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Works Constitution Act

Works Constitution Act as promulgated by the Act of 25 September 2001, Federal Law Gazette (Bundesgesetzblatt), Part I, p. 2518, last amended by Art 9 Law of the July 29, 2009 (Bundesgesetzblatt, Part I, p. 2424)

Part One General provisions

Section 1 Establishment of works councils

(1) Works councils shall be elected in all establishments that normally have five or more permanent employees with voting rights, including three who are eligible. The same shall apply to joint establishments of several companies.

(2) A joint establishment of several companies is assumed to exist if 1. the companies employ the equipment and workers jointly in order to pursue their working objectives, or 2. splitting a company would have the effect that one or several departments of an establishment would be allocated to another company that is involved in the split, without thereby fundamentally changing the organisation of the establishment concerned.

Section 2 Status of trade unions and employers' associations

(1) The employer and the works council shall work together in a spirit of mutual trust having regard to the applicable collective agreements and in co-operation with the trade unions and employers' associations represented in the establishment for the good of the employees and of the establishment.

(2) In order to permit the trade unions represented in the establishment to exercise the powers and duties established by this Act, their agents shall, after notification of the employer or his representative, be granted access to the establishment, in so far as this does not run counter to essential operational requirements, mandatory safety rules or the protection of trade secrets.

(3) This Act shall not affect the functions of trade unions and employers' associations and more particularly the representation of their members' interests.

Section 3 Different arrangements

(1) The following may be determined by collective agreements:

1. for companies comprising several establishments
 - a) the formation of a uniform works council for the company, or
 - b) the combination of companies or establishments

if the formation of works councils is thereby facilitated, or if this combination serves the appropriate safeguarding of the workers' interests;

2. for companies and combines, to the extent that they have been organised according to product- or project-specific divisions (branches) and the branch management also makes decision concerning issues that require participation, the formation of works councils for the branches (branch works councils), if this arrangement serves to appropriately carry out the works council's duties;
3. other workers' representation structures to the extent that these structures serve an efficient and appropriate representation of workers' interests, in particular, because of the organisation of the establishment, company, or combine, or because of other types of cooperation between companies;
4. additional bodies under the Works Constitution Act (working groups) that serve for the inter-company co-operation of workers' representations;
5. additional workers' representations under the Works Constitution Act that facilitate cooperation between the works council and the workers.

(2) If no provisions are included in a collective agreement that cover the cases listed in subsection (1), Clauses 1, 2, 4, or 5, and if no other collective agreement is available, such an arrangement can be agreed upon in a works agreement.

(3) If no provisions are included in a collective agreement that cover the case described in subsection (1) clause 1 letter a), and if there is no works council in the establishment, a majority of workers can resolve to elect a uniform works council. This vote can be initiated by a minimum of three workers with voting rights employed by the establishment, or by a trade union represented in the establishment.

(4) Unless provided otherwise in the collective agreement or the plant-level agreement, the arrangements specified in Subsection (1) Clauses 1 to 3 shall be applied for the first time in the course of the next regular works council elections, unless no works council exists, or unless the works council has to be re-elected for other reasons. If the collective agreement or the works agreement provides for another voting time, the term of office of existing works councillors, which will become obsolete under the Subsection 1 Clauses 1 to 3, shall terminate upon announcement of the election results.

(5) The organisation units under the Works Constitution Act, which were established on the basis of a collective agreement or a plant-level agreement in accordance with Subsection 1 Clauses 1 to 3, are considered establishments for the purposes of this Act. The provisions concerning the rights and obligations of the works council and the legal position of its members shall be applicable to the workers' representations formed therein.

Section 4

Separate departments, very small establishments

(1) Separate departments of establishments shall be regarded as independent establishments if they meet the conditions laid down in the first sentence of section 1 (1) and

1. are situated at a considerable distance from the principal establishment, or
2. are independent by reason of their function and organization.

The employees of a separate department, in which no separate works council exists, may resolve by a simple majority of votes and without complying with a

special form that they will participate in the works council elections of the principal establishment; the second sentence of section 3 (3) shall apply, mutatis mutandis. The vote may also be initiated by the works council of the principal establishment. The resolution shall be communicated to the works council of the principal establishment not later than ten weeks before expiry of its term of office. The second to fourth sentences of this subsection shall apply, mutatis mutandis, to the revocation of the resolution.

(2) Establishments that do not meet the conditions laid down in the first sentence of section 1 (1) shall be treated as part of the principal establishment.

Section 5 Employees

(1) In this Act the term “employee” (male and female) comprises wage earners and salaried employees including persons employed for the purpose of their vocational training, regardless of whether they are engaged in indoor work, in field service, or in tele-work. The term includes persons engaged in home work who work principally for one and the same establishment. Furthermore, (female and male) civil servants and workers of the public service, including persons employed for the purpose of their vocational training, are considered “employees” if they work in establishments organised under private law.

(2) The following shall not be considered as employees for the purposes of this Act:

1. in establishments belonging to a corporation, the members of the organs that are legally empowered to represent the corporation;
2. partners in an ordinary commercial partnership or members of another association of persons in the establishment belonging to the partnership or association, in so far as they are empowered by law, its own by-laws or the articles of association to represent the association or to exercise management functions;
3. persons whose employment is not primarily for the purpose of earning their livelihood but is chiefly inspired by charitable or religious motives;
4. persons whose employment is not primarily for the purpose of earning their livelihood but principally for their cure or recovery, rehabilitation, moral improvement or education;
5. the spouse, the life partner, as well as the relatives by blood or marriage of the first degree living with the employer.

(3) Unless this Act expressly provides to the contrary, it shall not apply to executive staff. Executive staff are employees who, under their contract of employment and by their status in the company or establishment,

1. are entitled on their own responsibility to engage and dismiss employees on behalf of the establishment or one of its departments; or
2. are endowed with general authority (power of procuration) or full power of representation or power to sign, the latter also being important in relation to the employer; or
3. regularly carry out other duties which are important for the existence and development of the company or an establishment and fulfilment of which requires particular experience and knowledge, if, in doing so, they either essentially make decisions on their own responsibility or substantially influence these decisions; this

may also be the case with stipulated procedures, particularly those based on legal provisions, plans or guidelines and when cooperating with other executive staff.

(4) In case of doubt, executive staff under subsection (3), clause 3, are employees who

1. have been assigned to the executive staff on the occasion of the last election of the works council, the executives' committee or of supervisory board members of the employees or by means of a final and conclusive legal decision; or
2. belong to a management level at which executive staff are predominantly represented in the company; or
3. regularly receive an annual salary which is customary for executive staff in the company; or
4. if there is still doubt on application of clause 3, regularly receive an annual salary which is three times greater than the reference figure as per section 18 of Book Four of the Social Code. The first and second sentences shall apply, mutatis mutandis, to the civil servants referred to in subsection 1, sentence 3.

Section 6 (cancelled)

Part Two

Works council, works meeting, central works council and combine works council

Division One

Composition and election of the works council

Section 7 Voting rights

All employees of the establishment who are 18 years of age or over shall have voting rights. If employees of another employer are hired out for work, they are entitled to vote if they are working in the establishment for more than three months.

Section 8 Eligibility

(1) All employees with voting rights who have been employed in or principally worked for the establishment as homeworkers for six months shall be eligible to the works council. The said period of six months shall be deemed to include any immediately preceding period during which the employee was employed in another establishment belonging to the same company or combine as defined in section 18 (1) of the Joint Stock Act. Persons who by court judgement have been declared ineligible or debarred from holding public office shall be ineligible to works councils.
(2) If the establishment has been in existence for less than six months, such employees as are employed in the establishment and fulfil the other conditions for eligibility at the announcement of the election for the works council shall be eligible notwithstanding the requirement of six months' service under subsection (1).

Section 9¹

Number of members of the works council

The membership of the works council shall be as follows, according to the number of employees with voting rights normally employed in the establishment:

5 to 20 employees entitled to vote: 1 person,
21 to 50 employees entitled to vote: 3 members,

51 to 100 employees entitled to vote: 5 members,
101 to 200 employees: 7 members,
201 to 400 employees: 9 members,
401 to 700 employees: 11 members,
701 to 1000 employees: 13 members,
1001 to 1500 employees: 15 members,
1501 to 2000 employees: 17 members,
2001 to 2500 employees: 19 members,
2501 to 3000 employees: 21 members,
3001 to 3500 employees: 23 members,
3501 to 4000 employees: 25 members,
4001 to 4500 employees: 27 members,
4501 to 5000 employees: 29 members,
5001 to 6000 employees: 31 members,
6001 to 7000 employees: 33 members,
7001 to 9000 employees: 35 members.

In establishments employing more than 9,000 employees the number of members of the works council shall be increased by two members for every additional fraction of 3,000 employees.

Footnote 1: In accordance with the second sentence of Article 14 of the Act Reforming the Works Constitution Act (BetrVerf-Reformgesetz) of 23 July 2001 ("Bundesgesetzblatt", Part I p. 1852), Section 9 (Article 1 clause 8 of BetrVerf-Reformgesetz) shall not be applicable to a works council prior to its re-election if it had been in office when the Act became effective.

Section 10
(cancelled)

Section 11

Reduction in the number of works council members

If the number of eligible employees in an establishment is insufficient, the number of members in the works council shall be the one specified for the next lower size of establishment.

Section 12
(cancelled)

Section 13

Time of elections to the works council

(1) Regular elections to the works council shall be held every four years at some time between 1 March and 31 May. They shall be held at the same time as the regular elections in accordance with section 5 (1) of the Executives' Committee Act.
(2) Elections to the works council shall be held outside this period whenever –

1. by the end of twenty-four months from the date of the last election, the number of employees regularly employed has increased or decreased by one half but by not less than fifty in any case;
2. the total membership of the works council, after all the substitutes have been called upon, has fallen below the prescribed number;
3. the works council decides to resign by the vote of a majority of its members;

4. the works council election results are successfully contested;
5. the works council is dissolved by court order; or
6. there is no works council in the establishment.

(3) If an election for a works council has been held outside the period set aside for regular works council elections, a new election shall be held in the next immediately following period for regular elections for the works council. If at the beginning of the period fixed for regular elections the works council has been in office for less than a year, the new works council elections shall be held in the regular election period that follows.

Section 14 Election procedure

- (1) The works council shall be elected directly by secret ballot.
- (2) The election shall be conducted according to the principles of proportional representation. If only one list of candidates is submitted, or if the works council is to be elected according to the simplified electoral procedure specified in Section 14a, the election shall be conducted according to the principles of majority representation.
- (3) Employees with voting rights and trade unions represented in the establishment shall be entitled to submit lists of candidates for the works council elections.
- (4) Each list of candidates submitted by the employees shall be signed by not less than onetwentieth of the employees entitled to vote, but by not less than three employees with voting rights; in establishments with up to twenty voting employees, as a rule, the signatures of two employees with voting rights shall suffice. The signatures of fifty voting employees shall suffice in all cases.
- (5) Each list of candidates from a trade union must be signed by two representatives.

Section 14a Simplified electoral procedure for small establishments

- (1) Works councils shall be elected in a two-step process in establishments that normally have five to fifty employees with voting rights. The electoral board pursuant to section 17a clause 3 is elected at an initial election meeting. The works council shall be elected directly by secret ballot at a second election meeting. This election meeting shall take place one week after the election meeting in which the electoral board was elected.
- (2) Lists of candidates may be submitted until the end of the election assembly in which the electoral board is elected pursuant to section 17a clause 3, and section 14 (4) shall be applicable to employees' lists of candidates with the proviso that lists of candidates submitted at this election meeting need not be submitted in writing.
- (3) Notwithstanding the first and second sentence of subsection (1) hereof, if the electoral board of establishments that normally have five to fifty voting employees has been appointed by the works council, the central works council or the combine works council pursuant to section 17a clause 1 in conjunction with section 16 or by the labour court pursuant to section 17a clause 4, the works council shall be elected directly by secret ballot at a single election meeting only. Lists of candidates may be submitted not later than one week before the election meeting in which the works council is elected; section 14 (4) shall not be affected.

(4) Those employees with voting rights who cannot participate in the election meeting in which the works council is elected shall be given the opportunity to cast their votes in writing.

(5) In establishments that normally have fifty-one to one-hundred employees with voting rights the electoral board and the employer may agree on the application of the simplified electoral procedure.

Section 15²

Representation of employment categories and of male and female employees

(1) The works council should be composed as far as possible of employees of the various organisation units and the different employment categories of the workers employed in the establishment.

(2) The gender that accounts for a minority of staff shall at least be represented according to its relative numerical strength whenever the works council consists of three or more members.

Footnote 2: In accordance with the second sentence of Article 14 of the Act Reforming the Works Constitution Act (BetrVerf-Reformgesetz) of 23 July 2001 ("Bundesgesetzblatt", Part I p. 1852), Section 15 (Article 1 clause 13 of BetrVerf-Reformgesetz) shall not be applicable to a works council prior to its re-election if it had been in office when the Act became effective.

Section 16

Appointment of the electoral board

(1) Not less than ten weeks before the end of its term of office, the works council shall appoint an electoral board of three persons with voting rights, one of whom shall be the chairman. The works council may increase the number of members on the electoral board if the proper conduct of the election so requires. In all cases the electoral board shall consist of an odd number of members. A substitute may be appointed for each member of the electoral board in order to replace him in his absence. In establishments with male and female employees, the electoral board shall comprise women and men. Each trade union represented in the establishment may, in addition, delegate a representative belonging to the establishment to the electoral board as a non-voting member, inasmuch as no voting member of the electoral board belongs to the trade union involved.

(2) If no electoral board has been appointed by the beginning of the eighth week before the end of the term of office of the works council, it shall be appointed by the labour court on application from three or more persons with voting rights or a trade union represented in the establishment; the preceding subsection shall apply, mutatis mutandis. The application may contain proposals as to the composition of the electoral board. In the case of establishments that normally employ more than twenty employees with voting rights the labour court may also appoint as members of the electoral board persons who are not employed in the establishment but belong to a trade union represented in the establishment, if the proper conduct of the election so requires.

(3) If no electoral board has been appointed by the beginning of the eighth week before the end of the term of office of the works council, the central works council or, in the absence of the latter, the combine works council may appoint the electoral board. Subsection (1), above, shall apply, mutatis mutandis.

Section 17

Appointment of the electoral board in establishments without a works council

(1) If an establishment that fulfils the conditions of the first sentence of section 1 (1) has no works council, an electoral board shall be appointed by the central works council or, in the absence of the latter, the combine works council. Section 16 (1) shall apply, mutatis mutandis.

(2) If there is neither a central works council nor combine works council, an electoral board shall be elected at a works meeting of the employees on a majority vote of those present; Section 16 (1) shall apply, mutatis mutandis. The same applies if the central works council or combine works council fails to appoint the electoral board as stipulated in subsection (1).

(3) Such works meeting may be called by three employees of the establishment with voting rights or a trade union represented in the establishment; in doing so, the said employees or trade union may make proposals as to the composition of the electoral board.

(4) If a works meeting thus called is not held or fails to elect an electoral board, the board shall be appointed by the labour court on application from three or more persons with voting rights or a trade union represented in the establishment. Section 16 (2) shall apply, mutatis mutandis.

