

Second Act amending the Act on European Works Councils
transposing Directive 2009/38/EC on a European Works Council

(2. EBRG-ÄndG)*

Date: 14 June 2011

The Bundestag has passed the following law:

Article 1

Amendment to Act on European Works Councils

The Act of 28 October 1996 on European Works Councils (BGBl. I p. 1548, 2022), which was last amended by Article 30 of the Act of 21 December 2000 (BGBl. I p. 1983), is hereby amended as follows:

1. § 1 is amended as follows:

a) After paragraph (1), the following new paragraph (2) is inserted:

"(2) The European Works Council shall be competent for matters that affect the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two establishments or two undertakings in different Member States. In the case of undertakings and groups of undertakings referred to in § 2(2), the European Works Council's competence shall cover only matters within the territory of the Member States unless a greater scope of application has been agreed."

b) The previous paragraph (2) becomes paragraph (3).

c) After the new paragraph (3), the following new paragraph (4) is inserted:

"(4) For the purposes of this Act, 'information' means transmission of data through central management or other appropriate level of management to employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it. Information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings."

d) The previous paragraph (4) becomes the following paragraph (5):

"(5) For the purposes of this Act, 'consultation' means the exchange of views and establishment of dialogue between employees' representatives and central management or other appropriate level of management at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings. Consultation shall allow the employees' representatives to meet central management and obtain a reasoned response to any opinion they have expressed."

e) The previous paragraph (3) becomes paragraph (6).

* Dieses Gesetz dient der Umsetzung der Richtlinie 2009/38/EG des Europäischen Parlaments und des Rates vom 6. Mai 2009 über die Einsetzung eines Europäischen Betriebsrats oder die Schaffung eines Verfahrens zur Unterrichtung und Anhörung der Arbeitnehmer in gemeinschaftsweit operierenden Unternehmen und Unternehmensgruppen (ABl. L 122 vom 16.5.2009, S. 28).

f) The following paragraph (7) is added:

"(7) The European Works Council shall be informed and consulted, at the latest, at the same time as the national employee representation bodies are informed and consulted."

2. In § 2(4) the reference "§ 5(2)" is replaced by the reference "§ 5(2) and (3)" and the reference "§ 35(2)" by the reference "§ 36(2)".

3. § 5 is amended as follows:

a) Paragraph (1) is amended to read as follows:

"(1) At the request of an employee representation body, the central management shall obtain the information required for commencing negotiations for the establishment of a European Works Council and to transmit that information to the employee representation body. The information in question shall include in particular the average total number of employees and their distribution between the Member States, undertakings and establishments as well as information on the structure of the undertaking or the group of undertakings."

b) In paragraph (2), the words "for this purpose" are deleted.

c) The following paragraph (3) is added:

"(3) The management of every undertaking belonging to the Community-scale group of undertakings and the central management shall be responsible for obtaining and transmitting the information referred to in paragraph (1)."

4. In §6(4), the words "Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJEC No L 395, p. 1)" are replaced by the words "Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1)".

5. § 10 is amended as follows:

a) Paragraph (1) is amended to read as follows:

"(1) For each portion of employees employed in a Member State amounting to 10%, or a fraction thereof, of the number of employees employed in all the Member States taken together by the Community-scale undertaking or Community-scale group of undertakings, one member from that Member State shall be appointed to the special negotiating body."

b) Paragraph (2) is deleted.

c) Paragraph (3) becomes paragraph (2).

6. § 13 is amended as follows:

a) In paragraph (1), the following sentence is inserted after the first sentence:

"The central management shall, at the same time, inform the competent European trade unions and employers' organisations of the start of negotiations and the composition of the special negotiating body referred to in the first sentence of § 12."

b) In paragraph (2), the words "and after" are inserted after the word "Before".

c) The following sentence is added to the end of paragraph (4):

"Such experts and trade union representatives may participate in negotiation meetings in an advisory capacity at the request of the special negotiating body."

7. The second sentence of § 18(1) is amended as follows:

a) Item 3 is amended to read as follows:

"3. tasks and powers of the European Works Council and the procedure for informing and consulting it; such procedure may be adjusted on the basis of the participatory rights of the national employees' representatives, provided their rights are not thereby restricted;"

b) The following Item 5 is inserted after Item 4:

"5. the establishment of a European Works Council committee, including its composition, the appointment of its members, its powers and operation;"

c) The previous Items 5 and 6 become Items 6 and 7.

d) In Item 7, a comma and the words "modification or termination" are inserted after the word "renegotiation".

