

Act Concerning Co-Codetermination of Employees (Co-determination Act – MitbestG)

**Working Translation
of parts of**

Gesetz über die Mitbestimmung der Arbeitnehmer (Mitbestimmungsgesetz - MitbestG)

Purpose:

The following passages have mainly been translated for the purpose of the course "German Maritime Law".

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Act Concerning Co-determination of Employees (Co-determination Act – MitbestG)

Section 3 Employees and establishment

(1) Employees as defined by this Act are:

1.

the persons referred to in section 5(1) of the Works Constitution Act (BetrVG) with the exception of the executive staff referred to in section 5(3) of the Works Constitution Act;

2.

the executive staff referred to in section 5(3) of the Works Constitution Act (BetrVG).

The persons referred to in section 5(2) of the Works Constitution Act (BetrVG) are not employees within the meaning of this Act.

(2) Establishments within the meaning of this Act are those defined in the Works Constitution Act (BetrVG). Section 4(2) of the Works Constitution Act (BetrVG) applies.

Section 7 Composition of the Supervisory Board

(1) The Supervisory Board of a company:

1.

usually not exceeding 10,000 employees shall be composed of shareholder representatives on the Supervisory Board and six employee representatives on the Supervisory Board respectively;

2.

usually not exceeding 10,000 employees but less than 20,000 employees shall be composed of eight shareholder representatives on the Supervisory Board and eight employee representatives on the Supervisory Board respectively;

3.

usually not exceeding 20,000 employees shall be composed of ten shareholder representatives on the Supervisory Board and ten employee representatives on the Supervisory Board respectively.

For the companies referred to in para. 1 of the first sentence, the by-laws (articles of association) may determine that para. 2 or 3 of the first sentence is applicable. For the companies referred to in para. 2 of the first sentence, the by-laws (articles of association) may determine that para. 3 of the first sentence is applicable.

(2) The employee representatives on the Supervisory Board shall include:

1.

four employees of the company and two representatives of trade unions for a Supervisory Board with six employee representatives;

2.

six employees of the company and two representatives of trade unions for a Supervisory Board with eight employee representatives;

3.

seven employees of the company and three representatives of trade unions for a Supervisory Board with ten employee representatives.

(3) Where the third sentence of section 96(2) of the Stock Corporation Act (AktG) applies, a minimum gender quota of at least 30 percent shall apply for the male and female employee representatives on the Supervisory Board of a listed company referred to in Section 1(1). The first sentence shall also apply to non-listed companies

in which the Federation holds a majority interest within the meaning of section 393a(1) of the Stock Corporation Act (AktG) or section 77a(1) of the Limited Liability Companies Act (GmbHG).

(4) The employees of the company referred to in subsection 2 must have reached the age of 18 and been employed by the company for one year. The employment period of one year includes any period of employment at another company in which the employees participate in the election of Supervisory Board members of the company in accordance with this Act. This period must immediately precede the point in time at which employees are entitled to elect Supervisory Board members of the company. The other eligibility criteria in section 8(1) of the Works Constitution Act (BetrVG) must be met.

(5) The trade unions referred to in subsection 2 must be represented in the company itself or in another company, in which the employees participate in the election of Supervisory Board members of the company in accordance with this Act.

Footnote

Section 7(1) and (2) in conjunction with Section 31 is compatible with the Basic Law (GG) in accordance with the decision of the Federal Constitutional Court (BVerfGE) of 1 March 1979 I 354 - 1 BvR 532/77, 1 BvR 533/77, 1 BvR 419/78, 1 BvL 21/78 -

Employee representatives on the Supervisory Board, principle

Section 9

(1) The employee representatives on the Supervisory Board (Section 7(2)) of a company usually exceeding 8,000 employees shall be elected through delegates, if the employees with voting rights do not decide that direct elections are to be held.

(2) The employee representatives on the Supervisory Board (Section 7(2)) of a company usually not exceeding 8,000 employees shall be elected directly, if the employees with voting rights do not decide that elections through delegates are to be held.

