

Act on European Works Councils*

dated 28 October 1996,

amended by the Act dated 22 December 1999 (“Bundesgesetzblatt“, Part I, p. 2809) and by the Act dated 21 December 2000 (“Bundesgesetzblatt“, Part I, p. 1983)

PART I General Provisions

§ 1

Cross-border information and consultation

- (1) To reinforce the right to the cross-border information and consultation of employees in Community-scale undertakings and groups of undertakings, European works councils or procedures for informing and consulting employees shall be agreed. Where no such agreement is reached, a European works council shall be established by act of law.
- (2) Cross-border information and consultation shall cover, in the case of undertakings, all establishments located within a Member State and, in the case of groups of undertakings, all undertakings resident in a Member State, unless a wider scope is agreed.
- (3) For the purposes of this Act, 'central management' means a Community-scale undertaking or the controlling undertaking in a Community-scale group of undertakings.
- (4) For the purposes of this Act, 'consultation' means the exchange of views and establishment of dialogue between employees' representatives and the central management or other appropriate level of management.

§ 2

Scope

- (1) This Act shall apply to Community-scale undertakings resident in Germany and to Community-scale groups of undertakings where the controlling undertaking is resident in Germany.
- (2) If the central management is not located in a Member State, but there is a subordinate management for establishments or undertakings located in Member States, this Act shall apply if the subordinate management is located in Germany. If there is no subordinate management, this Act shall apply if the central management designates an establishment or undertaking in Germany as its representative. Where no such representative is designated, this Act shall apply

* This Act is meant to implement Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJEC No. L 254 p. 64).

if the establishment or undertaking with the most employees, compared with other establishments of the undertaking or undertakings in a group of undertakings located in the Member States, is located in Germany. The above-mentioned bodies shall be deemed to be the central management.

(3) For the purpose of this Act, 'Member States' means the Member States of the European Union and the other States that are party to the Agreement on the European Economic Area.

(4) For the calculation of the number of employees in Germany (§ 4), the entitlement to information (§ 5 (2)), the determination of the controlling undertaking (§ 6), the forwarding of the request (§ 9 (2), third sentence), the joint and several liability of the employer (§ 16 (2)), the appointment of the employee representatives for Germany (§§ 11, 23 (1) to (5) and § 18 (2) in conjunction with § 23), together with the protective provisions applying to them (§ 40), and the report submitted to the local employee representatives in Germany (§ 35 (2)), this Act shall apply even where the central management is not in Germany.

§ 3

Community-scale activity

(1) An undertaking is active on a Community scale if it has at least 1 000 employees in the Member States including at least 150 employees in each of at least two Member States.

(2) A group of undertakings is active on a Community scale if it has at least 1 000 employees in the Member States and includes at least two undertakings resident in different Member States each with at least 150 employees in different Member States.

§ 4

Calculation of employee numbers

In establishments and undertakings in Germany, the number of employees considered for the purposes of § 3 shall be calculated as the average number of employees during the past two years in accordance with § 5 (1) of the Works Constitution Act. The relevant date for the commencement of the period referred to in the first sentence shall be the date on which the central management takes the initiative to establish a special negotiating body or receives a request to do so from the employees or their representatives in accordance with the terms set out in § 9 (2).

§ 5

Entitlement to information

(1) Upon request, the central management shall provide employee representatives with information on the average total number of employees and their distribution between the Member States, undertakings and establishments as well as on the structure of the undertaking or the group of undertakings.

(2) A works council or central works council may assert the entitlement under paragraph 1 above *vis-à-vis* the management of the local establishment or undertaking; the latter shall be obliged to obtain the information and documentation required for this purpose from the central management.

§ 6

Controlling undertaking

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

(2) A dominant influence shall be presumed if an undertaking, in relation to another undertaking, directly or indirectly

1. can appoint more than half of the members of the other undertaking's administrative, management or supervisory body or
2. controls a majority of the votes attached to the other undertaking's issued share capital or
3. holds a majority of that undertaking's subscribed capital.

If more than one undertaking meets one of the criteria specified in the first sentence, items 1 to 3 the controlling undertaking shall be determined by applying the criteria in the order listed.

(3) For the purposes of paragraph 2, an undertaking's rights as regards voting and appointment shall include the rights of any undertakings it controls and those of any person or body acting in his or its own name but on behalf of the undertaking or an undertaking controlled by the latter.

