

Wahlordnung zum Betriebsverfassungsgesetz (Englischsprachige Übersetzung)

Ein Arbeitspapier erstellt im Auftrag der Hans-Böckler-Stiftung

Auf einen Blick ...

In der zunehmend internationalisierten Wirtschaftsordnung werden englischsprachige Arbeitshilfen für Arbeitnehmervertreter immer wichtiger. Mit diesem Arbeitspapier legt die Hans-Böckler-Stiftung erstmals die Wahlordnung zum Betriebsverfassungsgesetz in englischsprachiger Übersetzung vor. Wir hoffen, damit eine Lücke in der Literatur zu schließen. Die Übersetzung wurde sorgfältig erstellt, jedoch gilt in Zweifelsfällen der deutschsprachige Gesetzestext.

This is a courtesy translation of the Erste Verordnung zur Durchführung des Betriebsverfassungsgesetzes (Wahlordnung - WO) provided by the Hans Böckler Foundation, Germany. It is a non-binding translation. The legally binding text is the original German version.

First Ordinance Implementing the Works Constitution Act (Election Regulations - WO)

BetrVG DV1WO

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"First Ordinance Implementing the Works Constitution Act (Election Regulations - WO) of 11 December 2001 (BGBl. [*Federal Law Gazette*] I p. 3494), as amended by Article 2 of the Ordinance of 23 June 2004 (BGBl. I p. 1393)"

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Footnote

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Preamble

Based on Section 126 of the Works Constitution Act as amended and promulgated on 25 September 2001 (BGBl. I p. 2518), the Federal Ministry of Labour and Social Affairs orders the following:

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First part

Election of the Works Council (Section 14 of the Act)

First division

General requirements

Section 1 Electoral Board

(1) The management of the election is the responsibility of the Electoral Board.

(2) The Electoral Board can give itself written procedural rules. It can enlist eligible voters as election clerks to assist it in the administration of the voting and in the counting of the votes.

(3) The resolutions of the Electoral Board are passed by a simple majority of its members who are entitled to vote. Minutes shall be taken of each meeting of the Electoral Board, which shall at least contain the wording of the resolutions passed. The minutes shall be signed by the Chairperson and another member of the Electoral Board who is eligible to vote.

Section 2 Electoral list

(1) The Electoral Board shall prepare a list of eligible voters (electoral list) for each Works Council election, broken down by gender.

The eligible voters should be listed in alphabetical order with family name, first name and date of birth. Persons without the right to stand for election, as defined in Section 14 (2) Sentence 1 of the Temporary Employment Act [Arbeitnehmerüberlassungsgesetz], shall be indicated in the electoral list.

(2) The employer shall give the Electoral Board all the information required for preparing the electoral list and shall provide the necessary documents. In particular, the employer shall help the Electoral Board in determining the persons specified in Section 5 (3) of the Act.

(3) Only employees who are entered on the electoral list have the right to vote and stand in elections. Temporary workers with the right to take part in elections, as defined in the Temporary Employment Act, may vote but not stand for election (Section 14 (2) Sentence 1 of the Temporary Employment Act).

(4) A copy of the electoral list and a copy of this Ordinance shall be displayed for inspection at a suitable location within the establishment from the date of the commencement of the election process (Section 3 (1)) up until the conclusion of voting. The copy of the electoral list should not include the dates of birth of eligible voters. In addition, the copy of the electoral list and the Ordinance can be publicised using the IT and communication technology available within the establishment. Notification solely in electronic form is permitted only if all employees are able to access the notification and measures are taken to ensure that changes to the notification can only be made by the Electoral Board.

(5) The Electoral Board is to ensure that non-German workers who are not proficient in the German language shall be appropriately informed about the election procedure, electoral/nomination lists, election process and voting before the declaration of the Works Council election.

Section 3 Election declaration

(1) At the latest six weeks before the first day of voting the Electoral Board shall issue an election declaration, which shall be signed by the Chairperson and at least one other member of the Electoral Board who is eligible to vote. The issuing of the election declaration denotes the commencement of the election process for the Works Council. The first day of voting is to be at the latest one week before the date on which the period of office of the Works Council expires.