(3) The vote on whether elections are to be held through delegates or directly shall be subject to an application that must be signed by one twentieth of the employees of the company with voting rights. The votes shall be cast by secret ballot. A decision in accordance with subsection 1 or 2 may only be taken when at least half of the employees with voting rights participate and only by a majority vote.

Election of employee representatives on the Supervisory Board through delegates

Section 10 Election of delegates

(1) In every establishment of a company, employees shall elect delegates by secret ballot and according to the principles of proportional representation.

(2) Employees of the company who are 18 years old shall be eligible to elect delegates. The second sentence of section 7 of the Works Constitution Act (BetrVG) shall apply accordingly.

(3) Employees referred to in the first sentence of subsection 2 that meet the other eligibility criteria of section 8 of the Works Constitution Act (BetrVG) may be elected as delegates.

(4) If only one list of candidates is submitted for a round of voting, the employees listed shall be deemed elected in the order indicated. Section 11(2) applies.

Section 11 Calculating the number of delegates

(1) In every establishment, one delegate must be elected per 90 employees with voting rights. If, in an establishment, the calculation in accordance with the first sentence results in more than:

1.

25 delegates, the number of delegates to be elected shall be halved; these delegates shall receive two votes each;

2.

50 delegates, the number of delegates to be elected shall be reduced to one third; these delegates shall receive three votes each;

3.

75 delegates, the number of delegates to be elected shall be reduced to one quarter; these delegates shall receive four votes each;

4.

100 delegates, the number of delegates to be elected shall be reduced to one fifth; these delegates shall receive five votes each;

5.

125 delegates, the number of delegates to be elected shall be reduced to one sixth; these delegates shall receive six votes each;

6.

150 delegates, the number of delegates to be elected shall be reduced to one seventh; these delegates shall receive seven votes each.

When calculating the number of delegates, numbers less than the full number shall be counted as full numbers if they amount to at least half of the number.

(2) In every establishment, the employees and executive staff referred to in Section 3(1)(1) must be represented among the delegates in accordance with their ratio. If at least nine delegates must be elected in an establishment, at least one delegate each shall represent the employees and executive staff referred to in Section 3(1)(1); this does not apply if no more than five of the employees and executive staff referred to in Section 3(1)(1) are eligible to vote. If the employees and executive staff referred to in Section 3(1)(1) are only represented by delegates in accordance with the second sentence, the number of delegates of the establishment calculated in accordance with subsection 1 shall be increased accordingly.

(3) If the employees and executive staff of an establishment referred to in Section 3(1)(1) are not represented by at least one delegate each in accordance with subsection 2, these shall be deemed to be employees of the main establishment of the company for the purpose of the election. If the employees and executive staff of the establishment referred to in Section 3(1)(1) are not represented by at least one delegate in accordance with subsection 2 and the first sentence, they shall be deemed for the purpose of the election to be employees of the largest establishment of the company, which is the establishment with the most employees eligible to vote.

(4) If an establishment or company, whose employees participate in the election of Supervisory Board members of the company in accordance with this Act, is not represented by a delegate, subsection 3 applies accordingly.

(5) The capacity of a delegate as a delegate of the employees in accordance with Section 3(1)(1) or Section 3(1)(2) shall persist, even if the delegate ceases to be an employee within the meaning of Section 3(1)(1) or Section 3(1)(2).

Section 12 Lists of candidates for delegates

(1) The employees of the establishment eligible to vote may submit lists of candidates for the election of delegates. Every list must be signed by one twentieth or 50 of the employees or executive staff of the establishment referred to in Section 3(1)(1) eligible to vote.

(2) Every list of candidates should contain at least twice as many candidates as delegates are to be elected in the round of voting.

Section 13 Term of office of the delegates

(1) The delegates are elected for a term that corresponds to the term of office of the Supervisory Board members they elect. They shall exercise the duties and authorities granted to them under this Act until the next election of employee representatives on the Supervisory Board commences.