(4) An investment or holding company as referred to in Article 3 (5)(a) or (c) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJEC No L 395, p. 1) shall not be deemed to be a controlling undertaking with respect to another undertaking in which it has holdings but does not participate in its management.

§ 7

European Works Council in groups of undertakings

Where a Community-scale group of undertakings includes one or more Community-scale undertakings, a European Works Council shall be established only for the controlling undertaking of the group, unless otherwise agreed.

PART II
Special negotiating body

§ 8

Task

- (1) The special negotiating body shall have the task of negotiating with the central management an agreement on the cross-border information and consultation of employees.
- (2) The central management shall provide the special negotiating body in good time with all the information it requires to carry out its tasks and with the necessary documentation.
- (3) The central management and the special negotiating body shall work together in a spirit of trust. The date, frequency and venue for negotiations shall be determined by agreement between the central management and the special negotiating body.

§ 9

Establishment

- (1) The special negotiating body shall be established upon a written request by the employees or their representatives addressed to the central management or at the initiative of the central management.
- (2) The request shall be effectively submitted if it is signed by at least 100 employees or their representatives from at least two establishments or undertakings in different Member States and is received by the central management. Where more than one request is submitted, the signatures shall be counted together. If the request is submitted to the management of an establishment or undertaking in Germany, the latter shall forward the request without delay to the central management and inform the requesting parties of this fact.
- (3) The central management shall inform the requesting parties, the management of the local establishments or undertakings, the employee representatives of the latter and the trade unions represented in establishments in Germany of the establishment of a special negotiating body and of its composition.

§ 10

Composition

- (1) An employee representative from each Member State in which the undertaking or group of undertakings has an establishment shall be appointed to the special negotiating body.
- (2) An additional representative shall be appointed from each Member State with at least 25%

of the employees of the undertaking or group of undertakings. Two additional representatives shall be appointed from Member States with at least 50% of the employees and three additional representatives from a Member State with at least 75% of the employees.

(3) Alternate members may be appointed.

§ 11

Appointment of employee representatives for Germany

(1) In Community-scale undertakings, the members of the special negotiating body who represent employees in Germany under this Act or the law of another Member State shall be appointed by the central works council (§ 47 of the Works Constitution Act). Where there is only a works council, the latter shall appoint the members of the special negotiating body.

(2) In Community-scale groups of undertakings, the members of the special negotiating body referred to in the first sentence of paragraph 1 above shall be appointed by the combine works council (§ 54 of the Works Constitution Act). If there is also a central works council or works council not represented on the combine works council, the combine works council shall be extended to include the chairpersons of these works councils and their deputies; these chairpersons and their deputies shall in this respect be deemed to be members of the combine works council.

(3) If there is no combine works council, the members of the special negotiating body referred to in the first sentence of paragraph 1 above shall be appointed as follows:

a) If there is more than one central works council, the members of the special negotiating body shall be appointed at a joint meeting of the central works councils, which shall be convened by the chairperson of the central works council of the largest undertaking in Germany in terms of the number of employees entitled to vote. If there is at least one works council not represented on the central works councils, its chairperson and his or her deputy shall be invited to this meeting; they shall in this respect be deemed to be members of a central works council.

b) If, in addition to a central works council, there is at least one works council not represented on the central works council, the latter shall be extended to include the chairperson of this works council and his or her deputy; the latter persons shall in this respect be deemed to be members of the central works council. The central works council shall appoint the members of the special negotiating body. If there is only one central works council, the latter shall appoint the members of the special negotiating body.

c) If there are several works councils, the members of the special negotiating body shall be appointed at a joint meeting convened by the chairperson of the works council of the largest establishment in Germany in terms of the number of employees entitled to vote. The chairpersons of the works councils and their deputies shall be entitled to attend this meeting; § 47 (7) of the Works Constitution Act shall apply *mutatis mutandis*.

d) If there is only one works council, the latter shall appoint the members of the special negotiating body.

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

(5) Men and women should be appointed in proportion to their respective numbers.

§ 12

Information concerning the members of the special negotiating body

The names of the members of the special negotiating body, their addresses and the establishments to which they belong shall be communicated without delay to the central management. The central management shall pass on this information to the managements and employee representatives of the local establishments or undertakings and to the trade unions represented in establishments in Germany.

§ 13

Meetings, rules of procedure, experts

(1) The central management shall convene a constitutive meeting of the special negotiating body as soon as the members have been appointed and shall inform the managements of the local establishments and undertakings of this fact. The special negotiating body shall elect a chairperson from among its number and may adopt rules of procedure.