Section 17a

Appointment of the electoral board in the simplified electoral procedure

If section 14a is applicable, sections 16 and 17 shall apply with the following modifications:

1. The period referred to in the first sentence of section 16 (1) shall be reduced to four weeks and the period referred to in the first sentences of section 16 (2) and (3) to three weeks.
2. The second and third sentences of section 16 (1) shall not apply.
3. If section 17 (2) is applicable, the electoral board shall be elected at an election meeting by the majority of the workers present. Section 17 (3) shall apply, mutatis mutandis, to the calling of the election meeting.
4. Section 17 (4) shall apply, mutatis mutandis, if no election meeting takes place although it has been properly convened, or if no electoral board was elected at the election meeting.

Section 18

Preparation and conduct of the election

(1) The electoral board shall without delay call the election, carry it out and announce the results. If the electoral board fails to carry out this duty, the labour court shall act in its place on application of the works council, of three or more employees with voting rights or a trade union represented in the establishment. Section 16 (2) shall apply, mutatis mutandis.

(2) If there is any doubt as to whether an organisation unit qualifies for having a works council, the employer, any interested electoral board member or a trade union represented in the establishment shall be entitled to apply to the labour court for a decision.

(3) Directly after termination of the election the electoral board shall count the votes in public, record the results in writing and announce them to the employees of the

establishment. The employer and the trade unions represented in the establishment shall each be sent a copy of the election records.

Section 18a

Allocation of executive staff for elections

(1) If the elections are to be held at the same time in accordance with section 13 (1) and section 5 (1) of the Executives' Committee Act, the electoral boards shall notify each other immediately after preparation of the voters' lists, but not later than two weeks prior to the start of the elections, which salaried employees have been allocated to the executive staff; this shall also apply if the elections are held at the same time without the existence of a legal obligation. Insofar as there is no agreement between the electoral boards regarding this allocation, an attempt must be made to reach an agreement in a joint meeting. Insofar as agreement is reached, the salaried employees shall be entered in the appropriate voters' list in accordance with their allocation.

(2) Insofar as no agreement is reached, a mediator shall make a renewed attempt to achieve agreement between the electoral boards regarding allocation, this occurring not less than one week before the start of the elections. The employer shall support the mediator at his request, particularly by providing the necessary information and documentation. If this attempt to reach agreement fails, the mediator shall decide after consultation with the employer. The third sentence of subsection (1), above, shall apply, *mutatis mutandis*.

(3) The electoral boards must agree on the mediator. Only an employee of the establishment or of another establishment of the company or combine, or the employer may be appointed as mediator. If no agreement is reached, the electoral boards shall each propose one person as a mediator; the casting of lots shall decide who will act as mediator.

(4) If an election in accordance with the Executives' Committee Act is not held at the same time as the election in accordance with section 13 (1) or (2), the electoral board shall notify the executives' committee in accordance with the first phrase of the first sentence of subsection (1). If there is disagreement regarding allocation, the executives' committee shall appoint members to participate in the allocation procedure in lieu of the electoral board. If an election in accordance with this Act is not held at the same time as the election in accordance with section 5 (1) or (2) of the Executives' Committee Act, the first and second sentences of this subsection shall apply to the works council, *mutatis mutandis*.

(5) Recourse to the courts of law shall not be excluded by the allocation. Contestation of the works council election or the election in accordance with the Executives' Committee Act shall be excluded, insofar as it is based on the claim that the allocation was incorrect. The second sentence of this subsection shall not apply if the allocation is patently incorrect.

Section 19

Contesting of elections

(1) An election may be contested before the labour court, if any of the essential rules respecting the right to vote, eligibility or electoral procedure have been infringed and no subsequent correction has been made, unless the infringement could not have altered or influenced the election results.

(2) Such contestation may be made by any three or more persons with voting rights, a trade union represented in the establishment or the employer. To be receivable

the action must be brought within two weeks of the announcement of the election results.

Section 20

Protection against obstruction and costs of the election

- (1) No person shall obstruct the election of a works council. In particular, no employee shall be restricted in his right to vote or to stand for election.
- (2) Any attempt to influence a works council election by inflicting or threatening any unfavourable treatment or by granting or promising any advantage shall be unlawful.
- (3) The costs of the election shall be borne by the employer. Any loss of working time entailed by voting, performance of duties on the electoral board or activity as a mediator (section 18a) shall not give the employer a right to reduce the remuneration.

Division Two

Term of office of the works council

Section 21

Term of office

The regular term of office of a works council shall be four years. It shall run from the announcement of the election results or, if a works council is still in office at that date, from the end of the term of office of that council. The term of office shall expire not later than 31 May of the year in which the regular works council elections are to be held under section 13 (1). In the case covered by the second sentence of section 13 (3) the term of office shall end not later than 31 May of the year in which a new works council is to be elected. In the cases covered by section 13 (2), clauses 1 and 2, the term of office shall end on the announcement of the election results giving the newly elected works council.

Section 21a³

Transitional mandate

- (1) If an establishment is split up, its works council shall continue in office and conduct the day-to-day business for the departments assigned to it, provided that they meet the conditions laid down in the first sentence of section 1 (1) and are not integrated into an establishment which has a works council (transitional mandate). In particular, the works council shall immediately appoint electoral boards. The transitional mandate shall be finished as soon as a new works council has been elected in the departments and the election results have been announced, but in any case not later than six months after the split has become effective. The transitional mandate may be extended by six more months by a collective agreement or works agreement.
- (2) If establishments or departments are combined into one establishment, the works council of the largest establishment or department in terms of number of workers with voting rights shall hold the transitional mandate. Subsection (1), above, shall apply, *mutatis mutandis*.
- (3) Subsections 1 and 2 shall also be applicable if establishments or departments are split up or combined in the course of a divestiture or a transformation in accordance with the Law Regulating Transformation of Companies.

Footnote 3: This provision serves to implement Article 6 of Council Directive 2001/23/EEC of March 12, 2001, on the approximation of the laws of the Member

States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ EEC No. L 82 p. 16).

Section 21b
Residual mandate

If an establishment is shut down, split up or combined with others and therefore ceases to exist, its works council shall continue in office for as long as it is necessary to safeguard the rights to participate and of co-determination existing in this context.

Section 22
Continuation in office of the works council

In the cases covered by section 13 (2), clauses 1 to 3, the works council shall continue in office until the new works council has been elected and the election results have been announced.

Section 23
Dereliction of statutory duties

(1) One-fourth or more of the employees with voting rights or the employer or a trade union represented in the establishment may apply to the labour court for an order to remove from office any member of the works council or to dissolve the council on the grounds of grave dereliction of its statutory duties. The works council itself may also apply for the removal of a member.

(2) Where a works council is dissolved, the labour court shall without delay appoint an electoral board for a fresh election. Section 16 (2) shall apply, mutatis mutandis.

(3) Where the employer has grossly violated his duties under this Act, the works council or a trade union represented in the establishment may apply to the labour court for an order to the employer enjoining him to cease and desist from an act, allow an act to be performed or perform an act. If the employer does not obey an executory court order to cease and desist from an act or allow an act to be performed, the labour court shall, on application and after prior warning, impose a fine on him for each such violation. If the employer does not carry out an act imposed on him by an executory court order, the labour court shall, on application, give a decision that he shall be made to perform the act imposed on him subject to payment of fines. Such application may be made by the works council or by a trade union represented in the establishment. The maximum amount of the fine shall be Euro 10,000.

Section 24
Termination of membership

(1) Membership of the works council shall be terminated by –

1. expiry of the term of office;
2. resignation from the works council;
3. termination of the contract of employment;
4. loss of eligibility;
5. removal from office or dissolution of the works council by court order;

6. a court order relating to the determination of non-eligibility after the expiry of the time limit referred to in section 19 (2) unless the grounds for non-eligibility are found to be nonexistent.

Section 25 Substitutes

- (1) Whenever a member leaves the works council he shall be replaced by a substitute. The foregoing shall apply, mutatis mutandis, to the replacement of a member of a works council who is temporarily unable to act.
- (2) The substitutes shall be taken in turn from the unelected employees on the same candidate lists as the members who are to be replaced, having regard to section 15 (2). After all persons on one list of candidates have been taken, the substitute shall be taken from the candidate list from which the next seat would be filled in accordance with the principles of proportional representation. If the member who is leaving or unable to act was elected on the principles of majority representation, the sequence of the substitutes shall be in accordance with the number of votes obtained, having regard to section 15 (2).

Division Three Conduct of business of the works council

Section 26 Chairman

- (1) The works council shall elect two of its members as chairman and vice-chairman.
- (2) The chairman of the works council (or if he is unable to act, the vice-chairman) shall represent the works council subject to the decisions adopted by the council. The chairman of the works council (or, if he is unable to act, the vice-chairman) shall have the right to receive statements to be submitted to the works council.

Section 27 Works committee

- (1) If a works council consists of nine or more members, it shall set up a works committee. The works committee shall consist of the chairman of the works council, the vice-chairman, as well as, in works councils with
9 to 15 members: 3 additional committee members,
17 to 23 members: 5 additional committee members,
25 to 35 members: 7 additional committee members,
37 or more members: 9 additional committee members,
The additional committee members shall be elected from its midst by the works council in a secret ballot and in accordance with the principles of proportional representation. If only one list of candidates is proposed, the ballot shall be carried out in accordance with the principles of the majority vote. If the additional committee members are elected in accordance with the principles of proportional representation, they shall be removed from office by a decision of the works council, taken in a secret ballot and requiring a majority of three-quarters of the votes of the works council members.
- (2) The works committee shall deal with the day-to-day business of the works council. The works council may by majority vote of its members delegate tasks to the works committee for independent action; the foregoing shall not apply to the negotiation of works agreements. Such delegation of tasks must be recorded in writing. The second and third sentences of this subsection shall apply, mutatis mutandis, to the revocation of such delegation of tasks.

(3) A works council consisting of less than nine members may delegate day-to-day business to its chairman or others of its members.

Section 28

Assignment of tasks to committees

(1) In establishments with more than 100 employees, the works council may establish additional committees and assign them specific tasks. The third to fifth sentences of section 27 (1) shall apply, mutatis mutandis, to the election and removal from office of the committee members. Once a works committee has been set up the works council may assign tasks for autonomous action to the committees; the second to fourth sentences of section 27 (2) shall apply, mutatis mutandis, insofar as these tasks are assigned to them for independent action.

(2) Subsection 1 shall apply, mutatis mutandis to the delegation of tasks for independent action to works council members on joint committees whose members are appointed by the works council and by the employer.

Section 28a

Assignment of tasks to working groups

(1) In establishments with more than 100 employees, the works council may by majority vote of its members delegate certain tasks to working groups, such delegation of tasks being subject to a framework agreement to be made with the employer. The tasks shall be linked to the activities to be performed by the working group. Such delegation of tasks must be recorded in writing. The first phrase of the first sentence and the third sentence of this subsection shall apply, mutatis mutandis, to the revocation of such delegation of tasks.

(2) The working group may, within the scope of the tasks delegated to it, make agreements with the employer; such an agreement shall be made by a majority vote of the group's members. Section 77 shall apply, mutatis mutandis. If the employer and the working group do not reach an agreement on a certain matter, the works council shall exercise the right to participation.

Section 29

Convening of meetings

(1) The electoral board shall convene the members of the works council for the purposes of the election under section 26 (1) before one week has elapsed after the election date. The meeting shall be presided over by the chairman of the electoral board, until the works council has appointed one of its own members to preside over the election.

(2) Subsequent meetings shall be called by the chairman of the works council. The chairman shall draw up the agenda and conduct the proceedings. He shall notify the works council members of the meetings in good time, informing them of the agenda. The foregoing shall also apply to the disabled persons' delegation and to the youth and trainee representatives, insofar as they are entitled to attend the works council meeting. If a member of the works council or of the youth and trainee delegation is unable to attend a meeting, he shall inform the chairman without delay, indicating the reasons for his absence. The chairman shall then invite the substitute to replace the said member of the works council or the youth and trainee representative in his absence.

(3) The chairman shall convene a meeting and place on its agenda the matter on which a discussion has been requested, if such request is made by one-fourth of the members of the works council or by the employer.

(4) The employer shall attend the meetings which take place at his request and any other meetings to which he is expressly invited. He may be accompanied by a representative of the employers' association of which he is a member.

Section 30

Meetings of the works council

The works council shall normally meet during working hours. In fixing the meetings the works council shall take account of the operational needs of the establishment. The employer shall be notified of the date of the meeting in advance. Meetings of the works council shall not be public.

Section 31

Attendance of trade union delegates

If one-fourth of the members of the works council so request, a delegate of a trade union represented on the works council may be invited to attend meetings in an advisory capacity; in that case the trade union shall be notified in good time of the time of the meeting and its agenda.

Section 32

Attendance of the disabled persons' delegation

The disabled persons' delegation (section 94 of Book Nine of the Social Code) shall be entitled to attend all meetings of the works council in an advisory capacity.

Section 33

Decisions of the works council

- (1) Unless otherwise provided in this Act, the decisions of the works council shall be deemed to be adopted if the majority of the members present vote in favour. In the case of a tie the motion shall be taken to be defeated.
- (2) At least one-half of the members of the works council must take part in a vote to constitute a quorum; members may be replaced by substitutes.
- (3) If the youth and trainee delegation participates in the voting, the votes of the youth and trainee representatives shall be taken into account in tallying the results.

Section 34

Minutes

- (1) Minutes shall be kept of all proceedings of the works council, giving at least the text of all decisions taken and the majority by which they were adopted. The minutes shall be signed by the chairman and one other member. They shall be accompanied by a list of the members present, in which each member shall personally enter his name.
- (2) If the employer or a trade union representative attended the meeting, he shall be given a copy of the section of the minutes which concerns him. Any objections to the minutes shall be lodged in writing without delay; they shall be attached to the minutes.
- (3) Members of the works council shall be entitled at any time to inspect all records of the works council and its committees.

Section 35

Deferment of decisions

- (1) If a majority of the youth and trainee delegation or the disabled persons' delegation is of the opinion that a decision of the works council considerably prejudices important interests of the employees they represent, the decision shall at their request be deferred for one week (counted from the date on which the decision

is taken) to allow time for an attempt to come to an agreement, where appropriate with the assistance of the trade unions represented in the establishment.

(2) On expiry of this period a fresh decision shall be taken on the matter at issue. If the initial decision is confirmed, no further deferment may be requested; the same rule shall apply if the initial decision is adopted with only minor amendments.

Section 36 **Standing orders**

Further provisions respecting the conduct of business should be laid down in writing in standing orders to be adopted by the works council by majority vote of its members.

Section 37 **Honorary nature of post; loss of working time**

(1) The post of member of the works council shall be unpaid.

(2) The members of the works council shall be released from their work duties without loss of pay to the extent necessary for the proper performance of their functions, having regard to the size and nature of the establishment.

(3) By way of compensation for works council activities which for operational reasons must be performed outside working hours, a member of a works council shall be entitled to corresponding time off without loss of pay. Operational reasons are also present if the works council activities cannot be carried out during the personal working hours because of different working hours of the works council members. Such time off shall be granted within a month; if this cannot be done for operational reasons, the time spent on such activities shall be remunerated on the same basis as extra work.

(4) During his term of office and for one year thereafter the remuneration of a member of the works council shall not be fixed at a lower rate than the remuneration paid to workers in a comparable position who have followed the career that is usual in the establishment. The same shall apply to general benefits granted by the employer.