(2) The election declaration must contain the following details:

1. the date of its issue;
2. specification of the location at which the electoral list and this Ordinance are displayed and, in the event of notification in electronic form (pursuant to Section 2 (4) Sentences 3 and 4), where and how it is possible to access the electoral list and the Ordinance;
3. that only employees who are registered on the electoral list can vote or be elected, and that any objections to the electoral list (Section 4) must be made in writing within two weeks of issue of the election declaration; the final date shall be stated;
4. the relative proportions of the two genders and the information that the minority gender must be represented on the Works Council at least in this proportion if the Works Council consists of at least three members (Section 15 (2) of the Act);

5. the number of members of the Works Council to be elected (Section 9 of the Act) and the minimum number of seats on the Works Council to be allocated to the minority gender (Section 15 (2) of the Act);
6. the minimum number of eligible voters who must sign a nomination (Section 14 (4) of the Act)
7. that a nomination from a trade union represented in the establishment must be signed by two representatives (Section 14 (5) of the Act);
8. that nominations must be submitted to the Electoral Board in the form of nomination lists within two weeks of the issuing of the election declaration if more than three members of the Works Council are to be elected; the final date shall be stated;
9. that voting is tied to the nominations and that only such nominations as are submitted within the specified time period (Point 8) may be considered;
10. specification of the location where the nominations are to be displayed up until the conclusion of voting;
11. location, date and time of voting as well as the separate departments (separate business units) and very small establishments for which postal voting (Section 24 (3)) has been decided;
12. the location at which objections, nominations and other declarations to the Electoral Board can be submitted (business address of the Electoral Board);
13. location, date and time of the public vote count.

(3) Insofar as it is practical in terms of the size, characteristics or composition of the establishment's workforce, the Electoral Board should state in the election declaration that the individual organisational units and the various types of employment should be included when listing the nominations.

(4) A copy of the election declaration shall be displayed and maintained in a legible condition by the Electoral Board from the day of its issue up until the last day of voting at one or more suitable locations accessible to the eligible voters. In addition, the election declaration can be publicised using the IT and communication technology available in the establishment. Section 2 (4) Sentence 4 applies analogously.

Section 4 Objections to the electoral list

(1) In order to have validity with regard to the Works Council election, objections relating to the correctness of the electoral list must be submitted in writing to the Electoral Board within two weeks of the issuing of the election declaration.

(2) The Electoral Board shall decide without delay on objections submitted in accordance with Sub-section (1). No objections shall be accepted that are based on the argument that the allocation as specified in Section 18a of the Act has been performed incorrectly. Sentence 2 shall not apply insofar as those persons involved in the allocation pursuant to Section 18a (1) or (4) Sentences 1 and 2 of the Act unanimously agree that the allocation was obviously incorrect. If the objection is judged to be justified, the electoral list shall be corrected. The decision of the Electoral Board shall be notified without delay in writing to the employee who submitted the objection; the decision must be sent to the employee at the latest on the day before the start of voting.

(3) After the time period for submitting objections has passed, the Electoral Board is to again check that the electoral list is complete. Furthermore, after the period for submitting objections has passed, the electoral list can only be corrected or added to in the event of spelling mistakes, obvious errors, in execution of objections submitted within the permitted time period or in the event of eligible voters joining or leaving the establishment up until the day before the start of voting.

Section 5 Determination of the minimum seats for the minority gender

(1) The Electoral Board shall determine which gender is in the minority within the establishment in numerical terms. The Electoral Board shall then calculate the minimum proportion of Works Council seats for the minority gender (Section 15 (2) of the Act) in accordance with the principles of proportional representation. For this purpose the numbers of men and women working in the establishment on the date of issue of the election declaration shall be positioned in a row next to each other and both divided by 1, 2, 3, 4 etc. The calculated quotients shall then be listed one after the other in rows under the figures in the first row until higher quotients for allocating the seats to be distributed are no longer found.