(2) Before any negotiations with the central management, the special negotiating body shall have the right to hold a meeting and invite persons to attend this meeting; § 8 (3), second sentence, shall apply *mutatis mutandis*.

(3) Unless otherwise provided for in this Act, decisions of the special negotiating body shall be adopted by a majority of the votes of its members.

(4) The special negotiating body may be assisted by experts of its choice where this is necessary for it to carry out its tasks properly. Such experts may also be representatives of

trade unions.

§ 14

Involvement of employee representatives from third countries

Where the central management and the special negotiating body agree to extend the agreement negotiated under § 17 to establishments or undertakings not located in a Member State (third country), they may agree to include employee representatives from these countries on the special negotiating body and to determine the number of members for the third countries concerned and their status.

§ 15

Decision on the termination of negotiations

(1) The special negotiating body may decide, by at least two-thirds of the votes of its members, not to open negotiations or to terminate negotiations. The decision and the result of the vote shall be recorded and the record shall be signed by the chairperson and one other member of the body. A copy of the record shall be forwarded to the central management.

(2) A new request to establish a special negotiating body (§ 9) may be made no sooner than two years after a decision taken in accordance with paragraph 1 above, unless the special negotiating body and the central management lay down a shorter period in writing.

§ 16

Costs and operating expenditure

(1) The costs arising from the establishment and operation of the special negotiating body shall be borne by the central management. Where experts are called in under § 13 (4), the obligation to bear costs shall extend to only one expert. The central management shall provide the rooms, materials, interpreters and office staff necessary for the meetings and shall bear the necessary travelling and accommodation costs of the members of the special negotiating body.

(2) The employer of a member appointed from Germany to the special negotiating body shall, together with the central management, be jointly and severally liable for this member's entitlement to the reimbursement of costs.

PART III

Agreements concerning cross-border information and consultation

§ 17

Freedom of organisation

The central management and the special negotiating body shall be free to decide how the cross-border information and consultation of employees is to be organised; they shall not be bound by the provisions of Part IV of this Act. The agreement shall cover all employees employed in those Member States where the undertaking or group of undertakings has establishments. The parties shall reach agreement on whether cross-border information and consultation is to be implemented by the establishment of one or more European Works Councils in accordance with § 18 or by a procedure for informing and consulting employees in accordance with § 19.

§ 18

European Works Council by agreement

(1) Where a European Works Council is to be established, a written agreement shall be reached as to how it is to be organised. The following, in particular, should be regulated:

1. designation of the establishments and undertakings covered, including branches outside the territory of the Member States, where these are to be covered;
2. composition of the European Works Council, number of members, alternate members, allocation of seats and term of office;
3. the competence and tasks of the European Works Council and the procedure for informing and consulting it;
4. venue, frequency and duration of meetings;
5. the financial and material resources to be allocated to the European Works Council;
6. clause concerning the adapting of the agreement to structural changes, the duration of the agreement and the procedure for its renegotiation, including transitional arrangements.

(2) § 23 shall apply *mutatis mutandis*.

§ 19

Procedure for information and consultation

Where a procedure for informing and consulting employees is to be introduced, an agreement shall be made in writing to regulate the conditions under which employee representatives have the right to confer together on the information conveyed to them and the procedure for the discussion of their proposals or concerns with the central management or other appropriate level of management. This information shall relate in particular to cross-border matters that significantly affect the interests of employees.

§ 20

Transitional provisions

An agreement pursuant to § 18 or 19 shall continue to apply if the right to submit a request or take an initiative under § 9 (1) is exercised before the agreement is terminated. The right to submit a request may also be exercised by an employee representation body established under an agreement. The application of the agreement shall end if it is replaced by a new agreement or if a European Works Council is established by act of law. The application of the agreement shall also end where the special negotiating body takes a decision as provided for in § 15 (1); § 15 (2) shall apply *mutatis mutandis*. The first, second, third and fourth sentences shall not apply if the existing agreement incorporates transitional arrangements.

PART IV

European Works Council by act of law

CHAPTER 1

Establishment of the European Works Council

§ 21

Requirements

(1) Should the central management refuse to enter into negotiations within six months of a request as referred to in § 9, a European Works Council shall be established in accordance with § 22 and 23. The same shall apply if no agreement can be reached under § 18 or 19 within three years after the request or the central management and the special negotiating body declare the negotiations failed. The first and second sentences shall apply *mutatis mutandis* if the special negotiating body is to be established upon the initiative of the central management.