(5) During his term of office and for one year thereafter a member of the works council shall be employed only on activities that rank on the same level as those of the workers referred to in the preceding subsection, except where this is precluded by imperative operational requirements.

(6) Subsections (2) and (3) shall apply, mutatis mutandis, to the attendance of training and educational courses, in so far as the knowledge imparted is necessary for the activities of the works council. Operational reasons as defined in subsection (3) are also present if the training is provided to the works council member outside his working hours due to special features of the establishment's working hours regulations; in this case, the claim for compensation is limited to the working hours of one full-time employee per day of training, taking into account the releases stipulated in subsection (2) hereof. In scheduling the time for attending training and educational courses the works council shall take account of the operational requirements of the establishment. It shall notify the employer in good time of the attendance of training and educational courses and of the time at which they are held. If the employer feels that the operational requirements of the establishment have not sufficiently been taken into account, he may submit the case to the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.

(7) Without prejudice to subsection (6), each member of the works council shall be entitled during his regular term of office to a paid release for a total of three weeks to enable him to attend training and educational courses that have been approved for this purpose by the competent central labour authority of the Land concerned after consultation with the central organization of trade unions and employers' associations. The entitlement conferred by the preceding sentence shall be increased to four weeks for employees who are serving for the first time as a member of the works council and have not yet previously served as a youth and trainee representative. The second to sixth sentences of subsection (6) shall apply.

Section 38 Releases

(1) The minimum number of works council members to be released from their work duties shall depend on the number of employees normally employed in the establishment, as set out below:

200 to 500 employees: 1 member of the works council,

501 to 900 employees 2 members of the works council

901 to 1500 employees 3 members of the works council

1501 to 2000 employees 4 members of the works council

2001 to 3000 employees 5 members of the works council

3001 to 4000 employees 6 members of the works council

4001 to 5000 employees 7 members of the works council

5001 to 6000 employees 8 members of the works council

6001 to 7000 employees 9 members of the works council

7001 to 8000 employees 10 members of the works council

8001 to 9000 employees 11 members of the works council

9001 to 10000 employees 12 members of the works council.

In establishments with more than 10,000 employees one further member of the works council shall be released for each additional fraction of 2,000 employees.

Releases may also be granted in the form of partial releases. Taken together, such partial releases shall not exceed the amount of releases specified in the first and second sentences. Other arrangements concerning releases can be made by collective or works agreement.

(2) The works council members to be released shall be elected by secret ballot and in accordance with the principles of proportional representation by the works council from its midst after consultation with the employer. If only one list of candidates is proposed, the ballot shall be carried out in accordance with the principles of the majority vote; if only one works council member is to be released, he shall be elected by simple majority. The works council shall give the employer the names of the members to be released. If the employer feels that the release is not justifiable under the circumstances, he may appeal to the conciliation committee within two weeks of being notified. The award of the conciliation committee shall take the place of an agreement between the employer and the works council. If the conciliation committee confirms the concern of the employer, it shall also take into account the protection of minorities in the sense of the first sentence of this subsection when deciding upon another works council member to be released. If the employer does not appeal to the conciliation committee, his approval shall be deemed to have been given and the releases shall take effect on the expiry of the two weeks referred to above. The fifth sentence of section 27 (1) shall apply, mutatis mutandis, to removal of members from office.

(3) In respect of members of the works council who have been released from their work duties for three full consecutive terms of office, the period during which their remuneration continues pursuant to section 37 (4) and their employment pursuant to 37 (5) shall be extended to two years after the expiry of their term of office.

(4) Members of the works council who have been released from their work duties shall not be debarred from vocational training programmes inside or outside the establishment. Within a year of the date on which the release comes to an end, members of the works council shall be allowed, as far as the facilities offered by the establishment permit, to take any career training normally provided for the employees of the establishment that they missed because of their release. In respect of members of the works council who were released from their work duties for three full consecutive terms of office, the period referred to in the preceding sentence shall be extended to two years.

Section 39

Consultation hours

(1) The works council may fix hours for consultation during working hours. The time and place of such consultation hours shall be fixed in agreement with the employer. If no agreement is reached the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.

(2) If the youth and trainee delegation does not have its own consultation hours, a member of the youth and trainee delegation may take part in the consultation hours held by the works council for the purpose of advising the employees referred to in section 60 (1).

(3) Any loss of working time entailed by making use of consultation hours or otherwise seeking the assistance of the works council shall not give the employer a right to reduce the employee's remuneration.

Section 40

Expenses of the works council and material facilities

(1) Any expenses arising out of the activities of the works council shall be defrayed by the employer.

(2) The employer shall provide to the necessary extent the premises, material facilities, means of information and communication and office staff required for the meetings, consultations and day-to-day operation of the works council.

Section 41

Prohibition of employees' contributions

It shall be unlawful to collect or pay employees' contributions towards the works council.

Division Four Works meeting

Section 42

Composition, sectional meetings, department meetings

(1) The works meeting shall be composed of all the employees of the establishment; it shall be conducted by the chairman of the works council. It shall not be public. In establishments whose nature precludes works meetings which all employees can attend at the same time, sectional meetings shall be held.

(2) The works council shall call department meetings for employees of departments that are separated by their organization or location where this is necessary to discuss the special interests of the said employees. Department meetings shall be conducted by a member of the works council who should, if possible, be employed in the department concerned. The second and third sentences of the preceding subsection shall apply, mutatis mutandis.

Section 43

Ordinary works meetings and department meetings

(1) The works council shall call a works meeting once in every calendar quarter and report on its activities. In the circumstances referred to in the first sentence of section 42 (2) the works council shall organise two of the works meetings referred to in the preceding sentence in the form of department meetings. The department meetings shall, as far as possible, be held simultaneously. The works council may call an additional works meeting (or, in the circumstances referred to in the first sentence of section 42 (2), one additional holding of simultaneous department meetings) in every calendar half year, if this appears advisable for special reasons.

(2) The employer shall be invited to the works meetings and department meetings and notified of the agenda. He shall be entitled to address the meetings. At least once in every calendar year the employer or his representative shall make a report to the works meeting on staff questions including the status of equality between women and men and the integration of the foreign employees working in the establishment, the financial position of and trends in the establishment, and on environmental protection in the establishment as far as there is no risk of a disclosure of trade or business secrets.

(3) The works council may, and if so requested by the employer or one-fourth or more of the employees with voting rights, must convene a works meeting and place on the agenda the matter on which a discussion has been requested. The employer shall be notified in good time of the day and time of the meetings convened at his request.

(4) At the request of a trade union represented in the establishment, the works council shall call a works meeting of the type referred to in the first sentence of subsection (1) within two weeks of receiving the said request, if no works meeting and no department meetings have been held in the preceding calendar half year.

Section 44

Time of meetings and loss of remuneration

(1) Meetings held in pursuance of sections 14a, 17 and 43 (1) as well as any meetings called at the request of the employer shall be held during working hours unless it is absolutely necessary in view of the nature of the establishment to make some other arrangement. The time for attending the meetings, including additional travel time, shall be remunerated as hours of work. This rule shall also apply if meetings are held outside working hours because of the nature of the establishment; any travel costs incurred by the employees through attending these meetings shall be reimbursed by the employer.

(2) All other works meetings or department meetings shall be held outside working hours. This rule may be relaxed if the employer so agrees; meetings held during working hours with the employer's agreement shall not give the employer any right to reduce the employees' remuneration.

Section 45

Subjects dealt with at works meetings and department meetings

Works meetings and department meetings may deal with matters of direct concern to the establishment or to the employees, including subjects in connection with collective bargaining policies, social policy, environmental and financial matters, issues concerning the promotion of equality between women and men and the reconciliation of family and employment; as well as the integration of the foreign employees working in the establishment, the principles laid down in section 74 (2) shall apply. Works meetings and department meetings may make suggestions to the works council and take a stand on its decisions.

Section 46

Delegates from industrial associations

- (1) Delegates from the trade unions represented in the establishment shall be entitled to attend all works and department meetings in an advisory capacity. Where the employer attends a works or department meeting, he may be accompanied by a delegate from the employers' association of which he is a member.
- (2) The trade unions represented on the works council shall be sent a written notification in good time indicating the date, time and agenda of the works or department meetings.

Division Five

Central works council

Section 47⁴

Conditions for establishment, number of members, weighting of votes

- (1) If there are several works councils in one company, a central works council shall be established.
- (2) Each works council shall appoint to the central works council one of its members if it consists of up to three members, and two of its members if it comprises more than three members. The genders shall be adequately represented.
- (3) The works council shall appoint at least one substitute for each member of the central works council and establish their order of succession to office.
- (4) A different number of members of the central works council from the one prescribed in the first sentence of subsection (2) above may be provided for by collective agreement or works agreement.
- (5) If under the provisions of the first sentence of subsection (2) a central works council has more than forty members and no stipulation of the type referred to in subsection (4) has been made by collective agreement, the employer and the central works council shall negotiate a works agreement on the number of members of the said council providing for the joint appointment of members to the central works council by the works councils of two or more establishments of the company that are linked by regional ties or similar interests.
- (6) If no agreement is reached in a case covered by subsection (5), the matter shall be decided by a conciliation committee to be set up for the whole company. The award of the conciliation committee shall take the place of an agreement between the employer and the central works council.
- (7) Each member of the central works council shall have as many votes as there are employees having voting rights and recorded in the voters' list of the establishment in which he was elected. Where several members of the works council have been

appointed, the votes shall be apportioned among them in accordance with the first sentence.

(8) Where a member of the central works council has been appointed to represent more than one establishment, he shall have as many votes as there are employees with voting rights who are recorded in the voters' list of the establishment for which he has been appointed; if several members have been appointed, the second sentence of subsection 7 shall apply, *mutatis mutandis*.

(9) For the members of the central works council who have been appointed by a joint establishment of several companies, provision differing from subsections 7 and 8 hereof can be made by collective agreement or works agreement.

Footnote 4: In accordance with the second sentence of Article 14 of the Act Reforming the Works Constitution Act (BetrVerf-Reformgesetz) of 23 July 2001 ("Bundesgesetzblatt", Part I p. 1852), Section 47 (2) (Article 1 clause 35 letter a of BetrVerf-Reformgesetz) shall not be applicable to a works council prior to its reelection if it had been in office when the Act became effective.

Section 48

Removal from office of members of the central works council

One-fourth or more of the employees of the company who have voting rights or the employer or the central works council or a trade union represented in the company may apply to the labour court for an order to remove from office any member of the central works council on the grounds of grave dereliction of his statutory duties.

Section 49

Termination of membership

Membership of the central works council shall be ended by termination of membership of the works council, resignation, removal from office in the central works council by court order or by the works council.

Section 50

Competency

(1) The central works council shall be competent to deal with matters affecting the company as a whole or two or more of its establishments, which the individual works councils are unable to settle within their establishments; therefore, its competency also covers establishments that have no works council. It shall not be deemed to be a higher organ than the individual works councils.

(2) A works council may refer a matter to the central works council by a majority vote of its members. In doing so, the works council may reserve the right of decision. The third and fourth sentences of section 27 (2) shall apply, *mutatis mutandis*.

Section 51

Conduct of business

(1) Sections 25 (1), 26, 27 (2) and (3), section 28 (1) first and third sentence, and (2), sections 30, 31, 35, 36, 37 (1) to (3) and sections 40 and 41 shall apply, *mutatis mutandis*, to the central works council. Section 27 (1) shall also apply, *mutatis mutandis*, with the proviso that the central works committee shall consist of the chairman and vice-chairman of the central works council and some additional members whose number shall depend on the size of the central works council, as set out below:

9 to 16 members: 3 additional committee members,

17 to 24 members: 5 additional committee members,
25 to 36 members: 7 additional committee members,
more than 36 central works council members: 9 additional committee members.

(2) If a central works council is to be established, the works council of the head office of the company or, if there is no such works council, the works council of the establishment with the largest number of employees with voting rights shall call a meeting to elect the chairman and the vice-chairman of the central works council. The chairman of the works council that has called the meeting shall preside over the meeting until the central works council has appointed one of its members to conduct the election. Section 29 (2) to (4) shall apply, mutatis mutandis.

(3) Unless otherwise provided, the decisions of the central works council shall be taken by a majority of the members present and voting. In the case of a tie the motion shall be taken to be defeated. To constitute a quorum not less than one-half of the members of the central works council must take part in the vote and those who vote must represent at least one-half of the total voting strength; members may be replaced by substitutes. Section 33 (3) shall apply, mutatis mutandis.

(4) Section 33 (1) and (2) shall apply to voting in the central works committee and other committees of the central works council.

(5) In as far as this Act does not contain any special provisions, the provisions relating to the rights and obligations of the works council shall apply, mutatis mutandis, to the central works council.

Section 52

Attendance of the central disabled persons' delegation

The central disabled persons' delegation (section 97 (1) of Book Nine of the Social Code) shall be entitled to attend all meetings of the central works council in an advisory capacity.

Section 53

Meeting of works councils

(1) At least once in every calendar year the central works council shall call a meeting of the chairmen and vice-chairmen of the works councils and all other members of the works committees. Works councils may appoint other members not covered by the first sentence as delegates to this meeting on condition that the total number of participants allotted to it in application of the first sentence is not exceeded.

(2) At the said meeting –

1. the central works council shall make a report on its activities, and
2. the employer shall make a report on staff questions and social affairs in the company including the status of equality between women and men and the integration of the foreign employees working in the establishment, the financial position of and trends in the establishment, and on environmental protection in the establishment, in as far as there is no risk of a disclosure of trade or business secrets.

(3) The central works council may hold the works council meetings in the form of partial meetings. In all other respects the second phrase of the first sentence and the second sentence of section 42 (1), the first and second sentences of section 43 (2) and sections 45 and 46 shall apply, mutatis mutandis.

Division Six Combine works council

Section 54

Establishment of the combine works council

(1) In a combine (as defined in section 18 (1) of the Joint Stock Act) a combine works council may be established by resolutions of the individual central works councils. Any proposal to establish such council must be approved by the central works councils for the subsidiaries of the combine employing more than 50 per cent of the employees of the whole combine.

(2) Where a subsidiary of the combine only has a works council, the said council shall assume the duties assigned to the central works council under the provisions of this Division.

Section 55

Composition of the combine works council and weighting of votes

(1) Each central works council appoints to the combine works council two of its members. The genders shall be adequately represented.

(2) The central works council shall appoint at least one substitute for each member of the combine works council and establish their order of succession to office.

(3) Each member of the combine works council is entitled to one-half of the votes of the members of the central works council by which he was appointed.

(4) A different number of members of the combine works council than the one prescribed in the first sentence of subsection (1) may be provided for by collective agreement or works agreement. Section 47 (5) to (9) shall apply, mutatis mutandis.

Section 56

Removal from office of members of the combine works council

One-fourth or more of the employees with voting rights of the subsidiaries of the combine or the employer or the combine works council or a trade union represented in the combine may apply to the labour court for an order to remove from office any member of the combine works council on the grounds of grave dereliction of his statutory duties.

Section 57

Termination of membership

Membership of the combine works council shall be ended by termination of membership of the central works council, resignation, removal from office in the combine works council by court order or by the central works council.

Section 58

Competency

(1) The combine works council shall be competent to deal with matters affecting the combine as a whole or two or more of its subsidiaries, which the individual central works councils are unable to settle within their establishments; therefore, its competency also covers establishments that have no central works council as well as establishments of the subsidiaries without a works council. It shall not be deemed to be a higher organ than the individual central works councils.

