation of employees by operation of law as set out in §§ 35–38 shall apply,

1. where a European company is established by way of conversion, if provisions on the participation of employees in the supervisory or administrative board were in place prior to the conversion of the company;
2. where a European company is established by way of merger,

a) if, before registration of the European company, one or more forms of participation applied in one or more of the participating companies covering at least 25% of the total number of employees in all the participating companies and concerned subsidiaries; or

b) if, before registration of the European company, one or more forms of participation applied in one or more of the participating companies covering less than 25% of the total number of employees in all the participating companies and concerned subsidiaries, and if the special negotiating body so decides;

3. where a European company is established by way of creating a holding company or forming a subsidiary

a) if, before registration of the European company, one or more forms of participation applied in one or more of the participating companies covering at least 50% of the total number of employees in all the participating companies and concerned subsidiaries; or

b) if, before registration of the European company, one or more forms of participation applied in one or more of the participating companies covering less than 50% of the total number of employees in all the participating companies and concerned subsidiaries, and if the special negotiating body so decides.

(2) Where, in the instances referred to in subparagraphs (1), (2) and (3), there was more than one form of participation, within the meaning of § 2 subpara. (12), in the various participating companies, the special negotiating body shall decide which of those forms is to be established in the European company. Where the special negotiating body does not take such a decision and a company within the country whose employees enjoy participation rights is involved in the establishment of the European company, participation as referred to in § 2 subpara. (12) No 1 shall apply. Where no company within the country whose employees enjoy participation rights is involved, the form of participation, as referred to in § 2 subpara. (12), which is used shall be that which covers the highest number of employees in the participating companies.

(3) The special negotiating body shall notify the management bodies about the resolutions adopted by it pursuant to subparagraph (1) No 2 (b) and No 3 (b), and subparagraph (2), first sentence.

§ 35

Extent of participation

(1) Where the conditions of § 34 subpara. (1) No 1 (establishment of a company by way of conversion) are fulfilled, the participation arrangements applying within the company prior to conversion shall remain in place.

(2) Where the conditions of § 34 subpara. (1) No 2 (establishment of a company by way of merger) or § 34 subpara. (1) No 3 (establishment of a company by way of creating a holding company or forming a subsidiary) are fulfilled, the employees of the European company, its subsidiaries and establishments or its representative body shall be entitled to elect or appoint a portion of the members of the European company's supervisory or administrative board, or to recommend or oppose their appointment. The number of these employee representatives on the European company's supervisory or administrative board shall be determined according to the highest proportion of employee representatives within the participating companies' bodies prior to the registration of the European company.

§ 36

Allocation of seats, appointments

(1) The European Works Council shall allocate the seats on the supervisory or administrative board to the Member States in which members are to be elected or appointed. The seats shall be allocated in proportion to each individual Member State's share of the total number of persons employed in the European company, its subsidiaries and establishments. Where the employees from one or more Member States are not allocated a seat under this proportionate distribution arrangement, the European Works Council shall allocate the last seat to be distributed in this way to a hitherto unrepresented Member State. This seat shall, where appropriate, be allocated to the Member State in which the European company shall have its registered office. This allocation procedure shall also apply in the event that the employees of the European company may recommend or oppose the appointment of members of these bodies.

(2) Where the Member States do not make their own arrangements about who is to fill the seats allocated to them, the European Works Council shall determine the employee representatives who are to sit on the European company's supervisory or administrative board.

(3) The employee representatives on the European company's supervisory or administrative board who are allocated to companies within the country shall be determined by an elective body composed of persons representing the employees of the European company, its subsidiaries and establishments. The provisions of § 6 subparas. (2) to (4), § 8 subpara. (1), second to fifth sentences, and subparas. (2) to (7), § 9 and § 10 shall apply *mutatis mutandis* to the election procedure, subject to the proviso that the European company, its subsidiaries and establishments shall take the place of the participating companies, concerned subsidiaries and concerned establishments. The result of the election shall be notified to the management of the European company, the European Works Council, the persons elected, the representative committees for executive staff, and the trade unions.

(4) A proposal for the appointment of the employee representatives determined in accordance with subparagraphs (2) and (3) shall be submitted to the general meeting of shareholders. The general meeting of shareholders shall accept the proposal.

§ 37

Dismissal, appeals

(1) A member or deputy member representing employees from within the country on the supervisory or administrative board may be dismissed before the end of their term of office. The following persons shall be entitled to request such dismissal:

1. the employee representatives forming the elective body;
2. in instances where a direct vote is used: at least three employees who are entitled to vote;
3. in the case of a member as referred to in § 6 subpara. (3): only the trade union which proposed the member;
4. in the case of a member as referred to in § 6 subpara. (4): only the representative committee for executive staff which proposed the member.