(2) A European Works Council shall not be established if the special negotiating body takes a decision as provided for in § 15 (1) before expiry of the deadlines in paragraph 1 above.

§ 22

Composition of the European Works Council

- (1) The European Works Council shall be composed of employees of the Community-scale undertaking or Community-scale group of undertakings. Alternate members may be appointed.
- (2) An employee representative from each Member State in which the undertaking or group of undertakings has an establishment shall be appointed to the European Works Council.
- (3) Where the undertaking or group of undertakings has a total of up to 10 000 employees within the Member States, Member States with at least 20% of the employees shall be represented by an additional member. Member States with at least 30% of the employees shall be represented by two additional members, with at least 40% of the employees by three additional members, and with at least 50% of the employees by four additional members. A Member State with at least 60% of the employees shall be represented by five additional members, with at least 70% of the employees by six additional members, and with at least 80% of the employees by seven additional members.
- (4) If the undertaking or group of undertakings has a total of more than 10 000 employees within the Member States, Member States with at least 20% of the employees shall be represented by an additional member. Member States with at least 30% of the employees shall be represented by three additional members, with at least 40% of the employees by five additional members, with at least 50% of the employees by seven additional members. A Member State with at least 60% of the employees shall be represented by nine additional members, with at least 70% of the employees by eleven additional members, and with at least 80% of the employees by thirteen additional members.

§ 23

Appointment of employee representatives in Germany

- (1) The members of the European Works Council appointed to represent employees in Germany under this Act or the law of another Member State shall be appointed in Community-scale undertakings by the central works council (§ 47 of the Works Constitution Act). If there is only a works council, the latter shall appoint the members of the European Works Council.
- (2) In Community-scale groups of undertakings, the European Works Council members referred to in paragraph 1 above, first sentence, shall be appointed by the combine works council (§ 54 of the Works Constitution Act). If, in addition to the combine works council, there is a central works council or works council not represented on it, the combine works council shall be extended to include their chairpersons and deputies; these chairpersons and their deputies shall in this respect be deemed to be members of the combine works council.

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

a) If there is more than one central works council, the members of the European Works Council shall be appointed at a joint meeting of the central works councils convened by the chairperson of the central works council of the largest undertaking in Germany in terms of the number of employees entitled to vote. If there is at least one works council not represented on the central works councils, the chairperson of this works council and his or her deputy shall be invited to attend the meeting; in this respect, they shall be deemed to be members of the central works council.

b) If, in addition to a central works council, there is at least one works council not represented on the central works council, the latter shall be extended to include the chairperson of this works council and his or her deputy; the chairperson of the works council and his or her deputy shall, in this respect, be deemed to be members of the central works council. The central works council shall appoint the members of the European Works Council. If there is only one central works council, the latter shall appoint the members of the European Works Council.

c) If there is more than one works council, the members of the European Works Council shall be appointed at a joint meeting convened by the chairperson of the works council of the largest establishment in Germany in terms of the number of employees entitled to vote. The chairpersons of the works councils and their deputies shall be entitled to attend this meeting; § 47 (7) of the Works Constitution Act shall apply *mutatis mutandis*.

d) If there is only one works council, the latter shall appoint the members of the European Works Council.

(4) Paragraphs 1 to 3 shall apply *mutatis mutandis* to the revocation of an appointment.

(5) Men and women should be appointed in proportion to their respective numbers.

(6) The competent executives' committee of a Community-scale undertaking or Community-scale group of undertakings which has its central management in Germany may designate one of the employees referred to in § 5 (3) of the Works Constitution Act who shall have the right to attend and address meetings for the information and consultation of the European Works Council, provided at least five representatives from Germany have been delegated to attend in

accordance with § 22 (2) to (4). § 30 and 39 (2) shall apply *mutatis mutandis*.

§ 24

Information concerning the members of the European Works Council

The names of the members of the European Works Council, their addresses and the establishments to which they belong shall be communicated without delay to the central management. The central management shall pass on this information to the managements and employee representatives of the local establishments or undertakings and to the trade unions represented in establishments in Germany.

CHAPTER 2

Conduct of business of the European Works Council

§ 25

Constitutive meeting, chairperson

(1) Immediately upon appointment of the members, the central management shall convene the constitutive meeting of the European Works Council. The European Works Council shall elect from among its number a chairperson and his or her deputy.