(2) A central works council may refer a matter to the combine works council by a majority vote of its members. In doing so, the central works council may reserve the right of decision. The third and fourth sentences of section 27 (2) shall apply, mutatis mutandis.

Section 59
Conduct of business

(1) Sections 25 (1), 26, 27 (2) and (3), section 28 (1) first and third sentence, and (2), sections 30, 31, 34, 35, 36, 37 (1) to (3) and sections 40, 41 and 51 (1) second sentence and (3) to (5) shall apply, mutatis mutandis, to the combine works council.
(2) If a combine works council is to be established, the central works council of the controlling company or, if there is no such central works council, the central works council of the subsidiary with the largest number of employees with voting rights shall call a meeting to elect the chairman and vice-chairman of the combine works council. The chairman of the central works council that has called the meeting shall preside over the meeting until the combine works council has appointed one of its members to conduct the election. Section 29 (2) to (4) shall apply, mutatis mutandis.

Section 59a
Attendance of the combine disabled persons' delegation

The combine disabled persons' delegation (section 97 (2) of Book Nine of the Social Code) shall be entitled to attend all meetings of the combine works council in an advisory capacity.

Part Three
Youth and trainee delegation

Division One
Youth and trainee delegation at the level of the establishment

Section 60
Establishment and function

(1) In establishments that normally employ five or more persons under 18 years of age (young employees) or persons under 25 years of age receiving vocational training, youth and trainee delegations shall be elected.
(2) The youth and trainee delegation shall represent the special interests of the employees referred to in the preceding subsection in accordance with the provisions set out below.

Section 61
Voting rights and eligibility

(1) All employees of the establishment referred to in section 60 (1) shall have voting rights.
(2) All employees of the establishment who are under 25 years of age shall be eligible for election; the third sentence of section 8 (1) shall apply. Members of the works council shall not be eligible as youth and trainee representatives.

Section 62
Number of youth and trainee representatives; composition of the youth and trainee delegation

(1) The membership of the youth and trainee delegation shall be as follows, according to the number of young employees and trainees normally employed in the establishment:
5 to 20 employees referred to in section 60 (1) – 1 person,
21 to 50 employees referred to in section 60 (1) – 3 members,
51 to 150 employees referred to in section 60 (1) – 5 members,
151 to 300 employees referred to in section 60 (1) – 7 members,
301 to 500 employees referred to in section 60 (1) – 9 members,

501 to 700 employees referred to in section 60 (1) – 11 members,
701 to 1000 employees referred to in section 60 (1) – 13 members,
more than 1000 employees referred to in section 60 (1) – 15 members.

(2) The youth and trainee delegation shall, as far as possible, comprise representatives of the various employment categories and training occupations of the employees of the establishment referred to in section 60 (1).

(3) The gender that accounts for a minority of the employees referred to in section 60 (1) shall at least be represented according to its relative numerical strength whenever the youth and trainee delegation consists of three or more members.

Section 63

Election procedure

(1) The youth and trainee delegation shall be elected directly by secret ballot.

(2) The works council shall appoint an electoral board and its chairman at least eight weeks before the end of the term of office of the youth and trainee delegation. The election of the youth and trainee representatives shall be governed by section 14 (2) to (5), the fourth to sixth sentences of section 16 (1), the first sentence of section 18 (1), section 18 (3), and sections 19 and 20, mutatis mutandis.

(3) If the works council fails to appoint an electoral board or does not appoint it at least six weeks before the end of the term of office of the youth and trainee delegation, or if the electoral board fails to carry out its duties under the first sentence of section 18 (1), the first and second sentences of section 16 (2), the first sentence of section 16 (3) and the second sentence of section 18 (1) shall apply, mutatis mutandis, subject to the proviso that the application to the labour court may also be made by young employees.

(4) Section 14a shall apply, mutatis mutandis, to establishments that normally have five to fifty permanent employees referred to in section 60 (1). The period specified for appointing the electoral board shall be reduced to four weeks in the cases covered by the first sentence of subsection 2 above, and to three weeks in the cases covered by the first sentence of subsection 3 above.

(5) Section 14a (5) shall apply, mutatis mutandis, to establishment that normally have 51 to 100 permanent employees referred to in section 60 (1).

Section 64

Time of elections and term of office

(1) Regular elections to the youth and trainee delegation shall be held every two years at some time between 1 October and 30 November. In respect of the election of the youth and trainee delegation outside this period, section 13 (2), clauses 2 to 6, and (3) shall apply, mutatis mutandis.

(2) The regular term of office of a youth and trainee delegation shall be two years. It shall run from the announcement of the election results or, if a youth and trainee delegation is still in office at that date, from the end of its term of office. The term of office shall expire not later than 30 November of the year in which regular elections are to be held under the first sentence of subsection (1). In the case covered by the second sentence of section 13 (3), the term of office shall end not later than 30 November of the year in which a new youth and trainee delegation is to be elected. In the case covered by section 13 (2), clause 2, the term of office shall end on the announcement of the election results for the newly elected youth and trainee delegation.

(3) If a member of the youth and trainee delegation reaches his twenty-fifth birthday while in office, he shall continue to hold office until the end of his term.

Section 65

Conduct of business

(1) Sections 23 (1), 24, 25, 26, 28 (1), first and second sentences, and sections 30, 31, 33 (1) and (2), as well as sections 34, 36, 37, 40 and 41 shall apply, mutatis mutandis, to the youth and trainee delegation.

(2) The youth and trainee delegation may hold meetings after notifying the works council; section 29 shall apply, mutatis mutandis. Such meetings may be attended by the chairman of the works council or another member of the works council delegated for this purpose.

Section 66

Deferment of decisions taken by the works council

(1) If a majority of the youth and trainee representatives are of the opinion that a decision of the works council considerably prejudices important interests of the employees referred to in section 60 (1), the decision shall at their request be deferred for one week to allow time for an attempt to come to an agreement, where appropriate with the assistance of the trade unions represented in the establishment.

(2) If the initial decision is confirmed, no further deferment may be requested; the same rule shall apply if the initial decision is adopted with only minor amendments.

Section 67

Participation in works council meetings

(1) The youth and trainee delegation may send a representative to attend any meeting of the works council. Where matters of particular concern to the employees referred to in section 60

(1) are on the agenda, the full youth and trainee delegation shall be entitled to participate in the discussion of the relevant items.

(2) The youth and trainee representatives shall be entitled to take part in the vote, insofar as the decisions to be taken by the works council mainly concern the employees referred to in section 60 (1).

(3) The youth and trainee delegation may request the works council to place on the agenda of its next meeting any matters of particular concern to the employees referred to in section 60 (1) that have previously been discussed by the youth and trainee delegation. The works council shall refer matters of particular concern to the employees referred to in section 60 (1) to the youth and trainee delegation for consideration.

Section 68

Participation in joint discussions

The works council shall invite the youth and trainee delegation to take part in discussions between the employer and the works council if the matters dealt with are of particular concern to the employees referred to in section 60 (1).

Section 69

Consultation hours

In establishments that normally employ more than fifty of the employees referred to in section 60 (1), the youth and trainee delegation may appoint hours for consultation during working hours. The time and place of such consultation hours

shall be fixed by agreement between the works council and the employer. The third and fourth sentences of section 39 (1) and section 39 (3) shall apply, mutatis mutandis. The chairman of the works council or another member of the works council delegated for this purpose may be present at the consultation hours of the youth and trainee delegation in an advisory capacity.

Section 70 General duties

(1) The youth and trainee delegation shall have the following general duties:

1. to request the works council to take action for the benefit of the employees referred to in section 60 (1), especially in vocational training matters and issues regarding the continued employment of persons employed for training purposes;
- 1a. to request the works council to take action to ensure the actual equality of the employees referred to in section 60 (1) as stipulated in section 80 (1) Clauses 2a and 2b;
2. to see that effect is given to Acts, ordinances, safety regulations, collective agreements and works agreements in favour of the employees referred to in section 60 (1);
3. to receive suggestions from the employees referred to in section 60 (1), especially in matters of vocational training, and have the works council act on these suggestions if they appear justified. The youth and trainee delegation shall inform the involved employees referred to in section 60 (1) of the state of the negotiations and their results;
4. to promote in the establishment the integration of foreign employees referred to in section 60 (1) and to request the works council to take appropriate action in this respect.

(2) The works council shall supply comprehensive information to the youth and trainee delegation in good time to enable it to discharge its duties. The youth and trainee delegation may demand that the works council make available any documentation it may require for the discharge of its duties.

Section 71 Works meetings for young and trainee employees

Before or after each works meeting, the youth and trainee delegation may call a works meeting for young and trainee employees in agreement with the works council. The works meeting for young and trainee employees may also be called at another time in agreement with the works council and the employer. The first and second sentences of section 43 (2), section 44 to 46 and the second sentence of section 65 (2) shall apply, mutatis mutandis.

Division Two Central youth and trainee delegation

Section 72 Conditions for establishment, number of members, weighting of votes

- (1) If there are two or more youth and trainee delegations in one company, a central youth and trainee delegation shall be established.
- (2) Each youth and trainee delegation shall appoint one of its members to the central youth and trainee delegation.

(3) The youth and trainee delegation shall appoint at least one substitute for the member appointed to the central youth and trainee delegation and establish the order of succession to office.

(4) A different number of members of the central youth and trainee delegation from that prescribed in subsection (2) may be provided for by collective agreement or works agreement.

(5) If, under the provisions of subsection (2), a central youth and trainee delegation has more than twenty members and no stipulation of the type referred to in subsection (4) has been made by collective agreement, the central works council and the employer shall negotiate a works agreement on the number of members of the central youth and trainee delegation, providing for the joint appointment of members to the central youth and trainee delegation by the youth and trainee delegations of two or more establishments of the company that are linked by regional ties or by similar interests.

(6) If no agreement is reached in a case covered by subsection (5), the matter shall be decided by a conciliation committee to be set up for the whole company. The award of the conciliation committee shall take the place of an agreement between the employer and the central works council.

(7) Each member of the central youth and trainee delegation shall have as many votes as there are employees referred to in section 60 (1) recorded in the voters' list of the establishment in which he was elected. Where a member of the central youth and trainee delegation has been appointed for more than one establishment, he shall have as many votes as the number of employees referred to in section 60 (1) recorded in the voters' list of the establishments for which he has been appointed. Where two or more members of the youth and trainee delegation have been appointed, the votes shall be apportioned among them in accordance with the first sentence.

(8) Different provisions from subsection 7 hereof can be made in a collective or works agreement for the members of the youth and trainee delegation which have been appointed by a joint establishment of several companies.

Section 73

Conduct of business and application of other provisions

(1) The central youth and trainee delegation may hold meetings after notifying the central works council. The meetings may be attended by the chairman of the central works council or another member of the central works council delegated for this purpose.

(2) Section 25 (1), sections 26 and the first sentence of 28 (1), and sections 30, 31, 34, 36, 37 (1) to (3), sections 40, 41, 48, 49, 50, 51 (2) to (5), and sections 66 to 68 shall apply, mutatis mutandis, to the central youth and trainee delegation.

Division Three

Combine youth and trainee delegation

Section 73a

Condition for establishment, number of members, weighting of votes

(1) If several central youth and trainee delegations exist in a combine (as defined in section 18 (1) of the Joint Stock Act) a combine youth and trainee delegation may be established by resolutions of the individual central youth and trainee delegations. Any proposal to establish such delegation must be approved by the central youth and trainee delegations for the subsidiaries of the combine employing at least 75 per

cent of the employees referred to in section 60 (1). Where a subsidiary of the combine only has a youth and trainee delegation, the said delegation shall assume the duties assigned to the central youth and trainee delegation under the provisions of this Division.

(2) Each central youth and trainee delegation shall appoint one of its members to the combine youth and trainee delegation. It shall appoint at least one substitute for each member of the combine youth and trainee delegation and establish their order of succession to office.

(3) Each member of the combine youth and trainee delegation shall have a number of votes that corresponds to the total number of votes of the central youth and trainee delegation by which it was appointed.

(4) Section 72 (4) to (8) shall apply, mutatis mutandis.

Section 73b

Conduct of business and application of other provisions

(1) The combine youth and trainee delegation may hold meetings after notifying the combine works council. The meetings may be attended by the chairman of the combine works council or another member of the combine works council delegated for this purpose.

(2) Section 25 (1), sections 26, 28 (1), first sentence, sections 30, 31, 34, 36, 37 (1) to (3), sections 40, 41, 51 (3) to (5), sections 56, 57, 58, 59 (2) and sections 66 to 68 shall apply, mutatis mutandis, to the combine youth and trainee delegation.

Part Four

Collaboration by employees and co-determination

Division One

General

Section 74

Principles of collaboration

(1) The employer and the works council shall meet together at least once a month for joint conferences. They shall discuss the matters at issue with an earnest desire to reach agreement and make suggestions for settling their differences.

(2) Industrial action between the employer and the works council shall be unlawful; the foregoing shall not apply to industrial action between collective bargaining parties. The employer and the works council shall refrain from activities that interfere with operations or imperil the peace in the establishment. They shall refrain from any activity within the establishment in promotion of a political party; the foregoing shall not apply to dealing with matters of direct concern to the establishment or its employees in the field of collective bargaining policy, social policy, environmental policy and of a financial nature.

(3) The fact that an employee has assumed duties under this Act shall not restrict him in his trade union activities even where such activities are carried out in the establishment.

Section 75

Principles for the treatment of persons employed in the establishment

(1) The employer and the Works Council shall ensure that all persons working in the establishment are treated in accordance with the principles of law and equity, in particular that no one is subject to discrimination on grounds of race, ethnic origin,

descent or other origin, nationality, religion or belief, disability, age, political or trade union activities or convictions or on the grounds of gender or sexual identity.

(2) The employer and the works council shall safeguard and promote the untrammelled development of the personality of the employees of the establishment. They shall promote the independence and personal initiative of the employees and working groups.

Section 76 Conciliation committee

(1) Whenever the need arises a conciliation committee shall be set up for the purpose of settling differences of opinion between the employer and the works council, central works council or combine works council. A standing conciliation committee may be established by works agreement.

(2) The conciliation committee shall be composed of assessors appointed in equal number by the employer and the works council and of an independent chairman accepted by both sides. If no agreement can be reached on a chairman, he shall be appointed by the labour court. The latter shall also decide in cases where no agreement can be reached on the number of assessors.

(3) The conciliation committee shall act without delay. It shall adopt its decisions by majority vote after oral proceedings. The chairman shall not participate in the voting; in the case of a tie the discussion shall be resumed and the chairman shall participate in the subsequent vote. The decisions of the conciliation committee shall be recorded in writing, signed by the chairman and transmitted to the employer and the works council.

(4) Further details of the procedure in the conciliation committee may be fixed by works agreement.

(5) In cases where the award of the conciliation committee takes the place of an agreement between the employer and the works council, the conciliation committee shall act at the request of either side. If one side fails to appoint members or if the members appointed by one side fail to attend after being convened in due time, the chairman and the members present shall make the award without them following the procedure laid down in subsection (3). In taking its decisions the conciliation committee shall have due regard to the interests of the establishment and of the employees concerned as reasonably assessed. The employer or the works council may make an appeal to the labour court on the grounds that the conciliation committee has exceeded its powers, but only within two weeks of the date of notification of the award.