(2) Of the quotients calculated in this way, the same amount of highest numbers are selected and arranged in order of size according to the number of Works Council members that are to be elected. The minority gender is allocated as many member seats as it has highest numbers allocated to it. If the lowest possible highest number is shared by both genders, it shall be decided by casting lots which gender shall be allocated the seat.

**Second division
Election of more than three Works Council
members (based on nomination lists)**

**First sub-division Submission and publication of
nomination lists**

Section 6 Nomination lists

(1) If more than three members of the Works Council are to be elected, the election shall be based on nomination lists. The nomination lists shall be submitted to the Electoral Board by eligible voters within two weeks of issuing of the election declaration.

(2) Each nomination list should include at least twice as many candidates as there are Works Council members to be elected.

(3) In each nomination list the individual candidates shall be listed in identifiable order with a serial number and stating family name, first name, date of birth and type of employment in the establishment. The candidate's written agreement to be included in the list shall be attached.

(4) If no other signatory of the nomination list is explicitly designated as the representative of the signatories to the list, the signatory at the top of the list shall be considered to be the representative. This person is entitled and obliged to give the necessary declarations to the Electoral Board as well as to receive declarations and decisions from the Electoral Board.

(5) The signature of an eligible voter only counts on one nomination list. If an eligible voter has signed more than one nomination list, he/she shall at the request of the Electoral Board state within a reasonable set time period, and at the latest within three working days, which signature he/she maintains. If a declaration is not made within the time limit, his/her name shall be counted on the first nomination list submitted and deleted from all other lists; if several nomination lists, which are signed by the same eligible voter, are submitted at the same time, it shall be decided by drawing lots which nomination list the signature shall count for.

(6) The linking of nomination lists is not permitted.

(7) A candidate can only be nominated on one nomination list. If the name of this person with his/her written agreement is listed on more than one nomination list, he/she shall declare at the request of the Electoral Board within three working days which nomination he/she maintains. If a declaration is not made within this time period, the candidate shall be deleted from all lists.

Section 7 Checking the nomination lists

(1) The Electoral Board shall on physical delivery or any other form of submission of the nomination list confirm in writing to the representative of the signatories to the list the time of submission.

(2) If the list is not provided with a keyword, the Electoral Board shall designate submitted nomination lists using the family name and first name of the first two persons named in the list. The Board shall check the nomination list without delay, and as far as possible within two working days of its receipt, and inform the representative of the signatories to the list without delay in writing stating reasons if the list is invalid or if there are objections to the list.

Section 8 Invalid nomination lists

(1) Nomination lists are invalid

1. if they have not been submitted on time,
2. if the candidates are not listed in an identifiable order,
3. if they do not have the required number of signatures when submitted (Section 14 (4) of the Act). The withdrawal of signatures from a submitted nomination list does not affect its validity; Section 6 (5) remains unaffected.

(2) Nomination lists are also invalid

1. if the candidates on them are not designated in the manner specified in Section 6 (3),
2. if the written agreement of the candidate to be included in the list is missing,
3. if, as a result of deleting names in accordance with Section 6 (5), the nomination list no longer contains the required number of signatures if this problem is not rectified within a time period of three working days despite complaint issued by the Electoral Board.

Section 9 Extension period for nomination lists

(1) If no valid nomination list has been submitted within the time period specified in Section 6 (1), the Electoral Board shall announce this situation in the same manner as for the election declaration and set an extension period of one week for the submission of nomination lists. The announcement shall indicate that the election can only take place if at least one valid nomination list is submitted within the extension period.

(2) If despite the announcement as per Sub-section 1 no valid nomination list is submitted, the Electoral Board shall immediately give notice that the election will not take place.

Section 10 Announcement of the nomination lists

(1) At the end of the periods specified in Section 6 (1), Section 8 (2) and Section 9 (1) the Electoral Board shall decide the order of numbering assigned to the submitted nomination lists (List 1 etc.) by drawing lots. The representative of the signatories to the list shall be invited to the drawing of lots in good time.