(2) The chairperson of the European Works Council or, in the event of his or her absence, his or her deputy shall represent the European Works Council within the terms of the decisions taken by the latter. The chairperson or, in the event of his or her absence, his or her deputy shall have the right to accept statements to be made to the European Works Council.

§ 26

Committee

(1) Where the European Works Council comprises nine or more members, it shall establish a committee of three members, comprising the chairperson and two other members to be elected. The members of the Committee should be employed in different Member States. The Committee shall conduct the ongoing business of the European Works Council.

(2) A European Works Council with fewer than nine members may delegate the conduct of ongoing business to the chairperson or another member of the European Works Council.

§ 27

Meetings

(1) The European Works Council shall have the right to hold a meeting and invite persons to attend in connection with the provision of information by the central management under § 32. The same shall apply in the case of information concerning extraordinary circumstances as

provided for in § 33. The date and venue for meetings shall be agreed with the central management. With the consent of the central management, the European Works Council may hold additional meetings. The meetings of the European Works Council shall not be public.

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

§ 28

Decisions, rules of procedure

Unless otherwise provided for in this Act, the decisions of the European Works Council shall be adopted by the majority of the votes of the members present. Other provisions relating to the conduct of business should be incorporated in written rules of procedure adopted by the European Works Council with the majority of the votes of its members.

§ 29

Experts

The European Works Council and the Committee may be assisted by experts of their choice where this is necessary for them to carry out their tasks properly. Such experts may also be representatives of trade unions.

§ 30

Costs and operating expenditure

The costs arising from the establishment and operation of the European Works Council and the Committee (§ 26 (1)) shall be borne by the central management. Where experts are called in under § 29, the obligation to bear costs shall extend to only one expert. In particular, it shall provide the rooms, material resources and office staff necessary for the meetings and the conduct of ongoing business and shall, in addition, provide interpreters for meetings. It shall bear the necessary travelling and accommodation costs of the members of the European Works Council and the Committee. § 16 (2) shall apply *mutatis mutandis*.

CHAPTER 3

Competence and rights of participation

§ 31

Cross-border matters

(1) The European Works Council shall have competence in the matters referred to in § 32 and 33 where these concern at least two establishments or two undertakings in different Member States.

(2) For undertakings and groups of undertakings within the meaning of § 2 (2), the European Works Council shall have competence only in those matters that relate to the territory of the Member States and concern at least two establishments or two undertakings in different Member States.

§ 32

Annual information and consultation

(1) Once every calendar year, the central management shall inform the European Works Council, providing it with the required documentation in good time, of the progress of the business of the Community-wide undertaking or Community-wide group of undertakings and its prospects and consult it on these matters.

(2) The progress of the business and prospects as referred to in paragraph 1 above relate in particular to:

1. structure and economic and financial situation of the undertaking or group of undertakings;
2. the likely development of the business and of production and sales;
3. the situation and probable trend of employment;
4. investments (investment programmes);
5. fundamental changes in organisation;
6. the introduction of new working and production processes;
7. the relocation of undertakings, establishments or significant parts thereof and transfers of production;
8. the merger or division of undertakings or establishments;
9. the cutting back or closure of undertakings, establishments or significant parts thereof;
10. collective redundancies.

§ 33

Information and consultation

(1) In the event of exceptional circumstances affecting the employees' interests to a considerable extent, the central management shall inform the European Works Council in good time of these circumstances, providing it with the required documentation, and, on request, consult the European Works Council. Exceptional circumstances comprise in particular

1. the relocation of undertakings, establishments or important parts thereof;
2. the closure of undertakings, establishments or important parts thereof;
3. collective redundancies.

(2) If there is a Committee within the meaning of § 26 (1), this Committee shall be addressed instead of the European Works Council in accordance with paragraph (1), first sentence. § 27

(1), second to fifth sentences, shall apply *mutatis mutandis*. Those members of the European Works Council appointed for establishments or undertakings directly affected by the planned measures shall also be invited to meetings of the Committee; in this respect, they shall be deemed to be members of the Committee.

§ 34

Ideological undertakings

Only § 32 (2), items 5 to 10, and § 33 shall apply to undertakings and controlling undertakings of groups of undertakings that, for the most part, directly serve the purposes referred to in § 118 (1), first sentence, items 1 and 2, of Works Constitution Act, subject to the proviso that information and consultation shall be required only with regard to compensation or alleviation of financial disadvantages suffered by the employees as a result of changes in the undertaking or establishment.