(6) In all other cases the conciliation committee shall act only if both sides so request or agree to its intervention. In such cases its award shall take the place of an agreement between the employer and the works council only if both sides have accepted the award in advance or accept it subsequently.

(7) In as far as other provisions allow for judicial proceedings, such proceedings shall not be precluded by the award of the conciliation committee.

(8) It may be stipulated by collective agreement that an arbitration body set up under the agreement shall take the place of the conciliation committee referred to in subsection (1).

Section 76a Costs of the conciliation committee

(1) The costs of the conciliation committee shall be borne by the employer.

(2) The assessors of the conciliation committee who belong to the establishment shall not receive any remuneration for their activity; section 37 (2) and (3) shall apply, mutatis mutandis. Where a conciliation committee is to be formed to settle differences of opinion between the employer and the central works council or combine works council, the first sentence shall apply, mutatis mutandis, to the assessors belonging to an establishment of the company or of a constituent company.

(3) The chairman and the assessors of the conciliation committee who are not among the persons referred to in subsection (2) shall be entitled to remuneration from the employer for their activity. The amount of remuneration shall be based on the principles of the third to fifth sentences of subsection (4).

(4) The Federal Minister of Labour and Social Affairs may settle the remuneration in accordance with subsection (3) by way of a ministerial order. Maximum rates shall be established in the remuneration regulations. In this case, the time required, the complexity of the dispute and the loss of earnings shall be taken into account, in particular. The remuneration of the assessors shall be lower than that of the chairman. When establishing the maximum rates, the rightful interests of the members of the conciliation committee and the employer shall be taken into account.

(5) Subsection (3) and remuneration regulations in accordance with subsection (4) may be deviated from by way of a collective agreement or in a works agreement, if a collective agreement permits this or if no such collective agreement exists.

Section 77

Execution of joint decisions, works agreements

(1) Agreements between the works council and the employer including those based on an award of the conciliation committee shall be executed by the employer save where otherwise agreed in particular cases. The works council shall not interfere with the management of the establishment by any unilateral action.

(2) Works agreements shall be negotiated by the works council and the employer and recorded in writing. They shall be signed by both sides, except where they are based on an award of the conciliation committee. The employer shall display the works agreements in a suitable place in the establishment.

(3) Works agreements shall not deal with remuneration and other conditions of employment that have been fixed or are normally fixed by collective agreement. The foregoing shall not apply where a collective agreement expressly authorises the making of supplementary works agreements.

(4) Works agreements shall be mandatory and directly applicable. Any rights granted to employees under a works agreement cannot be waived except with the agreement of the works council. Such rights cannot be forfeited. Any time limits for invoking these rights shall be valid only in so far as they are laid down by collective or works agreement; the same shall apply to any reduction of the periods provided for the lapsing of rights.

(5) Unless otherwise agreed, works agreements may be terminated at three months' notice.

(6) After the expiry of a works agreement its provisions shall continue to apply until a fresh agreement is made in respect of all matters in which an award of the conciliation committee may take the place of an agreement between the employer and the works council.

Section 78

Protective provisions

Members of the works council, the central works council, the combine works council, the youth and trainee delegation, the central youth and trainee delegation, the combine youth and trainee delegation, the finance committee, the ship's committee, the fleet works council, the representative bodies of the employees referred to in section 3 (1), the conciliation committee, an arbitration board set up by collective agreement (section 76 (8)) a grievance committee (section 86), or personnel providing information (third sentence of section 80 (2)) shall not be interfered with or obstructed in the discharge of their duties. They shall not be prejudiced or favoured by reason of their office; this principle shall also apply to their vocational development.

Section 78a

Protection of trainees in special cases

- (1) Where the employer does not intend to offer a trainee who is a member of the youth and trainee delegation, the works council, the ship's committee or the fleet works council permanent employment after completion of vocational training, he shall notify the trainee of this fact in writing three months before completion of the vocational training.
- (2) Where a trainee referred to in subsection (1) demands continued employment from the employer in writing within the last three months prior to completion of his vocational training, a permanent employment contract shall be deemed to exist between the trainee and employer following the vocational training. Section 37 (4) and (5) shall apply in particular, mutatis mutandis, to this employment.
- (3) Subsections (1) and (2) shall also apply where the vocational training ends less than one year after the end of the term of office of the youth and trainee delegation, the works council, the ship's committee or the fleet works council.
- (4) The employer may apply to the labour court not more than two weeks after completion of the vocational training 1. to establish that an employment contract in accordance with subsection (2) or (3) has not been established, or 2. to dissolve an employment contract which has already been established in accordance with subsection (2) or (3), if facts exist which indicate that, in view of all the circumstances, continued employment may not be reasonably expected of the employer. The works council, the ship's committee, the fleet works council and the youth and trainee delegation, if one of its members is concerned, are also involved in the proceedings before the labour court as interested parties.
- (5) Subsections (2) to (4) shall apply, irrespective of whether the employer has observed his obligation to notify in pursuance of subsection (1).

Section 79

Secrecy

(1) Members and substitute members of the works council shall be bound to refrain from divulging or making use of trade or business secrets that have come to their knowledge as a result of their membership on the works council and which the employer has expressly stated to be confidential. This obligation shall be maintained even after they have ceased to belong to the works council. It shall not apply as between members of the works council. Moreover it shall not apply as regards dealings with members of the central works council, the combine works council, the ship's committee, the fleet works council and the employees' representatives on the supervisory board or in the proceedings of the conciliation committee, the arbitration

body set up by collective agreement (section 76 (8)) or a grievance committee (section 86).

(2) Subsection (1) shall apply, mutatis mutandis, to the members and substitute members of the central works council, the combine works council, the youth and trainee delegation, the central youth and trainee delegation, the combine youth and trainee delegation, the financial committee, the ship's committee, the fleet works council, the representative bodies of the employees established under section 3 (1), the conciliation committee, the arbitration body set up by collective agreement (section 76 (8)) and a grievance committee (section 86), as well as to the representatives of trade unions or employers' associations.

Section 80 General duties

(1) The works council shall have the following general duties:

1. to see that effect is given to Acts, ordinances, safety regulations, collective agreements and works agreements for the benefit of the employees;
2. to make recommendations to the employer for action benefiting the establishment and the staff;
- 2a. to promote the implementation of actual equality between women and men, in particular, as regards recruitment, employment, training, further training and additional training and vocational advancement;
- 2b. to promote reconciliation of family and work;
3. to receive suggestions from employees and the youth and trainee delegation and, if they are found to be justified, to negotiate with the employer for their implementation; it shall inform the employees concerned of the state of the negotiations and their results;
4. to promote the rehabilitation of severely handicapped persons and other persons in particular need of assistance;
5. to prepare and organise the election of a youth and trainee delegation and to collaborate closely with said delegation in promoting the interests of the employees referred to in section 60 (1); it may invite the youth and trainee delegation to make suggestions and to state its view on various matters;
6. to promote the employment of elderly workers in the establishment;
7. to promote the integration of foreign workers in the establishment and to further understanding between them and their German colleagues, and to request activities to combat racism and xenophobia in the establishment;
8. to promote and safeguard employment in the establishment;
9. to promote health and safety at work and the protection of the environment in the establishment.

(2) The employer shall supply comprehensive information to the works council in good time to enable it to discharge its duties under this Act; such information shall also refer to the employment of persons who have not entered into a contract of employment with the employer. The works council shall, if it so requests, be granted access at any time to any documentation it may require for the discharge of its duties; in this connection the works committee or a committee set up in pursuance

of section 28 shall be entitled to inspect the payroll showing the gross wages and salaries of the employees. The employer shall provide knowledgeable personnel as informers to the works council, if necessary for the proper discharge of its functions, having due regard to the suggestions of the works council, except where this is precluded by imperative operational requirements.

(3) In discharging its duties the works council may, after making a more detailed agreement with the employer, call on the advice of experts in as far as the proper discharge of its duties so requires.

(4) The informers and experts shall be bound to observe secrecy as prescribed in section 79, *mutatis mutandis*.

Division Two **Employees' rights to participate and to make complaints**

Section 81

Employer's obligation to inform and discuss

(1) The employer shall inform the employee of his tasks and responsibilities, the nature of his activity and how it fits into the operations of the establishment. Before the employee takes up his employment, the employer shall instruct him on the safety and health hazards to which he will be exposed in his employment as well as on the measures and devices for the prevention of the said hazards and on the measures taken pursuant to section 10 (2) of the Health and Safety Act.

(2) Any changes within the area of an employee's activities shall be brought to his notice in good time. Subsection (1) shall apply, *mutatis mutandis*.

(3) In those establishments which have no works council, the employer shall consult the employees concerning all measures that might affect the health and safety of the employees.

(4) The employer shall inform the employee about measures envisaged due to plans concerning technical plants, works procedures and operations or jobs and their effects on his job, the working environment as well as the contents and nature of his activity. As soon as it is known that the activity of the employee will change and his professional knowledge and skills are no longer sufficient to fulfil his duties, the employer shall discuss with the employee how the latter's professional knowledge and skills can be adapted to the future requirements within the framework of the in-house possibilities. The employee may call in a member of the works council to the discussion.

Section 82

Employee's right to be heard and request explanations

(1) The employee shall be entitled to obtain a hearing from the persons who are competent according to the organisational structure of the establishment on any operational matter concerning his own person. He shall be entitled to state his case on any measure taken by the employer concerning him and to make suggestions on the design of his workplace and the organization of operations.

(2) The employee shall be entitled to an explanation of how his remuneration is calculated and the elements of which it is composed and to apply for an interview on the assessment of his performance and his career possibilities in the establishment. He may be accompanied by a member of the works council. The member of the works council shall be bound to observe secrecy with respect to the contents of these discussions except where the employee releases him from this obligation in his particular case.

Section 83

Access to personal files

- (1) The employee shall have access to his personal file. In this connection he may call in a member of the works council. The member of the works council shall be bound to observe secrecy with respect to the contents of the personal file except where the employee releases him from this obligation in his particular case.
- (2) The employee's own comments on the entries in his personal file shall be appended at his request.

Section 84

Right to make complaints

- (1) Every employee shall be entitled to make a complaint to the competent bodies in the establishment if he feels that he has been discriminated against or treated unfairly or otherwise put at a disadvantage by the employer or by other employees of the establishment. He may call on a member of the works council for assistance or mediation.
- (2) The employer shall inform the employee on how his complaint will be dealt with and, if he considers the complaint justified, remedy his grievance.
- (3) The employee shall not suffer any prejudice as a result of having made a complaint.

Section 85

Works council's role in dealing with grievances

- (1) The works council shall hear employees' grievances and, if they appear justified, induce the employer to remedy them.
- (2) If there are any differences of opinion between the works council and the employer as to whether the complaint is well-founded, the works council may appeal to the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council. The foregoing shall not apply in as far as the grievance relates to a legal entitlement.
- (3) The employer shall inform the works council on how the grievance is dealt with. The foregoing shall be without prejudice to section 84 (2).

Section 86

Supplementary agreements

The details of the grievance procedure may be fixed by collective agreement or works agreement. In this connection provision may be made for the conciliation committee to be replaced in cases covered by section 85 (2) by a grievance committee at the level of the establishment.

Section 86a

Employees' right of proposal

Each employee shall have the right to propose issues to be discussed by the works council. If a proposal is seconded by at least 5 per cent of the employees in the establishment, the works council shall place it on the agenda of a works council meeting within two months.

Division Three Social matters

Section 87

Right of co-determination

(1) The works council shall have a right of co-determination in the following matters in so far as they are not prescribed by legislation or collective agreement:

1. matters relating to the rules of operation of the establishment and the conduct of employees in the establishment;
2. the commencement and termination of the daily working hours including breaks and the distribution of working hours among the days of the week;
3. any temporary reduction or extension of the hours normally worked in the establishment;
4. the time and place for and the form of payment of remuneration;
5. the establishment of general principles for leave arrangements and the preparation of the leave schedule as well as fixing the time at which the leave is to be taken by individual employees, if no agreement is reached between the employer and the employees concerned;
6. the introduction and use of technical devices designed to monitor the behaviour or performance of the employees;
7. arrangements for the prevention of accidents at work and occupational diseases and for the protection of health on the basis of legislation or safety regulations;
8. the form, structuring and administration of social services whose scope is limited to the establishment, company or combine;
9. the assignment of and notice to vacate accommodation that is rented to employees in view of their employment relationship as well as the general fixing of the conditions for the use of such accommodation;
10. questions related to remuneration arrangements in the establishment, including in particular the establishment of principles of remuneration and the introduction and application of new remuneration methods or modification of existing methods;
11. the fixing of job and bonus rates and comparable performance-related remuneration including cash coefficients;
12. principles for suggestion schemes in the establishment;
13. principles governing the performance of group work; group work within the meaning of this provision is defined as a group of employees performing a complex task within the establishment's workflows, which has been assigned to it and is executed in a largely autonomous way.

(2) If no agreement can be reached on a matter covered by the preceding subsection, the conciliation committee shall make a decision. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.

Section 88

Works agreements on a voluntary basis

The following, in particular, may be determined by works agreements:

1. additional measures to prevent accidents at work and health damages;
- 1a. measures concerning the establishment's environmental policy;

2. the establishment of social services whose scope is limited to the establishment, company or combine;
3. measures to promote capital formation;
4. measures to promote the integration of foreign employees and to combat racism and xenophobia in the establishment.

Section 89

Health and safety as well as environmental protection at work

(1) The works council shall endeavour to ensure that the provisions on safety and health at work and accident prevention as well as environmental protection are observed in the establishment. It shall support the competent occupational safety and health authorities, the statutory accident insurance institutions and other relevant bodies in their efforts to eliminate safety and health hazards by offering suggestions, advice and information

(2) The employer and the bodies referred to in the second sentence of subsection (1) shall be obliged to invite the works council or the members it delegates for that purpose to participate in all inspections and issues relating to safety and health at work or the prevention of accidents and inquiries into accidents. The employer shall also consult the works council concerning all inspections and issues relating to environmental protection in the company, and shall immediately inform it of any conditions imposed and instructions given by the competent bodies relating to safety and health at work, the prevention of accidents, or environmental protection in the establishment.

(3) For the purposes of this Act, environmental protection in the establishment comprises all personnel and organisational measures as well as all measures relating to the establishment's buildings, rooms, technical equipment, working methods, working processes and work places that serve the protection of the environment.

(4) Members delegated by the works council shall take part in discussions between the employer and the safety delegates within the context of section 22 (2) of the Seventh Book of the Social Code.

(5) The works council shall receive from the employer the minutes of inquiries, inspections and discussions in respect of which subsections (2) and (4) provide for its participation.

(6) The employer shall supply the works council with a copy of the accident notification to be signed by the works council under section 193 (5) of the Seventh Book of the Social Code.

Division Four

Structuring, organization and design of jobs, operations and the working environment

Section 90

Information and consultation rights

- (1) The employer shall inform the works council in due time of any plans concerning
1. the construction, alteration or extension of works, offices and other premises belonging to the establishment;
 2. technical plants;
 3. working procedures and operations or

4. jobs and submit the necessary documents.