The provisions of §§ 8–10 shall apply *mutatis mutandis* to the dismissal procedure, subject to the proviso that the European company, its subsidiaries and establishments

shall take the place of the participating companies, concerned subsidiaries and concerned establishments; by way of derogation from § 8 subpara. (5) and § 10 subpara. (1), third sentence, a resolution shall require a three-quarters majority of the votes cast. Dismissal of employee representatives shall be the responsibility of the general meeting of shareholders of the European company.

(2) The election of a member or deputy member representing employees from within the country on the supervisory or administrative board may be challenged where substantive provisions concerning the right to vote, eligibility for election or the election procedure have been infringed and such infringement has not been remedied, unless the result of the vote could not be altered or influenced by the infringement. Such challenges may be asserted by the persons referred to in subparagraph (1), second sentence, the European Works Council and the management of the European company. Any action shall be lodged within one month following the decision of the general meeting of shareholders to appoint the member concerned.

§ 38

Legal position: internal organisation

(1) The employee representatives on the European company's supervisory or administrative board shall have the same rights and obligations as the members representing the shareholders.

(2) The members of the management body (§ 16 of the SE Implementation Act) [Act implementing Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE) (*Gesetz zur Ausführung der Verordnung (EG) Nr. 2157/2001 des Rates über das Statut der Europäischen Gesellschaft – "SE-Ausführungsgesetz – SEAG"*)] or the executive directors (§ 40 *SEAG*) shall number at least two, one of whom shall be responsible for the field of employment and social affairs.

(3) Where the supervisory board of one of the participating companies consists of an equal number of shareholder and employee representatives and a further member, an additional member shall be elected to the supervisory or administrative board of the European company on the basis of a joint proposal from the shareholder and employee representatives.

Section 3

Protection of establishments with political, religious, charitable and other aims (*Tendenzschutz*)

§ 39

Establishments with political, religious, charitable and other aims (*Tendenzunternehmen*)

(1) Subparagraph (2) shall not apply to European companies which, directly and predominantly,

1. are engaged in the pursuit of political, coalition-related, religious, charitable, educational, scientific or artistic objectives; or
2. serve purposes of publishing or the expression of opinions covered by Article 5 subpara. (1), second sentence, of the Basic Constitutional Law (*Grundgesetz – GG*).

(2) Information and consultation shall be restricted to the matters referred to in § 28 subpara. (2) Nos 5–10 and § 29, and shall relate only to the full or partial compensation of employees for any financial disadvantages arising from the changes to the company or establishment concerned.

Part 4

Principles governing collaboration, protective provisions

§ 40

Collaboration in good faith

The management of the European company and the European Works Council, or the employee representatives in the context of an information and consultation procedure, shall collaborate in good faith for the benefit of the employees and the company or group of companies.

§ 41

Maintenance of secrecy, confidentiality

(1) Obligations to provide information incumbent upon the management bodies and the management of the European company pursuant to this Act shall exist only where, on the basis of objective criteria, trade or business secrets relating to the participating companies, the European company or their respective subsidiaries or establishments are not thereby put at risk.

(2) The members and deputy members of a European Works Council shall, irrespective of their whereabouts, be required not to disclose or make use of any trade or business secrets which come to their knowledge as a result of their membership of the European Works Council, and which are designated by the management of the European company as being of a sensitive nature. This shall apply even after the persons concerned have ceased to be members of the European Works Council.

(3) The duty of confidentiality relating to the European Works Council as referred to in subparagraph (2) shall not apply to

1. members of the European Works Council;
2. representatives of employees in the European company, its subsidiaries and establishments where, pursuant to an agreement as referred to in § 21 or in accordance with § 30, these must be informed about the content of the information and the outcome of the consultation procedure;
3. employee representatives on the supervisory or administrative board of the European company; and
4. interpreters and experts called in to provide assistance.

(4) The duty to maintain confidentiality as referred to in subparagraph (2) shall apply *mutatis mutandis* to

1. the members and deputy members of the special negotiating body;
2. the representatives of employees in the European company, its subsidiaries and establishments;

3. employee representatives involved in any other manner in an information and consultation procedure; and
4. experts and interpreters.

(5) The exemption from the duty of confidentiality as referred to in subparagraph (3) No 1 shall apply *mutatis mutandis* to the persons referred to in subparagraph (4) Nos 1 to 3. The duty of confidentiality shall also apply to

1. the members of the special negotiating body in dealings with interpreters and experts; and
2. the employee representatives as referred to in subparagraph (4) No 3 in dealings with employee representatives on the supervisory or administrative board of the European company, interpreters and experts called in to provide assistance under agreed arrangements, and representatives of employees in the European company, its subsidiaries and establishments in cases where these must be informed about the content of the information and the outcome of the consultation procedure in accordance with the agreement (§ 21).