(2) At the latest one week before the start of voting the Electoral Board shall publicise the valid nomination lists in the same manner as the election declaration up until conclusion of the voting (Section 3 (4)).

Second sub-division Election procedure in the event of multiple nomination lists (Section 14 (2) Sentence 1 of the Act)

Section 11 Voting

(1) The voter can cast his/her vote for only one of the nomination lists that has been recognised as valid. Voting shall be performed by submitting ballot papers in the envelopes provided for this purpose (ballot envelopes).

(2) The ballot papers shall include the nomination lists arranged in the order of the serial numbers and shall give the details of the first two candidates as regards family name, first name and type of employment in the establishment; in the case of lists provided with a keyword, this keyword shall also be stated. The ballot papers for the Works Council election must all have the same dimensions, colour, characteristics and wording. The same applies for the ballot envelopes.

(3) The voter shall identify the nomination list he/she selects by making a cross at the place provided on the ballot paper.

(4) Ballot papers on which a special distinguishing feature has been added or from which it is not possible definitely to identify the intention of the voter or that contain details other than those on the nomination lists specified in Sub-section 1 or any other additions or changes are not valid.

Section 12 Election process

(1) The Electoral Board shall take suitable measures to ensure that the voter cannot be observed while marking his or her ballot paper in the polling location and that one or more ballot boxes are provided. The ballot boxes must be locked by the Electoral Board and set up so that the ballot papers placed in them cannot be removed without opening the boxes.

(2) During the voting at least two members of the Electoral Board who are eligible to vote must always be present in the polling location; if election clerks are appointed (Section 1 (2)), only one member of the Electoral Board who is eligible to vote plus one election clerk need be present.

(3) The voter states his/her name and places the ballot envelope containing the ballot paper in the ballot box after the casting of his/her vote has been noted on the electoral list.

(4) Anyone whose ability to vote is hampered by disability can nominate a trusted person to assist him/her in voting and shall inform the Electoral Board of this. Election candidates, members of the Electoral Board and electoral clerks may not be called upon to provide such assistance. The assistance shall be limited to fulfilling the wishes of the voter in terms of voting; the trusted person may enter the polling booth together with the voter. This person shall be obliged to maintain confidentiality regarding any knowledge gained in providing assistance in voting. Sentences 1 to 4 apply analogously for voters who are unable to read.

(5) Following the conclusion of voting, the ballot box shall be sealed if the votes are not to be counted immediately after the end of voting. The same applies if voting is interrupted, particularly if it takes place over several days.

Section 13 Public vote count

Immediately after the conclusion of the voting the Electoral Board shall perform a public vote count and shall announce the election result based on the count.

Section 14 Procedure for the vote count

(1) After opening the ballot box, the Electoral Board shall take the ballot papers out of the ballot envelopes and add up the votes cast for each nomination list. The validity of the ballot papers shall also be checked.

(2) If several marked ballot papers are contained in one ballot envelope (Section 11 (3)), they shall be counted only as a single vote provided they completely agree with each other; otherwise they shall be deemed to be invalid.

Section 15 Allocation of Works Council seats to the nomination lists

(1) The Works Council seats shall be allocated to the nomination lists as follows: The number of votes cast for the individual nomination lists shall be listed in a row next to each other and then each one divided by 1, 2, 3, 4 etc. The quotients thus calculated are then listed one after the other in rows under the figures in the first row until there are no more eligible higher quotients for the allocation of seats.

(2) The highest quotients calculated in this way are selected and arranged according to the number of Works Council members that are to be elected. Each nomination list is allocated as many member seats as it has highest quotients. If the lowest eligible highest number occurs in more than one nomination list, the nomination list to be allocated this seat shall be decided by casting lots.

(3) If a nomination list contains fewer candidates than it has highest numbers, the excess member seats transfer to the next highest numbers in the other nomination lists.

(4) The order of candidates within the individual nomination lists is determined by the order of their names on the list.

(5) If the highest numbers calculated for the nomination lists do not include the required minimum number of the minority gender (as per Section 15 (2) of the Act), the following arrangement applies:

1. The person on the nomination list with the lowest highest number who is not a member of the minority gender shall be replaced by the non-

selected person of the minority gender who comes next in the order of candidates listed on the same nomination list.