(2) The employer shall consult the works council in good time on the action envisaged and its effects on the employees, taking particular account of its impact on the nature of their work and the resultant demands on the employees so that suggestions and objections on the part of the works council can be taken into account in the plans. In their consultations, the employer and the works council shall bear in mind the established findings of ergonomics relating to the tailoring of jobs to meet human requirements.

Section 91 Right of co-determination

Where a special burden is imposed on the employees as a result of changes in jobs, operations or the working environment that are in obvious contradiction to the established findings of ergonomics relating to the tailoring of jobs to meet human requirements, the works council may request appropriate action to obviate, relieve or compensate for the additional stress thus imposed. If no agreement is reached the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.

Division Five Staff policy

Subdivision One General staff policy

Section 92 Manpower planning

(1) The employer shall inform the works council in full and in good time of matters relating to manpower planning including in particular present and future manpower needs and the resulting staff movements and vocational training measures and supply the relevant documentation. He shall consult the works council on the nature and extent of the action required and means of avoiding hardship.

(2) The works council may make recommendations to the employer relating to the introduction and implementation of manpower planning.

(3) Subsections (1) and (2), above, shall apply, *mutatis mutandis*, to measures under section 80 (1) Clauses 2a and 2b, in particular, the adoption and implementation of measures to promote equality between women and men.

Section 92a Securing employment

(1) The works council may submit proposals to the employer relating to the security and promotion of employment. These recommendations may refer to, in particular, a flexible design of working hours, the promotion of part-time work and old-age part-time work, new forms of work organisation, changes in working methods and working processes, the improvement of worker qualifications, alternatives to the spin-off of operations or outsourcing, as well as the production and investment plan.

(2) The employer shall consult the works council concerning these proposals. If the employer believes that the works council's proposals are inadequate, he shall give reasons for this opinion, and in establishments with more than 100 employees the reasons shall be provided in written form. The employer or the works council may be

accompanied by a representative of the Federal Employment Agency in these consultations.

Section 93
Notification of vacancies

The works council may request that all vacancies or vacancies for certain types of jobs are advertised internally before they are filled.

Section 94
Staff questionnaires, assessment criteria

(1) Staff questionnaires shall require the approval of the works council. If no agreement is reached on their contents, the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.

(2) Subsection (1) shall apply, mutatis mutandis, to any personal data contained in written employment contracts that are to be generally used in the establishment and to the formulation of general assessment criteria.

Section 95
Guidelines for selection

(1) Guidelines for the selection of employees for recruitment, transfer, regrading and dismissal shall require the approval of the works council. If no agreement is reached on the guidelines or their contents, the employer may apply to the conciliation committee for a decision. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.

(2) In establishments with more than 500 employees the works council may request the drawing up of guidelines on the technical, personal and social criteria to be applied in taking the measures referred to in the first sentence of the preceding subsection. If no agreement is reached on the guidelines or their contents, the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.

(3) For the purposes of this Act a transfer means assignment to another work area which is expected to continue for more than one month or involves a substantial change in the conditions in which the work is to be performed. In the case of employees who are not, by the nature of their employment relationship, as a rule permanently employed on the same job, the assignment of the job to be performed shall not be deemed to constitute a transfer.

Subdivision Two
Vocational training

Section 96
Promotion of vocational training

(1) The employer and the works council shall promote the vocational training of the staff within the framework of the manpower planning for the establishment and in collaboration with the bodies that are competent for vocational training and for the promotion of vocational training. At the request of the works council the employer shall determine the need for vocational training and consult it on matters relating to staff training. The works council may make relevant proposals.

(2) The employer and the works council shall ensure that employees are given an opportunity to participate in vocational training programmes inside or outside the

establishment, having regard to the operational needs of the establishment. In this connection they shall also give due consideration to the interests of older employees, of part-time employees and of employees with family responsibilities.

Section 97

Vocational training facilities and programmes

(1) The employer shall consult the works council on the establishment and equipment of inplant training facilities, the introduction of vocational training programmes in the establishment and participation in external vocational training programmes.

(2) If the employer has planned or implemented measures as a result of which the work of the employees concerned is changed and their vocational knowledge and skills are no longer sufficient to discharge their duties, the works council shall participate in the decisions relating to the implementation of vocational training programmes in the establishment. If no agreement is reached the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.

Section 98

Implementation of vocational training in the establishment

(1) The works council shall participate in the decisions relating to the implementation of vocational training programmes in the establishment.

(2) The works council may oppose the appointment of a training officer in the establishment or request his removal on the grounds that he lacks the necessary personal or technical qualifications and in particular the necessary knowledge of the teaching methods required to give training in the occupation and processes concerned within the meaning of the Vocational Training Act or is negligent in the performance of his duties.

(3) If the employer provides vocational training in the establishment or releases employees to enable them to participate in vocational training programmes outside the establishment or if he defrays all or part of the cost arising from such participation, the works council may propose employees or groups of employees of the establishment for participation in such vocational training.

(4) If no agreement is reached in the case covered by subsection (1) or concerning the trainees proposed by the works council under subsection (3), the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.

(5) If no agreement is reached in the case covered by subsection (2), the works council may apply to the labour court for an order enjoining the employer to refrain from appointing or to recall the person concerned. If the employer proceeds with the appointment in violation of a mandatory court order, the labour court shall, on the request of the works council, sentence him, after giving prior warning, to pay a fine on account of the appointment; the maximum fine shall be EUR 10,000. If the employer does not remove the training officer, thereby violating a mandatory court order, the labour court shall, on application by the works council, compel the employer to comply with the order by the imposition of fines; the maximum fine shall be EUR 250 in respect of each day on which the violation continues. The foregoing shall be without prejudice to the provisions of the Vocational Training Act that relate to the organization of vocational training.

(6) Subsections (1) to (5) shall apply, mutatis mutandis, where the employer carries out other vocational training programmes in the establishment.

Subdivision Three Individual staff movements

Section 99 Co-determination in individual staff movements

(1) In companies normally employing more than twenty employees with voting rights the employer shall notify the works council in advance of any recruitment, grading, regrading and transfer, submit to it the appropriate recruitment documents and in particular supply information on the persons concerned; he shall inform the works council of the implications of the measure envisaged, supply it with the necessary supporting documentation and obtain its consent to the measure envisaged. In the case of recruitments and transfers the employer shall in particular supply information on the job and grading envisaged. Members of the works council shall refrain from divulging any information relating to the personal circumstances and private affairs of the employees concerned that has come to their knowledge in connection with the staff movements referred to in the first and second sentences, where such information is of a confidential nature by reason of its implications or contents; the second to fourth sentences of section 79 (1) shall apply, mutatis mutandis.

(2) The works council may refuse its consent in the following cases:

1. if the staff movement would constitute a breach of any Act, ordinance, safety regulation or stipulation of a collective agreement or works agreement, or of a court order or official instruction;
2. if the staff movement would amount to non-observance of a guideline within the meaning of section 95;
3. if there is factual reason to assume that the staff movement is likely to result in the dismissal of or other prejudice to employees of the establishment not warranted by operational or personal reasons; in cases of permanent recruitment non-consideration of an equally suitable employee on a fixed term contract shall also be considered a prejudice to that employee;
4. if the employee concerned suffers prejudice through the staff movement although this is not warranted by operational or personal reasons;
5. if the vacancy has not been notified in the establishment as required under section 93; or
6. if there is reason based on facts to assume that the applicant or employee envisaged for the staff movement would cause trouble in the establishment through unlawful conduct or gross violation of the principles laid down in section 75 (1), in particular through racist or xenophobic activities.

(3) If the works council refuses its consent, it shall notify the employer in writing, giving its reasons, within one week of being informed by the employer. If the works council fails to do so within the said time limit it shall be deemed to have given its consent.

(4) If the works council refuses its consent, the employer may apply to the labour court for a decision in lieu of consent.

Section 100 Temporary staff movements

(1) The employer may, if this is urgently required for reasons based on facts, make a staff movement within the meaning of the first sentence of section 99 (1) on a temporary basis before the works council takes a stand or if it has refused its consent. In such cases the employer shall inform the employee concerned of the position in fact and in law.

(2) The employer shall immediately notify the works council of the temporary staff movement. If the works council contends the urgency of the action taken on grounds based on facts, it shall immediately report its objection to the employer. In such cases the employer shall be allowed to maintain the temporary staff movement only on condition that within three days he applies to the labour court for a decision in lieu of the consent of the works council and for a declaration stating that the action taken was urgently required for reasons based on facts.

(3) If the labour court by mandatory decision refuses to issue a decision in lieu of the works council's consent or if it hands down a final mandatory judgement to the effect that the action taken was manifestly not urgently required by reasons based on facts, the temporary staff movement shall be cancelled on the expiry of two weeks after the date on which the decision or judgement becomes operative. After that date it shall be unlawful to maintain the staff movement.

Section 101 **Fines**

If the employer makes a staff movement within the meaning of the first sentence of section 99 (1) without the works council's consent or if he maintains a temporary staff movement in violation of section 100 (2), third sentence, or (3) the works council may request the labour court to order the employer to rescind the staff movement. If the employer fails to rescind the staff movement in violation of a mandatory court order, the labour court shall, on application by the works council, compel the employer to cancel the change by the imposition of fines. The maximum fine shall be EUR 250 in respect of each day on which the violation continues.

Section 102 **Co-determination in the case of dismissal**

(1) The works council shall be consulted before every dismissal. The employer shall indicate to the works council the reasons for dismissal. Any notice of dismissal that is given without consulting the works council shall be null and void.

(2) If the works council has objections to a routine dismissal, it shall notify the employer in writing within a week giving its reasons. If it does not report its objections within the said time limit, it shall be deemed to have given its consent to the dismissal. If the works council has objections against an exceptional dismissal, it shall notify the employer in writing immediately and at any rate not later than within three days, giving its reasons. The works council shall consult the employee concerned before it takes a stand, in so far as this appears necessary. The third sentence of section 99 (1) shall apply, *mutatis mutandis*.

(3) The works council may oppose a routine dismissal within the time limit specified in the first sentence of subsection (2) in the following cases:

1. if the employer in selecting the employee to be dismissed disregarded or did not take sufficient account of social aspects;
2. if the dismissal amounted to non-observance of a guideline covered by section 95;

3. if the employee whose dismissal is being envisaged could be kept on at another job in the same establishment or in another establishment of the same company;
4. if the employee could be kept on after a reasonable amount of retraining or further training; or
5. if the employee could be kept on after a change in the terms of his contract and he has indicated his agreement to such change.

(4) If the employer gives notice of dismissal although the works council has lodged objections to such dismissal under subsection (3), he shall append a copy of the works council's point of view to the notice of dismissal sent to the employee.

(5) If the works council has lodged an objection to a routine dismissal within the period and in the manner prescribed and if the employee has brought an action under the Protection against Dismissal Act for a declaration that the employment relationship has not been dissolved by the notice of dismissal, the employer shall be bound to keep the employee in his employment at the latter's request after expiry of the term of notice until a final decision is given on the case at issue; during such period he shall not make any change in his conditions of work. On application by the employer the court may issue an interim order releasing him from his obligation under the first sentence of this subsection to maintain the employment relationship in the following cases:

1. if the action brought by the employee is not reasonably likely to succeed or appears abusive; or
2. if the continuation of the employment relationship imposes an unreasonable financial burden on the employer; or
3. if the objection raised by the works council is manifestly unfounded.

(6) The employer and the works council may make an agreement to the effect that any notice of dismissal requires the approval of the works council and that differences of opinion on whether a refusal of consent is justified are to be submitted to the decision of the conciliation committee.

(7) The foregoing shall be without prejudice to the regulations relating to the participation of the works council made under the Protection against Dismissal Act.

Section 103

Exceptional dismissal and transfer in special cases

(1) The exceptional dismissal of a member of the works council, the youth and trainee delegation, the ship's committee and the fleet works council, the electoral board or of candidates for election shall require the consent of the works council.

(2) If the works council refuses its consent, the employer may apply to the labour court for a decision in lieu of consent if the exceptional dismissal is justified, all circumstances being taken into account. The employee concerned shall be a party to the proceedings in the labour court.

(3) A transfer of the persons referred to in subsection (1), which would result in the loss of an office or of eligibility, shall require the approval of the works council; the foregoing shall not apply if the employee concerned agrees to the transfer.

Subsection (2) shall apply, mutatis mutandis, subject to the proviso that the employer may apply to the labour court for a decision in lieu of consent if the transfer is warranted by important operational reasons, even with due regard to the position of the employee concerned under the Works Constitution Act.

Section 104

Removal of employees causing trouble in the establishment

If an employee through unlawful conduct or gross violation of the principles laid down in section 75 (1), in particular, through racist or xenophobic activities, repeatedly causes serious trouble in the establishment, the works council may request the employer to dismiss or transfer him. If the labour court upholds an application by the works council to enjoin the employer to dismiss or transfer the said employee and the employer does not dismiss or transfer him in violation of a mandatory court order, the labour court shall, on application by the works council, compel the employer to comply with the order by the imposition of fines. The maximum fine shall be EUR 250 in respect of each day on which the violation continues.

Section 105

Executive staff

The works council shall be notified in good time of all prospective recruitments or staff movements affecting executive staff covered by section 5 (3).

Division Six

Financial matters

Subdivision One

Information on financial matters

Section 106

Finance committee

(1) A finance committee shall be established in all companies that normally have more than 100 permanent employees. It shall be the duty of the finance committee to consult with the employer on financial matters and report to the works council.

(2) The employer shall inform the finance committee in full and in good time of the financial affairs of the company and supply the relevant documentation in so far as there is no risk of disclosing the trade or business secrets of the company and demonstrate the implications for manpower planning. In the cases referred to in subsection 3, No. 9a, the relevant documentation shall include information regarding the potential acquirer and his/her intentions with respect to the company's future business activity and the resulting consequences for employees; the same shall apply in the case where a bidding process is conducted in the run-up to the takeover.

(3) The following, inter alia, are financial matters covered by this provision:

1. the economic and financial situation of the company;
2. the production and marketing situation;
3. the production and investment programmes;
4. rationalisation plans;
5. production techniques and work methods, especially the introduction of new work methods;
- 5a. issues concerning the establishment's environmental policy;
6. the reduction of operations in or closure of establishments or parts of establishments;

7. the transfer of establishments or parts of establishments;
8. the amalgamation or split-up of establishments or parts of establishments;
9. changes in the organization or objectives of establishments;
- 9a. the takeover of the company, if control is thereby obtained, and
10. any other circumstances and projects that may materially affect the interests of the employees of the company.

Section 107

Appointment and composition of the finance committee

(1) The finance committee shall consist of not less than three and not more than seven members, who shall be employees of the company and at least one of whom shall be a works council member. The executives referred to in section 5 (3) are also eligible for membership on the finance committee. The committee members should have the necessary technical and personal qualifications for their functions.

(2) The members of the finance committee shall be appointed by the works council for a period corresponding to its own term of office. Where a central works council has been established, the members of the finance committee shall be appointed by the said council; in this case the term of office of the committee members shall end on the expiration date for the term of office of the majority of the members of the central works council who were entitled to participate in making the appointments. Members of the finance committee may be removed from office at any time; the first and second sentences shall apply, mutatis mutandis, to removal from office.