§ 35

Information of local employee representatives

(1) The European Works Council or the Committee (§ 33 (2)) shall report to the local employee representatives or, where there are no such representatives, the employees in the establishments or undertakings on the information and consultation procedure.

(2) The member of the European Works Council or the Committee who reports to the local employee representatives in Germany shall, in establishments and undertakings where executives' committees exist, deliver this report to a joint meeting within the meaning of § 2(2) of the Executives' Committee Act. This shall not apply where an employee designated under § 23 (6) has attended the meeting to inform and consult the European Works Council. If the report as referred to in paragraph (1) above is delivered only in writing, it shall also be forwarded to the competent executives' committee.

CHAPTER 4

Change of composition, transition to an agreement

§ 36

Duration of membership, appointment of new members

(1) Membership of the European Works Council shall be for a period of four years unless terminated earlier by revocation of appointment or for other reasons. This period shall start upon appointment.

(2) Every two years, starting from the date of the constitutive meeting of the European Works Council (§ 25 (1)), the central management shall examine whether the numbers of employees in

the individual Member States have changed to such an extent that the composition of the European Works Council would be calculated differently under § 22 (2) to (4). It shall inform the European Works Council of the results. Where the results require a different composition of the European Works Council, the latter shall call upon the competent bodies to ensure that new members of the European Works Council are appointed for those Member States where a different number of employee representatives is required compared with the previous period; these new appointments end the membership of the employee representatives that have hitherto represented these Member States on the European Works Council. The first, second and third sentences shall apply *mutatis mutandis* in the case of a Member State hitherto not represented on the European Works Council.

§ 37

Opening of negotiations

Four years after the constitutive meeting (§ 25 (1)), the European Works Council shall decide, by a majority of the votes of its members, whether to negotiate an agreement with the central management as provided for in § 17. Should the European Works Council decide to open negotiations, it shall have the same rights and duties as the special negotiating body; § 8, 13, 14, 15 (1) and § 16 to 19 shall apply *mutatis mutandis*. The term of office of the European Works Council shall end when an agreement is reached under § 17.

PART V

Principles of cooperation and protective provisions

§ 38

Cooperation in a spirit of trust

The central management and the European Works Council shall co-operate in a spirit of trust for the good of the employees and the undertaking or group of undertakings. The first sentence shall apply *mutatis mutandis* to cooperation between the central management and the employee representatives under an information and consultation procedure.

§ 39

Secrecy, confidentiality

(1) The central management shall be obliged to provide information on the matters agreed under § 18 and 19 or as referred to in § 32 and § 33 (1) only where business or operating secrets of the undertaking or group of undertakings are not jeopardised as a result.

(2) The members and alternate members of a European Works Council shall not divulge or make use of operating or business secrets that have come to their knowledge in connection

with their membership of the European Works Council and have been expressly designated by the central management as confidential. This provision shall continue to apply to former members of the European Works Council. It shall not apply *vis-à-vis* other members of the European Works Council. In addition, it shall not apply *vis-à-vis* the employee representatives of local establishments or undertakings, where such persons are to be informed under an agreement in accordance with § 18 or under § 35 of the content of information and the outcome of consultations, *vis-à-vis* employee representatives on the supervisory board or *vis-à-vis* interpreters or experts called in to provide assistance.

(3) The obligation to preserve confidentiality under paragraph 2, first and second sentences, shall apply *mutatis mutandis* to

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

(4) The exceptions to the obligation to preserve confidentiality set out in paragraph 2, third and fourth sentences, shall apply *mutatis mutandis* to

1. the special negotiating body *vis-à-vis* experts and interpreters,
2. employee representatives in the case of an information and consultation procedure *vis-à-vis* interpreters and experts called in under an agreement to provide assistance and *vis-à-vis* local employee representatives where such persons are to be informed of the content of information and the outcome of consultations under the agreement (§ 19).

§ 40

Protection of employee representatives in Germany

(1) For members of a European Works Council employed in Germany, § 37 (1) to (5), § 78 and § 103 of the Works Constitution Act and § 15 (1), (3) to (5) of the Act on Protection against Unfair Dismissals shall apply *mutatis mutandis*.