(2) In the cases described in Section 9(1), the term of office of the delegates shall end, if:

1.

the employees eligible to vote decide to hold direct elections in accordance with Section 9(1);

2.

the companies no longer meet the requirements for application of Section 9(1), unless the employees eligible to vote decide that the term of office is to continue until the point in time mentioned in subsection 1; Section 9(3) applies accordingly.

(3) In the circumstances laid down in Section 9(2), the term of office of the delegates shall end if the employees eligible to vote decide to hold direct elections; Section 9(3) applies.

(4) In derogation from subsection 1, the term of office of the delegates of an establishment shall end when, after all substitutes from the list of candidates that contains the delegates to be replaced have taken their seats, the total number of delegates of the establishment is lower than the number of delegates required to represent the establishment at the time of their election.

Section 14 Premature termination of the term of office or absence of delegates

(1) The term of office of a delegate shall end before the point in time referred to in Section 13 by:

1.

resignation from the office;

2.

termination of the delegate's employment in the establishment that they represent as a delegate;

3.

loss of eligibility.

(2) If a delegate's term of office ends prematurely or if the delegate is absent, a substitute shall take the delegate's place. Substitutes shall be taken in turn from the unelected employees on the same lists of candidates as the members who are to be replaced.

Section 15 Election of company-employed employee representatives on the Supervisory Board

(1) The delegates shall elect Supervisory Board members who must be employees of the company in accordance with Section 7(2) by secret ballot and according to the principles of proportional representation for the period stipulated in the Act or by-laws (articles of association) for the Supervisory Board members to be elected by the electoral body of the shareholders. The Supervisory Board must include one executive.

(2) The election shall be based on lists of candidates. Each list of candidates for:

1.

employee representatives on the Supervisory Board in accordance with Section 3(1)(1) must be signed by one fifth or 100 of the employees of the company eligible to vote;

2.

the Supervisory Board member of the executive staff shall be nominated by decision of the executive staff eligible to vote and based on the list of candidates. Each list of candidates must be signed by one twentieth or 50 of the executive staff eligible to vote. The decision shall be taken by secret ballot. Each executive shall have the same number of votes as candidates are to be nominated for the list of candidates in accordance with the second sentence of subsection 3. The number of candidates required in accordance with the second sentence of subsection 3 shall be included in the list of candidates in the order of the number of votes obtained.

(3) In derogation from subsection 1, the election shall be conducted by majority vote if only one list of candidates has been submitted. In this case, the list must contain twice as many candidates as Supervisory Board members are allocated to employees in accordance with Section 3(1)(1) and executive staff.

Section 16 Election of representatives of trade unions to the Supervisory Board

(1) The delegates shall elect the Supervisory Board members, who are representatives of trade unions in accordance with Section 7(2), by secret ballot and according to the principles of proportional representation for the period stipulated in Section 15(1).

(2) The election shall be conducted based on lists of candidates submitted by the trade unions, which are represented in the company itself or in another company whose employees participate in the election of Supervisory Board members of the company in accordance with this Act. In derogation from subsection 1, the election shall be conducted by majority vote if only one list of candidates has been submitted. In this case, the list must contain twice as many candidates as representatives of trade unions to be elected to the Supervisory Board.

Section 17 Substitutes

(1) One substitute member of the Supervisory Board may be added for each candidate on the list. Only an employee in accordance with Section 3(1)(1) may be proposed as a substitute for a candidate who is an employee in accordance with Section 3(1)(1), and only an executive may be proposed as a substitute for an executive in accordance with Section 3(1)(2). Candidates may not also be listed as substitutes at the same time.

(2) If a candidate is elected as a Supervisory Board member, the substitute listed with them is elected as well.

(3) In the circumstances laid down in the third sentence of section 96(2) of the Stock Corporation Act (AktG), a substitute may not take a delegate's place if this violates the mandatory gender quota for the employee representatives on the Supervisory Board set out in Section 7(3); the second sentence of Section 18a(2) applies accordingly.