8. § 22 is amended as follows:

a) Paragraph (2) is amended to read as follows:

"(2) For each portion of employees employed in a Member State amounting to 10%, or a fraction thereof, of the number of employees employed in all the Member States taken together by the Community-scale undertaking or Community-scale group of undertakings, one member from that Member State shall be appointed to the European Works Council."

b) Paragraphs (3) and (4) are deleted.

9. § 23 is amended as follows:

a) The following shall be inserted in front of the first sentence of paragraph (5): "Where possible, there should be a balanced representation of employees with regard to their activities;"

b) Paragraph 6 is amended as follows:

aa) In the first sentence, the reference "§ 22 (2) to (4)" is replaced by the reference "§ 22 (2)".

bb) In the second sentence, the words "§ 30 und 39 (2)" are replaced by the words "§ 35 (2) and § 39".

10. § 26 is amended to read as follows:

"§ 26

Committee

The European Work Council shall establish a Committee from its members. The Committee shall comprise the chairperson and at least two, but no more than four, other members to be elected. The other members of the Committee shall be employed in different Member States. The Committee shall conduct the ongoing business of the European Works Council."

11. § 27 is amended as follows:

a) In the first sentence of paragraph (1), the reference "§ 32" is replaced by the reference "§ 29".

b) In the second sentence of paragraph (1), the reference "§ 33" is replaced by the reference "§ 30".

c) In paragraph (2), the reference "§ 26 (1)" is replaced by the reference "§ 26".

12. The following heading is inserted after § 28:

"CHAPTER 3

Participation rights".

13. § 29, § 30, the previous heading for Chapter 3 and § 31 are deleted.

14. The previous § 32 becomes § 29.

15. The previous § 33 becomes § 30 and is amended as follows:

a) In the first sentence of paragraph (1), the words "or decisions" are inserted after the word "circumstances".

b) In the first sentence of paragraph (2), the reference "§ 26 (1)" is replaced by the reference "§ 26".

c) In the third sentence of paragraph (2), the words "or decisions" are inserted after the word "measures".

16. The previous § 34 becomes § 31 and the words "§ 32 (2), items 5 to 10, and § 33" are replaced by the words "§ 29 (2), items 5 to 10 and § 30".

17. The following heading is inserted after the new § 31:

"CHAPTER 4

Change of composition, transition to an agreement".

18. § 35 and the previous heading for Chapter 4 are deleted.

19. The previous § 36 becomes § 32 and, in the first sentence of paragraph (2) thereof, the reference "§ 22 (2) to (4)" is replaced by the reference "§ 22 (2)".

20. The previous § 37 becomes § 33.

21. The previous heading for Part V is deleted.

22. The following heading is inserted after the new § 33:

"PART V

Common provisions".

23. The previous § 38 becomes § 34.

24. The previous § 39 becomes § 35 and is amended as follows:

a) In paragraph (1), the reference "§ 32 and § 33 (1)" is replaced by the reference "§ 29 and § 30 (1)".

b) In the fourth sentence of paragraph (2), the reference "§ 35" is replaced by the reference "§ 36".

25. The following § 36 to § 39 are inserted after the new § 35:

"§ 36

Information of local employees' representatives

(1) The European Works Council or the Committee (§ 30 (2)) shall report on information and

consultation to the local employees' representatives or, if there are no such representatives, to the employees of the establishments or undertakings.

(2) The member of the European Works Council or Committee who reports to the local employees' representatives at a domestic level shall give his report in establishments or undertakings with management representative committees at a joint meeting within the meaning of § 2 (2) of the Representative Committee Act (*Sprecherausschussgesetz*). This shall not apply where an employee designated in accordance with § 23 (6) has participated at the meeting for the information and consultation of the European Works Council. Where the report referred to in paragraph (1) is given in written form only, it shall also be forwarded to the competent representative committee.

§ 37

Significant structural changes

(1) Where the structure of the Community-scale undertaking or Community-scale group of undertakings changes significantly, and either in the absence of relevant provisions established by the agreements in force or in the event of conflicts between such provisions, the central management shall initiate the negotiations for an agreement referred to in § 18 or § 19 on its own initiative or at the request of the employees or of their representatives (§ 9 (1)). The significant structural changes referred to in the first sentence include in particular

1. the merging of undertakings or groups of undertakings;
2. the division of undertakings or a group of undertakings;
3. the relocation of an undertaking or group of undertakings to another Member State or to a third country, or the closure of undertakings or a group of undertakings;
4. the relocation or closure of establishments where such action may have an impact on the composition of the European Works Council.