(3) The works council may decide by majority vote of its members to assign the functions of the finance committee to a committee of the works council. The membership of such committee shall not exceed the number of members of the works committee. The works council may, however, appoint additional employees including executive staff specified in section 5(3) to the committee but not more than the number of committee members; the decisions shall be taken in accordance with the first sentence of this subsection. The additional employees referred to in the third sentence shall be bound to secrecy in accordance with section 79, mutatis mutandis. For amending or annulling decisions taken in accordance with the first to the third sentences of this subsection the same majority shall be required as for the adoption of decisions under the first to the third sentences of this subsection. If a company has a central works council, the said council shall decide on the assignment of functions of the finance committee to other committees; the first to the fifth sentences shall apply, mutatis mutandis.

Section 108

Meetings

(1) The finance committee shall meet once a month.

(2) The employer or his representative shall attend the meetings of the finance committee. He may be accompanied by competent employees of the company including members of the executive staff covered by section 5 (3). The participation of experts and their duty to observe professional secrecy shall be governed by section 80 (3) and (4), mutatis mutandis.

(3) The members of the finance committee shall have access to the documents to be submitted under section 106 (2).

(4) The finance committee shall without delay give a full report on each meeting to the works council.

(5) The annual balance sheet shall be explained to the finance committee in conjunction with the works council.

(6) Where the works council or central works council has decided to assign the functions of the finance committee to another committee, subsections (1) to (5) shall apply, mutatis mutandis.

Section 109

Settlement of differences

If despite a request from the finance committee information on financial matters as defined in section 106 is not furnished or not furnished in good time or if the information given is inadequate and if no agreement on the matter is reached between the employer and the works council, the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the works council. The conciliation committee may call in experts if it needs their evidence to reach a decision; section 80 (4) shall apply, mutatis mutandis. Where the works council or the central works council has decided to assign the functions of the finance committee to another committee, the first sentence shall apply, mutatis mutandis.

Section 109a

Takeover

In companies where no financial committee has been established, the works council shall be involved as stipulated in § 106 (1) and (2), in the case covered by in section 106 (3), No. 9a; section 109 shall apply mutatis mutandis.

Section 110

Information of employees

(1) In companies that normally have more than 1.000 permanent employees, the employer shall report to the staff in writing on the financial situation and progress of the company at least once every calendar quarter after prior coordination with the finance committee or the bodies referred to in section 107 (3) and the works council.

(2) The preceding subsection shall also apply to companies that do not meet the conditions laid down in the preceding subsection but normally have more than twenty permanent employees with voting rights, subject to the proviso that the employees of such companies may also be informed orally. If such company is under no obligation to set up a finance committee, the employees shall be informed after prior coordination with the works council.

Subdivision Two

Alterations

Section 111

Alterations

In establishments that normally have more than twenty employees with voting rights the employer shall inform the works council in full and in good time of any proposed alterations which may entail substantial prejudice to the staff or a large sector thereof and consult the works council on the proposed alterations. In establishment that have more than 300 employees, the works council may retain a consultant to support it; section 80 (4) shall apply, mutatis mutandis, the foregoing shall be without prejudice to section 80 (3). The following shall be considered as alterations for the purposes of the first sentence above:

1. reduction of operations in or closure of the whole or important departments of the establishment;
2. transfer of the whole or important departments of the establishment;
3. the amalgamation with other establishments or split-up of establishments;
4. important changes in the organization, purpose or plant of the establishment;
5. introduction of entirely new work methods and production processes.

Section 112

Reconciliation of interests in the case of alterations; social compensation plan

(1) If the employer and the works council reach an agreement to reconcile their interests in connection with the proposed alterations, the said agreement shall be recorded in writing and signed by the employer and the works council. The foregoing shall also apply to an agreement on full or part compensation for any financial prejudice sustained by staff as a result of the proposed alterations (social compensation plan). The social compensation plan shall have the effect of a works agreement. Section 77 (3) shall not apply to the social compensation plan.

(2) If no reconciliation of interests can be achieved in connection with the proposed alterations or if no agreement is reached on the social compensation plan, the employer or the works council may apply to the Executive Board of the Federal Employment Agency for mediation, the Board may entrust other staff members of the Federal Employment Agency with this task. If mediation is not applied for or the attempt at mediation is unsuccessful, the employer or the works council may submit the case to the conciliation committee. The chairman of the conciliation committee may request a member of the Executive Board of the Federal Employment Agency or a staff member of the Federal Employment Agency appointed by the Board to take part in the proceedings.

(3) The employer and the works council shall submit proposals to the conciliation committee for the settlement of differences on the reconciliation of interests and the social compensation plan. The conciliation committee shall attempt to reconcile the parties. If an agreement is reached, it shall be recorded in writing and signed by the parties and the chairman.

(4) If no agreement is reached on the social compensation plan, the conciliation committee shall make a decision on the drawing up of a social compensation plan. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.

(5) When making a decision in pursuance of subsection (4), the conciliation committee shall take into account the social interests of the employees concerned while taking care that its decision does not place an unreasonable financial burden on the company. In doing so and within the framework of equitable discretion, the conciliation committee shall be guided by the following principles, in particular:

1. When compensating in full or part any financial prejudices sustained, in particular by a reduction in income, the lapse of additional benefits or loss of entitlements to company pensions, removal costs or increased travelling costs, it shall provide for payments which generally make allowances for the circumstances of the individual case.
2. It shall take into account the prospects of the employees concerned on the labour market. It shall exclude from payments employees who may continue to work in

reasonable employment in the same establishment or in another establishment of the company or of a company belonging to the combine, but refuse said continued employment; the possibility of continued employment at another location shall not alone be sufficient grounds for claiming unreasonableness.

- 2a. In particular, it shall duly consider the support schemes aimed at avoiding unemployment provided for in Book Three of the Social Code.
3. When calculating the total amount of the social compensation plan payments, it shall take care that the continuance of the company or the jobs remaining after the implementation of the alterations is not jeopardised.

Section 112a

Enforceable social compensation plan in the event of staff cutbacks, establishment of new businesses

(1) Where a planned alteration to the establishment in accordance with section 111, third sentence, clause 1, consists only in a reduction of staff, section 112 (4) and (5) shall only apply if the following numbers of employees are to be dismissed for operational reasons:

1. In establishments with normally less than 60 employees, 20 % of the regularly employed employees, but not less than 6 employees;
2. In establishments with normally more than 60 and less than 250 employees, 20 % of the regularly employed employees or not less than 37 employees;
3. In establishments with normally more than 250 and less than 500 employees, 15 % of the regularly employed employees or not less than 60 employees;
4. In establishments with normally more than 500 employees, 10 % of the regularly employed employees, but not less than 60 employees.

The leaving of employees on the basis of contract cancellation, occasioned by the employer due to reasons of alteration within the establishment, shall also count as dismissal.

(2) Section 112 (4) and (5) shall not apply to establishments of a company in the first four years of its existence. This shall not apply to new businesses set up in conjunction with the legal restructuring of companies and combines. The start of gainful activity, of which the tax office is to be notified in accordance with section 138 of the Tax Code, shall be authoritative for the time of establishment.

Section 113

Indemnities

(1) If the employer fails to comply with an agreement on the reconciliation of interests in connection with the alterations proposed without any compelling reasons to do so, the employees who are dismissed as a result of such non-compliance may bring an action in the labour court requesting that the employer should be condemned to pay indemnities; section 10 of the Protection against Dismissal Act shall apply, *mutatis mutandis*.

(2) If employees sustain other financial prejudice as a result of a non-compliance covered by subsection (1), the employer shall make good such prejudice for a period not exceeding twelve months.

(3) Subsections (1) and (2) shall apply, *mutatis mutandis*, where the employer carries out any proposed alterations within the meaning of section 111 without having attempted to reach an agreement with the works council on a reconciliation

of interests and such action results in dismissals or other financial prejudice to employees.

Part Five
Special regulations for particular types of establishments

Division One
Maritime Shipping

Section 114
Basic principles

- (1) This Act shall apply to shipping companies and their fleets in so far as this Division does not contain anything to the contrary.
- (2) In this Act the term “shipping company” means a company engaged in merchant shipping and having its head office within the territorial scope of this Act. A person shall also be deemed to operate a shipping company within the meaning of this Division if he operates ships for profit by ocean trading as a corresponding shipowner, charterer, ship’s chandler or on the basis of a similar legal relationship and is the employer of the master and crew or predominantly exercises the functions of an employer.
- (3) A shipping fleet within the meaning of this Act shall be deemed to comprise all of the ships operated by a shipping company including those covered by the second sentence of subsection (2).
- (4) In this Act the term “ship” means any merchant vessel flying the flag of the Federal Republic in virtue of the Law of the Flag Act. Ships which normally return to the base of a shore establishment within twenty-four hours of leaving port shall be treated as a part of such shore establishment of the shipping company.
- (5) Only shore establishments of shipping companies shall have youth and trainee delegations.
- (6) The term “crew members” means the persons defined as such in section 3 of the Seamen’s Act. Only the master shall be deemed to be a member of the executive staff within the meaning of section 5 (3) of this Act.

Section 115
Ship’s committee

- (1) A ship’s committee shall be established on board every ship that normally has five crew members with voting rights, including three who are eligible. Unless this Act or other statutory instruments provide to the contrary, the provisions relating to the rights and obligations of the works council and the legal status of its members shall also apply to ships’ committees.
- (2) The provisions relating to the election and composition of works councils shall apply with the following modifications:
1. All members of the ship’s crew shall have voting rights.
 2. All members of the ship’s crew who are 18 years of age or over on the day of election and have served for not less than one year as crew members on board a ship flying the flag of the Federal Republic in virtue of the Law of the Flag Act shall be eligible to the ship’s committee. The third sentence of section 8 (1) shall continue to apply.
 3. The membership of the ship’s committee shall be as follows, according to the normal manning of the vessel: 5 to 20 crew members with voting rights: 1 person 21 to 75

crew members with voting rights: 3 members
Over 75 crew members with voting rights: 5 members

4. (cancelled)
 5. Section 13 (1) and (3) shall not apply. In the conditions listed in section 13 (2), clauses (2) to (5), a new ship's committee shall be elected before the term of office of the incumbent committee expires.
 6. The crew members with voting rights may decide by majority vote to hold an election to the ship's committee within twenty-four hours.
 7. The period referred to in the first sentence of section 16 (1) shall be reduced to two weeks and the period referred to in the first sentence of section 16 (2) to one week.
 8. If the incumbent ship's committee does not appoint an electoral board in good time or if there is no ship's committee, the electoral board shall be appointed by the majority of crew members attending a crew meeting, section 17 (3) shall apply, *mutatis mutandis*. If a crew meeting cannot be held because it would interfere with the smooth running of the ship, the master may appoint the electoral board at the request of three persons with voting rights. If the master fails to appoint the electoral board, the fleet works council shall be entitled to do so in his stead. The foregoing shall be without prejudice to the provisions relating to the appointment of the electoral board by the labour court.
 9. In respect of crew members on board ship the period within which an election may be contested shall run from the date on which the vessel enters, for the first time after the election results have been announced, a port of call located within the territorial scope of this Act or in which there is a seamen's tribunal. The contestation of an election may also be placed on record with the seamen's tribunal. If the election to the ship's committee is contested, the seamen's tribunal shall seize the election records on board. The seamen's tribunal shall immediately transmit the declaration of contestation and the election records seized to the labour court competent to deal with the contestation.
- (3) The term of office of the ship's committee shall be governed by sections 21, 22 to 25, except that 1. the term of office shall be one year; and 2. membership of the ship's committee shall also expire on the termination of the crew member's service on board, unless he resumes service on board before the expiry of the term of office under the preceding clause.
- (4) The conduct of business of the ship's committee shall be governed by sections 26 to 36, 37 (1) to (3) and sections 39 to 41, *mutatis mutandis*. Section 40 (2) shall apply with the additional proviso that the ship's committee may also make use of the telecommunication facilities between the ship and the shore office for the rapid transmission of news in so far as its activities so require.
- (5) Sections 42 to 46 relating to the works meeting shall apply, *mutatis mutandis*, to the meetings held by the members of the ship's crew (crew meeting). At the request of the crew meeting the master shall give a report on the ship's voyage and related matters. He shall answer questions concerning the operation of the ship, the voyage and safety on board.
- (6) Sections 47 to 59 relating to the central works council and the combine works council shall not apply to the ship's committee.
- (7) Sections 74 to 105 relating to collaboration by employees and co-determination shall apply to the ship's committee with the following modifications:

1. The ship's committee shall be competent to deal with the matters in respect of which this Act provides for collaboration and co-determination by the works council in so far as they concern the ship's operations or the members of the ship's crew and are subject to the master's decision under statutory regulations or by virtue of the authority delegated to him by the shipowner.
2. Where the master and the ship's committee fail to reach an agreement on a matter which is subject to the ship's committee's collaboration or co-determination, the ship's committee may refer the matter to the fleet works council. The fleet works council shall inform the ship's committee on any further action taken on the matter. The ship's committee and the master may apply to the conciliation committee or the labour court only where no fleet works council has been elected.
3. The ship's committee and the master may conclude "ship's agreements" within the scope of their competence. The provisions relating to works agreements shall apply, mutatis mutandis, to ship's agreements. No ship's agreements shall be made on any matter that is the subject of a works agreement between the fleet works council and the employer.
4. The master may take temporary arrangements on matters that are subject to the codetermination of the ship's committee even before an agreement has been reached with the ship's committee if such arrangements are urgently necessary to maintain the smooth operation of the ship. The crew members affected shall be informed of the temporary nature of the arrangement. In as far as the final arrangement differs from the temporary arrangement, the shipping company shall make good any prejudice incurred by crew members as a result of the temporary arrangement.
5. The ship's committee shall be entitled to be fully and regularly briefed on the ship's operations. The ship's committee shall be supplied with the relevant documentation. The term "ship's operations" shall be deemed to include, inter alia, safety on board, routes and voyages, prospective times of arrival and departure and the cargo to be carried on board.
6. The master shall at its request grant the ship's committee access to the ship's log books kept on board. Where the master has made an entry on matters that are subject to the collaboration or co-determination of the ship's committee, the latter may request a copy of the entry and enter comments into the ship's log. Where no agreement has been reached between the master and the ship's committee on a matter that is subject to the collaboration or co-determination of the ship's committee, the latter may make an entry to this effect into the ship's log and request a copy of such entry.
7. The competence of the ship's committee in occupational safety and health matters shall extend to the safety of the ship and collaboration with the competent authorities and other bodies concerned.