2. If this nomination list does not contain a person of the minority gender, this seat transfers to the nomination list that has the next non-selected highest number and contains a member of the minority gender. If the next highest number is found on more than one nomination list, it shall be decided by casting lots which nomination list shall be allocated this seat.
3. The procedure described in Points 1 and 2 above shall be continued until the minimum proportion of seats for the minority gender (as per Section 15 (2) of the Act) is achieved.
4. When allocating minority gender seats, only members of this gender on the individual nomination lists should be considered in accordance with the order of their names on the list.
5. If no other nomination list contains members of the minority gender, the seat shall remain with the nomination list that would ultimately have had to surrender a seat in favour of a member of the minority gender, as per Point 1.

Section 16 Election record

(1) After it has been determined which employees have been elected as members of the Works Council, the Electoral Board shall set down in a record the following:

1. The total number of ballot envelopes submitted and the number of valid votes submitted;
2. The number of votes cast for each list;
3. The calculated highest numbers;
4. The allocation of the calculated highest numbers to the lists;
5. The number of invalid votes;
6. The names of the candidates elected to the Works Council;
7. If relevant, any specific incidents or other events that occurred during the Works Council election.

(2) The record shall be signed by the Chairperson and at least one other member of the Electoral Board who is eligible to vote.

Section 17 Notifying the elected candidates

(1) The Electoral Board shall without delay notify in writing those employees elected as members of the Works Council of their election. If the elected person does not decline the election within three working days of receipt of the notification by the Electoral Board, the election shall be deemed to be accepted.

(2) If an elected person declines the election, he/she shall be replaced by the next non-elected person named on the same nomination list below the elected person. If the elected person belongs to the minority gender, he/she shall be replaced by the next non-elected person of the same gender named on the same nomination list below the elected person if otherwise the minority gender would not receive their minimum seat entitlement as per Section 15 (2) of the Act. Section 15 (5) Nos. 2 to 5 apply analogously.

Section 18 Announcing the elected candidates

Once the names of the members of the Works Council have finally been determined, the Electoral Board shall announce the names by displaying them for two weeks in the same manner as the election declaration (Section 3(4)). One copy each of the election record (Section 16) shall be sent without delay to the employer and to the trade unions represented in the establishment.

Section 19 Safekeeping of the electoral documents

The Works Council shall keep the electoral documents at least until the end of its term of office.

Third sub-division

Election procedure in the event of just one nomination list (Section 14 (2) Sentence 2 First half-sentence of the Act)

Section 20 Voting

(1) If only one valid nomination list is submitted, the voter may only cast his/her vote for those candidates contained on the nomination list.

(2) On the ballot papers the candidates shall be listed (stating family name, first name and type of employment in the establishment) in the order of their names on the nomination list.

(3) The voter shall identify his/her chosen candidate by placing a cross at the designated place on the ballot paper; the voter may not place a cross against more candidates than there are Works Council members to be elected. Section 11 (1) Sentence 2, (2) Sentences 2 and 3 and (4) as well as Sections 12 and 13 apply analogously.

Section 21 Counting the votes

After opening the ballot box, the Electoral Board shall take the ballot papers out of the ballot envelopes and shall add up the votes cast for each candidate; Section 14 (1) Sentence 2 and (2) apply analogously.

Section 22 Determining the elected candidates

(1) First of all, the minimum seats to which the minority gender is entitled are allocated (Section 15 (2) of the Act) by filling the minimum number of seats to which the minority gender is entitled with members of this gender in the order of the highest number of votes received.

(2) After allocating the minimum seats for the minority gender as per Sub-section 1, the other seats are then allocated. The other seats are filled with candidates, irrespective of their gender in the order of the highest number of votes received.

(3) If in the cases described in Sub-sections (1) or (2) more than one candidate has received the same number of votes for the last Works Council seat to be allocated, the elected person will be decided by drawing lots.