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

(3) During negotiations, each European Works Council affected by the structural change shall remain in office until such time as a new European Works Council is established (transitional term of office). Agreement may be reached with the central management as to the provisions governing the operation and composition of the transitional term of office. Where no agreement is reached with the central management in accordance with the second sentence, the transitional term of office shall be assumed by the relevant European Works Council in accordance with the provisions governing it in the undertaking or group of undertakings. The transitional term of office shall also end if the special negotiating body adopts a decision pursuant to § 15 (1).

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

§ 38 Training

(1) The European Works Council may designate members to take part in training and educational events where such events impart knowledge required for the work of the European Works Council. The European Works Council shall notify the central management in good time of participation and date. When the date of the event is being set, operational needs shall be taken into account. The European Works Council may transfer its tasks under this paragraph to the Committee referred to in § 26.

(2) The first, second and third sentences of paragraph (1) shall apply *mutatis mutandis* to the special negotiating body and its members.

§ 39

Costs, operating resources and experts

(1) Any expenses arising from the training and functioning of the European Works Council and the Committee shall be borne by the central management. The central management shall, in particular, make available adequate rooms, material and human resources for the meetings and day-to-day business as well as interpreters for the meetings. The central management shall bear the necessary travel and accommodation expenses of members of the European Works Council and of the Committee. § 16 (2) shall apply *mutatis mutandis*.

(2) The European Works Council and the Committee may obtain such support from experts of their choice as is necessary to enable them to discharge their duties properly. Experts may also be authorised trade union representatives. If experts are consulted, the obligation to bear costs shall be restricted to one expert unless otherwise agreed under § 18 or § 19."

26. The following sentence is added to the end of § 40 (1):

"The first and second sentences of § 37 (6) of the Works Constitution Act (*Betriebsverfassungsgesetz*) shall apply *mutatis mutandis* to the necessary training referred to in § 38."

27. § 41 is amended as follows:

a) In the first sentence of paragraph (1), the words "except in the cases referred to in § 37" are inserted after the words "this Act shall not apply".

b) In paragraph 4, the full stop at the end is replaced by a comma and the following words are added: "except in the event of significant structural changes within the meaning of § 37."

c) In the first sentence of paragraph (7), the words "except in the cases referred to in § 37" are inserted after the words "this Act shall not apply".

d) The following paragraph (8) is added:

"(8) Except in the cases referred to in § 37, the provisions of this Act in the version dated 28 October 1996 (BGBl. I, pp. 1548, 2022), as last amended by Article 30 of the Act of 21 December 2000 (BGBl. I, p. 1983) shall apply to the undertakings and groups of undertakings referred to in § 2 and § 3 in which an agreement on cross-border information and consultation was signed or revised between 5 June 2009 and 5 June 2011. If an agreement within the meaning of the first sentence is concluded for a limited period of time, the parties may decide that it should continue to be valid as long as the agreement has effect; paragraph (4) shall apply *mutatis mutandis*."

28. In § 43 (1) and § 44 (1) (1), the words "of § 39 (2), first or second sentence," are in each case replaced by the words " of § 35 (2), first or second sentence,".

29. § 45 (1) is amended as follows:

a) [In Item 1 the words "eine Auskunft" are replaced by the words "die Informationen" – *Translator's Note: already translated as "information" in previous English version*] and the word "provides" is in each case replaced by the words "obtains or transmits".

b) In Item 2, the reference "§ 32 (1) or § 33 (1), first sentence, or (2), first sentence," is replaced by the reference "§ 29 (1) or the first sentence of § 30 (1), first sentence, or (2), first sentence," and the reference "§ 26 (1)" is replaced by the reference "§ 26".

Article 2

Amendment to Labour Court Act

In the second sentence of § 82 (2) of the Labour Court Act (*Arbeitsgerichtsgesetz*) in the version published on 2 July 1979 (BGBl. I, pp. 853, 1036), as last amended by Article 6 of the Act of 28 April 2011 (BGBl. I, p. 687), the reference "§ 41" is replaced by the reference "§ 41 (1) to (7)".

Article 3

Permission to publish

The Federal Ministry for Labour and Social Affairs may publish in the Federal Gazette (*Bundesgesetzblatt*) the text of the European Work Councils Act as amended following the entry into force of this Act.

Article 4

Entry into force

This Act shall enter into force on the day following its promulgation.

The constitutional rights of the Bundesrat are maintained.

This Act is hereby adopted. It shall be promulgated in the Federal Gazette.

Berlin, 14 June 2011

The Federal President
Christian Wulff

The Federal Chancellor
Dr Angela Merkel

The Federal Minister for Labour and Social Affairs
Ursula von der Leyen