§ 42

Protection of employees' representatives

When carrying out their tasks,

1. the members of the special negotiating body;
2. the members of the European Works Council;
3. the employee representatives involved in any other manner in an information and consultation procedure; and
4. employee representatives on the supervisory or administrative board of the European company

who are employees of the European company, its subsidiaries and establishments, or of one of the participating companies, concerned subsidiaries or concerned establishments, shall enjoy the same protection and safeguards as the employee representatives under the laws and customs of the Member State in which they are employed. This shall apply in particular with regard to

1. employment protection;
2. participation in meetings of the respective bodies referred to in the first sentence; and
3. continued payment of wages.

§ 43

Prohibition of abusive practices

A European company may not be misused for the purpose of depriving employees of participation rights or withholding such rights. Misuse shall be deemed to exist where, in the absence of any procedure as referred to in § 18 subpara. (3), changes in the structure of the European company take place within one year following its establishment which lead to employees being deprived of participation rights, or to such rights being withheld.

§ 44

Protection against interference during establishment and subsequent activities

No person shall be permitted

1. to hinder the setting-up of the special negotiating body, the creation of a European Works Council or the introduction of an information and consultation procedure as referred to in § 21 subpara. (2), or the election, appointment, recommendation or rejection of the employee representatives on the supervisory or administrative board, or to influence any of the same through the infliction or threat of disadvantages, or the granting or promise of advantages;
2. to hinder or disrupt the activities of the special negotiating body, the European Works Council or the employee representatives as referred to in § 21 subpara. (2), or the activities of the employee representatives on the supervisory or administrative board; or
3. to discriminate against or give preferential treatment to a member or deputy member of the special negotiating body, the European Works Council, or an employee representative as referred to in § 21 subpara. (2), or to an employee representative because of the activities in which they are engaged.

Part 5

Penalties and fines, final provisions

§ 45

Penalties

(1) Any person who,

1. contrary to the provisions of § 41 subpara. (2), also in conjunction with subpara. (4), makes use of a trade or business secret; or
2. contrary to the provisions of § 43, first sentence, misuses a European company for the purpose of depriving employees of participation rights or withholding such rights,

shall be liable to a term of imprisonment of up to two years, or to a fine.

(2) Any person who,

1. contrary to the provisions of § 41 subpara. (2), also in conjunction with subpara. (4), discloses a trade or business secret;
2. contrary to the provisions of § 44 No 1 or 2, hinders, influences or disrupts an activity referred to therein; or
3. contrary to the provisions of § 44 No 3, discriminates against or gives preferential treatment to a person referred to therein,

shall be liable to a term of imprisonment of up to one year, or to a fine.

(3) Where, in the circumstances referred to in subparagraph (2) No 1, the offender's actions are undertaken in return for payment or with the intention of enriching himself or another person, or of causing harm to another person, this shall be punishable by a term of imprisonment of up to two years or a fine.

(4) Prosecutions for such offences shall be undertaken only upon request. In the circumstances provided for in subparagraph (1) No 2 and subparagraph (2) Nos 2 and 3, such a request may be lodged by the special negotiating body, the European Works Council, a majority of the employee representatives in the context of an information and consultation procedure, each member of the supervisory or administrative board, a trade union represented within a company, or the management bodies.

§ 46

Fines

(1) Any person who,

1. contrary to the provisions of § 4 subpara. (2) or § 5 subpara. (4), second sentence, in each case also in conjunction with § 18 subpara. (4), fails to provide information, provides incorrect or incomplete information, or fails to provide information in good time; or
2. contrary to the provisions of § 28 subpara. (1), first sentence, or § 29 subpara. (1), first sentence, fails to notify the European Works Council, gives incorrect or incomplete notification, or fails to give notification in the prescribed manner or in good time,

shall be deemed to have committed a regulatory offence.

(2) The regulatory offence shall be punishable by a fine of up to 20 000.

§ 47

Applicability of national law

(1) This Act shall not affect the participation rights to which employees are entitled under legal provisions and regulations applying within the country, except with regard to

1. participation in the bodies of the European company;
2. the provisions of the European Works Councils Act, unless the special negotiating body has adopted a resolution as referred to in § 16.

(2) Provisions and arrangements relating to the bodies representing the employees of a participating company which is based within the country and which, upon the establishment of the European company, ceases to have the status of a legal entity in its own right, shall remain in place following the registration of the European company. The management of the European company shall ensure that these bodies representing employees remain able to exercise their functions.

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