Section 116 **Fleet works council**

- (1) Fleet works councils shall be elected in fleets. The provisions relating to the rights and obligations of the works council and the legal status of its members shall also apply to the fleet works council, except in so far as this act or other statutory instruments provide to the contrary.
- (2) The provisions relating to the election, composition and term of office of works councils shall apply with the following modifications:

1. All crew members in the employment of the shipping company shall have voting rights in respect of the fleet works council.
2. Eligibility to the fleet works council shall be governed by section 8 with the following exceptions:
 - a) In shipping companies with a fleet of more than eight ships or a payroll of normally more than 250 crew members, a crew member to be eligible must fulfil the conditions for eligibility laid down in section 115 (2), clause 2.
 - b) In cases which do not meet the conditions laid down in subclause (a) only such employees shall be eligible as fulfil the conditions for eligibility in the shore office of the shipping company in application of section 8, unless the employer agrees to the election of crew members.
3. The membership of the fleet works council shall be as follows, according to the number of crew members with voting rights normally employed in the fleet:

5 to 400 crew members with voting rights: 1 person

401 to 800 crew members with voting rights: 3 members

Over 800 crew members with voting rights: 5 members
4. To be valid, a list of candidates must be signed by at least three crew members with voting rights if the first phrase of the first sentence and the second sentence of section 14 (4) are applicable.
5. Section 14a shall not apply.
6. The time limit referred to in the first sentence of section 16 (1) shall be extended to three months and the time limit referred to in the first sentence of section 16 (2) shall be extended to two months.
7. Employees of the shore office of the shipping company may also be appointed to the electoral board. Section 17 (2) to (4) shall not apply. If no fleet works council exists, the central works council or, if inexistent, the combine works council shall appoint the electoral board. If an establishment has no central works council or combine works council, the electoral board shall be appointed jointly by the employer and the trade unions represented in the fleet. The same applies if the central works council or combine works council fails to appoint the electoral board as stipulated in the third sentence of this clause. If no agreement is reached between the employer and the trade unions, the electoral board shall be appointed by the labour court on application from the employer or a trade union represented in the fleet or at least three crew members with voting rights. The second and third sentences of section 16 (2) shall apply, *mutatis mutandis*.
8. In respect of crew members on board ship the period within which an election may be contested in application of section 19 (2) shall run as from the date on which the ship enters, for the first time after the election results have been announced, a port of call that is located within the territorial scope of this Act or in which there is a seamen's tribunal. A contestation of an election shall cease to be receivable on the expiry of three months after the election results have been announced. The contestation of an election may also be placed on record with the seamen's tribunal. The seamen's tribunal shall immediately transmit the declaration of contestation to the labour court competent to deal with the contestation.
9. If the fleet works council consists of crew members, a member of the fleet works council who ceases to be a crew member shall also cease to be a member of the

fleet works council. The fact of holding office on the fleet works council or an employment covered by clause 2 of subsection (3) below shall not affect a person's status as crew member.

(3) Sections 26 to 41 relating to the conduct of business of the works council shall apply to the fleet works council with the following modifications:

1. In matters in respect of which the fleet works council must take a stand within a specified time limit under this Act, the fleet works council may, notwithstanding section 33 (2), take a decision irrespective of the number of members present at the meeting, on condition that the members have been convened in the manner prescribed.
2. To the extent that members of the fleet works council cannot be released from their work duties, they shall be assigned tasks that do not interfere with the discharge of their duties on the fleet works council. The job assigned shall be in keeping with the capacity and skills of the member of the fleet works council and with his previous post. The job to be assigned shall be determined in agreement with the fleet works council. If no agreement is reached on the assignment of the job the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the fleet works council.
3. Crew members who serve on the fleet works council shall continue to receive their seamen's pay even if they are employed in the shore office. Benefits in kind shall be compensated at an appropriate rate. If the new job ranks higher than the previous job, the remuneration paid shall be that which corresponds to the new job.
4. Where the workplace is located outside the place of residence an arrangement which should take account of local conditions shall be made between the fleet works council and the employer as to the accommodation of the crew members elected to the fleet works council. If no agreement is reached the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the fleet works council.
5. The fleet works council shall have the right to board any ship of the fleet, perform its duties while on board and attend the meetings of the ship's committee. The first sentence of section 115 (7), clause 5, shall apply, *mutatis mutandis*.
6. While a ship is berthed in a port located within the territorial scope of this Act, the fleet works council may, after notifying the master, appoint hours for consultation aboard and call crew meetings on board.
7. If the ship does not call at a port located within the territorial scope of this Act within a calendar year, clauses 5 and 6 shall apply to European ports. The locks of the Kiel Canal shall not be considered as ports.
8. Notwithstanding clauses 6 and 7 consultation hours and crew meetings may also be held in other ports of call, in cases of urgent need, if the employer agrees. If no agreement is reached the matter shall be decided by the conciliation committee. The award of the conciliation committee shall take the place of an agreement between the employer and the fleet works council.

(4) Sections 42 to 46 relating to works meetings shall not apply to fleets.

(5) The tasks, powers and duties conferred on the works council under sections 47 to 59 shall be exercised by the fleet works council in respect of the fleet.

(6) Sections 74 to 113 relating to collaboration by employees and co-determination shall apply to the fleet works council with the following modifications:

1. The fleet works council shall be competent to deal with the matters in respect of which this Act provides for collaboration or co-determination by the works council in so far as such matters –
 - a) concern the whole fleet or two or more ships of the fleet or the crew members of the whole fleet or of two or more ships of the fleet;
 - b) have been referred to it by the ship's committee under section 115 (7), clause 2; or c) do not fall within the competence of the ship's committee under section 115 (7), clause 1.
2. The fleet works council shall be kept fully and regularly informed on the shipping movements of the shipping company. It shall be supplied with the relevant documentation.

**Division Two
Aviation**

**Section 117
Application to aviation**

- (1) This Act shall apply to the ground establishments of aviation companies.
- (2) A body representing the flight personnel of aviation companies may be set up by collective agreement. The collective agreement may derogate from this Act with respect to the collaboration of such body with the bodies to be established under this Act for the representation of the employees of the ground establishments of the aviation company.

**Division Three
Establishments for political, religious, charitable and other purposes; religious communities**

**Section 118
Application to ideological establishments and religious communities**

- (1) The provisions of this Act shall not apply to companies and establishments that directly and predominantly
 1. pursue political, coalition, religious, charitable, educational, scientific or artistic objectives; or
 2. serve purposes of publishing or expressing opinions covered by the second sentence of section 5 (1) of the Basic Law in so far as their application would not be in keeping with the specific nature of the company or establishment. In such cases sections 106 to 110 shall not apply and sections 111 to 113 shall apply only in so far as they provide for the full or part compensation of employees for any financial prejudice sustained as a result of alterations.
- (2) This Act shall not apply to religious communities or to their charitable and educational institutions irrespective of their legal form.

**Part Six
Offences punishable by imprisonment or fines**

Section 119

Offences against bodies established under this Act and their members

- (1) The following offences shall be punishable by a term of imprisonment not exceeding one year or a fine, or both:

1. interfering with an election to the works council, the youth and trainee delegation, the ship's committee, the fleet works council or the representative bodies of the employees referred to in section 3 (1), clause 1 to 3 or 5, or influencing such elections by inflicting or threatening reprisals or granting or promising incentives,
2. obstructing or interfering with the activities of the works council, the central works council, the combine works council, the youth and trainee delegation, the central youth and trainee delegation, the combine youth and trainee delegation, the ship's committee, the fleet works council, the representative bodies of the employees referred to in section 3 (1), the conciliation committee, the arbitration body referred to in section 76 (8), the grievance committee referred to in section 86 or the finance committee, or
3. prejudicing or favouring a member or substitute member of the works council, the central works council, the combine works council, the youth and trainee delegation, the central youth and trainee delegation, the combine youth and trainee delegation, the ship's committee, the fleet works council, the representative bodies of the employees referred to in section 3 (1), the conciliation committee, the arbitration body referred to in section 76 (8), the grievance committee referred to in section 86 or the finance committee or personnel providing information referred to in the third sentence of section 80 (2) by reason of his office.

(2) Proceedings concerning the offence shall be instituted only on application by the works council, the central works council, the combine works council, the ship's committee, the fleet works council, the representative bodies of the employees referred to in section 3 (1), the electoral board, the employer or a trade union represented in the establishment. The application may be withdrawn.

Section 120 **Breach of secrecy**

(1) Any person who, without being authorised to do so, divulges a third party's trade or business secret which the employer has expressly stated to be confidential and that has come to his knowledge while serving as

1. a member or substitute member of the works council or one of the bodies referred to in section 79 (2),
2. a representative of a trade union or employers' association,
3. an expert who has been called in by the works council under section 80 (3) or consulted by the conciliation committee under the third sentence of section 109,
- 3a. a consultant retained by the works council under the second sentence of section 111,
- 3b. personnel providing information to the works council in accordance with the third sentence of section 80 (2),
4. an employee who has been called in by the works council in accordance with the third sentence of section 107 (3) or by the finance committee under the second sentence of section 108 (2) shall be liable to a term of imprisonment of up to one year or a fine.

(2) A similar penalty shall be imposed on any person who without being authorised to do so divulges an employee's secret and specifically a personal secret which has come to his knowledge while he was serving as a member or substitute member of the works council or one of the bodies referred to in section 79 (2) and in respect of which he is bound to secrecy under the provisions of this Act.

(3) Where an offender has acted for reward or with the intention of obtaining some advantage for himself or another person or of harming any other person, the penalty shall be a term of imprisonment of up to two years or a fine. A similar penalty shall be imposed on any person who, without being authorised to do so, exploits a third party's secret and specifically a trade or business secret in respect of which he is bound to secrecy under the provisions of subsections 1 or 2.

(4) Subsections (1) to (3) shall also be applicable if the offender divulges or exploits the thirdparty secret after the death of the person concerned.

(5) Proceedings for the offence shall be instituted only on application by the injured party. If the injured party dies, the right to apply shall pass to the relatives in accordance with section 77 (2) of the Criminal Code insofar as the secret belongs to the personal sphere of the injured party; in all other cases it shall pass to the heirs. Where the offender divulges the secret after the death of the party concerned, the second sentence of this subsection shall apply, mutatis mutandis.

Section 121
Minor offences

(1) Any person who fails to comply with the obligation to supply information referred to in section 90 (1) and the first sentence of 90 (2), the first sentence of section 92 (1), also in connection with (3), section 99 (1), section 106 (2), section 108 (5), section 110 or 111, or fails to supply such information truthfully, completely or at the proper time shall be deemed to have committed a minor offence.

(2) Minor offences may be punished by a fine not exceeding Euro 10,000.

Part Seven
Amendment of other laws

Section 122
(Amendment to the Civil Code)

(obsolete)

Section 123
(Amendment to the Protection against Dismissal Act)

(obsolete)

Section 124
(Amendment to the Labour Courts Act)

(obsolete)

Part Eight
Transitional and final provisions

Section 125
First elections under this Act

(1) The first elections to works councils in accordance with section 13 (1) shall be held in 1972.

(2) The first elections to youth and trainee delegations in accordance with the first sentence of section 64 (1) shall be held in 1988. The term of office of the youth delegation shall end with the announcement of the election results of the newly elected youth and trainee delegation, at the latest on 30 November 1988.

(3) The elections of the works council, the ship's committee, the fleet works council and the youth and trainee delegation which are initiated later than 28 July, 2001, shall be governed by the First Ordinance for the Implementation of the Works

Constitution Act of 16 January 1972 (“Bundesgesetzblatt“, Part I p. 49), last amended by the ordinance of 16 January 1995 (“Bundesgesetzblatt“, Part I, p. 43), the Second Ordinance for the Implementation of the Works Constitution Act of 24 October 1972 (“Bundesgesetzblatt“, Part I, p. 2029), last amended by the ordinance of 28 September 1989 (“Bundesgesetzblatt“, Part I, p. 1795), and the Ordinance for the Performance of the Works Council Elections in the post establishments of 26 June 1995 (“Bundesgesetzblatt“, Part I, p. 871), mutatis mutandis, until amendment thereof.

(4) In addition, the First Ordinance for the Implementation of the Works Constitution Act, until amended, shall apply, mutatis mutandis, to the simplified electoral procedure under section 14a subject to the following proviso:

1. The time period for the invitation to the election meeting where the electoral board is to be elected in accordance with section 14a (1) of the Act shall not be shorter than seven days. The invitation shall include the place, day, and time of the election meeting as well as the information that lists of candidates for the works council elections may be submitted until the end of the election meeting (Section 14a (2) of the Act).
2. Section 3 shall apply with the following proviso:
 - a) If section 14a (1) of the Act is applicable, the electoral board shall adopt the declaration of the election at the election meeting. The time limit for raising objections under section 3 (2), clause 3 shall be reduced to three days. The information provided under section 3 (2) clause 4 shall include the minimum number of seats of the minority gender (section 15 (2) of the Act). The lists of candidates shall not be submitted as stipulated in section 3 (2) clause 7, but shall be submitted to the electoral board until the end of the election meeting for the election of the electoral board. In addition to section 3 (2) clause 10, the electoral board shall specify the place, day, and time of subsequent casting of votes (section 14a (4) of the Act).
 - b) If section 14a (3) of the Act is applicable, the electoral board shall immediately adopt the declaration of the election subject to the restrictions concerning section 3 (2) clauses 3, 4, and 10 listed under letter a) above. In derogation of section 3 (2) clause 7, the lists of candidates shall be submitted to the electoral board not later than one week prior to the election meeting in which the works council will be elected (second sentence of section 14a (3) of the Act).
3. The time limit for raising objections under section 4 (1) shall be reduced to three days.
4. Sections 6 to 8 and section 10 (2) shall apply, mutatis mutandis, with the modification that the elections shall be held on the basis of lists of candidates. If section 14a (1) of the Act is applicable, the lists of candidates shall be submitted to the electoral board until the end of the election meeting in which the electoral board is elected; if section 14a (3) of the Act is applicable, the lists of candidates shall be submitted to the electoral board not later than one week prior to the election meeting for the election of the works council (second sentence of section 14a (3) of the Act).
5. Section 9 shall not apply.
6. Sections 21 ff shall apply, mutatis mutandis, to the electoral procedure. The candidates shall be listed on the ballot papers in alphabetical order including their surname, first name, and type of occupation in the establishment.

7. Section 25 (5) to (8) shall not apply.
8. Section 26 (1) shall apply subject to the proviso that a person entitled to vote shall have informed the electoral board of his request for a written note not later than three days prior to the date of the election meeting in which the works council is elected.
9. Section 31 shall apply, mutatis mutandis, with the modification that the election of the youth and trainee delegation shall be held on the basis of lists of candidates.

Section 126

Authorisation to make rules for the elections

The Federal Minister of Labour and Social Affairs is hereby authorised to issue ordinances with the approval of the Bundesrat regulating the electoral procedure for the elections referred to in sections 7 to 20, 60 to 63, 115 and 116 concerning –

1. the preparation of elections, including in particular the establishment of voters' lists and the calculation of the number of representatives;
2. the time limit for inspection of voters' lists and for raising objections to them;
3. the lists of candidates and the time limits for their submission;
4. the declaration of the election and the time limit for its announcement;
5. the casting of votes;
- 5a. the allocation of seats in the works council, the ship's committee, the fleet works council and the youth and trainee delegation to the genders, even if the seats cannot be filled as stipulated in section 15 (2) and section 62 (3).
6. the determination of election results and the time limits for their announcement;
7. the safekeeping of election documents.

Section 127

References

Any reference in other enactments to provisions repealed or amended by this Act shall be construed as references to the corresponding provisions of this Act, and any expressions used in other enactments and amended by this Act shall be replaced by the corresponding expressions in this Act.

Section 128

Existing collective agreements containing provisions contrary to this Act

Any collective agreements concluded under section 20 (3) of the Works Constitution Act of 11 October 1952 that are operative on the date of commencement of this Act and provide for the setting up of some other body representing the employees in establishments of such character that there are particular difficulties in setting up works councils shall not be affected by this Act.

Section 129

(cancelled)

Section 130

Civil service

This Act shall not apply to the administrative organs and establishments of the Federal Republic, the Länder, the communes and other public corporations, institutions and foundations.

(obsolete)	Section 131 Berlin clause
(Commencement)	Section 132