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

PART VI
Existing agreements

§ 41

Continued application

(1) Where an agreement on cross-border information and consultation is in place before 22 September 1996, the provisions of this Act shall not apply to the undertakings and groups of undertakings as referred to in § 2 and 3 for as long as this agreement is in force. The agreement must cover all employees employed in the Member States and guarantee appropriate participation in information and consultation to employees from those Member States where the undertaking or group of undertakings has an establishment.

(2) The conclusion of such an agreement on the part of the employees only by an employee representation as provided for in the Works Constitution Act shall not preclude the application of paragraph (1) above. The same shall apply where more than one agreement has been concluded for an undertaking or a group of undertakings.

(3) Where the requirements of paragraph (1) are not satisfied because the agreement existing at the date referred to in paragraph (1), first sentence, does not cover all employees, the parties to the agreement may include all employees within a deadline of six months.

(4) Even after the date referred to in paragraph (1), first sentence, existing agreements may be adapted to changes in the structure of the undertaking or the group of undertakings and to the number of employees.

(5) Where an agreement has been concluded for a limited period of time, the parties may decide to continue to apply it under the terms of paragraphs (1), (3) and (4) above.

(6) An agreement shall continue to apply where the right to submit a request or take an initiative under § 9 (1) has been exercised before its termination. The right to submit a request may also be exercised by an employee representation body established under the agreement. The application of the agreement shall end if it is replaced by a cross-border information and consultation procedure as provided for in § 18 or 19 or if a European Works Council has been established by act of law. The application of the agreement shall also end where the special negotiating body takes a decision as provided for in § 15 (1); § 15 (2) shall apply *mutatis mutandis*.

(7) The provisions of this Act shall not apply to undertakings and groups of undertakings which meet the requirements of § 2 and 3 for the first time due to the fact that establishments and undertakings located in the United Kingdom of Great Britain and Northern Ireland are taken into account if an agreement on cross-border information and consultation is in place in these undertakings and groups of undertakings before 15 December 1999. Paragraphs (1) to (6) shall apply *mutatis mutandis*.

PART VII

Special provisions; penalties and fines

§ 42

Protection of establishment and activity

No-one may

1. obstruct or influence, by imposing or threatening to impose disadvantages or by granting or promising to grant advantages, the establishment of the special negotiating body (§ 9) or a European Works Council (§ 18, 21(1)) or the introduction of an information and consultation procedure (§ 19),
2. obstruct or interfere with the activity of the special negotiating body, a European Works Council or the employee representatives in the case of an information and consultation procedure, or
3. disadvantage or favour, on account of his or her activity, a member or alternate member of the special negotiating body or of a European Works Council or an employee representative in the case of an information and consultation procedure.

§ 43

Penalties

(1) A term of imprisonment of up to two years or a fine shall be imposed on anyone who makes use of a business or operating secret in breach of § 39 (2), first or second sentence, both also in conjunction with paragraph (3).

(2) Offences shall be prosecuted only upon request.

§ 44

Penalties

(1) A term of imprisonment of up to one year or a fine shall be imposed on anyone who:

1. reveals a business or operating secret in breach of § 39 (2), first or second sentence, both also in conjunction with paragraph (3); or

2. infringes a provision of § 42 concerning the establishment of the bodies referred to or the introduction of the procedure referred to, concerning the activity of the bodies referred to or of the employee representatives, or concerning the disadvantaging or favouring of a member or alternate member of the bodies referred to or an employee representative.

(2) Where, in the cases referred to in paragraph (1), subparagraph 1., an offender acts in return for gain or with the intention of enriching himself/herself or another or of injuring another, the punishment shall be a term of imprisonment of up to two years or a fine.

(3) Offences shall be prosecuted only upon request. In the cases referred to in paragraph (1), subparagraph 2., prosecution may be requested by the special negotiating body, the European Works Council, the majority of the employee representatives in the case of an information and consultation procedure, the central management or a trade union represented in the establishment.

§ 45

Fines

(1) An administrative offence shall be committed by anyone who

1. in breach of § 5 (1) fails to provide information, provides incorrect or incomplete information or does not provide information in good time, or

2. in breach of § 32 (1) or § 33 (1), first sentence, or (2), first sentence, fails to provide information, provides incorrect or incomplete information or does not provide information in the prescribed manner or in good time to the European Works Council or the Committee referred to in § 26 (1).

(2) Such an administrative offence may be punished by a fine of up to 15 000 EUR.