(4) If fewer members of the minority gender have been nominated for election or if fewer members of this gender have been elected than the minimum number of entitled seats (as per Section 15 (2) of the Act), the

surplus seats for the minority gender shall be included in the distribution of seats described in Sub-section (2) Sentence 2.

Section 23 Election record and announcement

(1) After it has been determined which employees have been elected as members of the Works Council, the Electoral Board shall prepare a record that sets down the number of votes cast for each candidate as well as the information laid down in Section 16 (1) Nos. 1, 5 and 7. Section 16 (2), Section 17 (1) and Sections 18 and 19 apply analogously.

(2) If an elected person declines the election, the non-elected person with the next highest number of votes shall take his/her place. If the elected person is a member of the minority gender, the non-elected person of this gender with the next highest number of votes shall take his/her place if otherwise the minority gender would not receive the minimum seat entitlement as per Section 15 (2) of the Act. If there is no other member of this gender who received votes, this seat shall go to the non-elected person of the other gender with the next highest number of votes.

Third division Postal voting

Section 24 Prerequisites

(1) The Electoral Board shall hand over or send the following to eligible voters who at the time of the election are prevented from casting their vote in person because of absence from the work place:

1. the election declaration,
2. the nomination lists,
3. the ballot paper and ballot envelope,
4. a pre-printed declaration to be made by the voter in which he/she assures the Electoral Board that the ballot paper has been marked in person, and
5. a large prepaid envelope containing the address of the Electoral Board and - as sender - the name and address of the eligible voter and the comment "Postal vote".

The Electoral Board should further hand over or send to the voter an instruction sheet explaining how to cast a postal vote (Section 25). The Electoral Board shall indicate in the electoral list that these documents have been handed over or sent.

(2) Eligible voters, who the Electoral Board know will probably be absent from the establishment at the time of the election because of the nature of their employment (in particular, field staff and teleworkers or home-based workers), shall receive the documents specified in Sub-section (1) without the eligible voter having to request them.

(3) In the case of separate departments (separate business units) and very small establishments that are located a long distance from the main headquarters of the establishment, the Electoral Board may decide on postal voting. Sub-section 2 applies analogously.

Section 25 Voting

The procedure for voting shall be as follows:

1. The voter personally marks the ballot paper without being observed and seals it in the ballot envelope.
2. The voter signs the pre-printed declaration stating the location and date.
3. The voter seals the ballot envelope and the signed pre-printed declaration in the prepaid envelope and sends or hands over this envelope in good time to the Electoral Board so that it is received before the end of voting.

The voter can designate a trusted person to perform the activities specified in Points 1 to 3, subject to the prerequisites in Section 12 (4).

Section 26 Procedure for voting

(1) Just before the end of voting, the Electoral Board shall open the prepaid envelopes received in time up to this point in a public session

and take out the ballot envelopes and pre-printed declarations. If the postal vote has been carried out correctly (Section 25), the Electoral Board places the ballot envelope unopened in the ballot box after noting in the electoral list that the vote was cast.

(2) Envelopes that arrive late shall be placed unopened together with the election documents by the Electoral Board with a note stating the time of receipt. The envelopes shall be destroyed unopened one month after the results of the election are announced unless the election is disputed.

Fourth division

Trade union nominations

Section 27 Prerequisites and procedure

(1) Sections 6 to 26 apply analogously for nominations by a trade union represented in the establishment (Section 14 (3) of the Act).

(2) Nominations from a trade union are invalid if they are not signed by two representatives of the trade union (Section 14 (5) of the Act).

(3) The union representative whose signature appears first shall be deemed to be the representative of the signatories to the list. The trade union can name any employee of the establishment who is a member of the trade union.

Second part

Election of the Works Council using the simplified electoral procedure (Section 14a of the Act)

First division

Election of the Works Council using the two-stage procedure (Section 14a (1) of the Act)

First sub-division

Election of the Electoral Board

Section 28 Invitation to the election meeting

(1) Three eligible voters from the establishment or a trade union represented in the establishment may issue invitations (inviting body) to the election meeting in which the Electoral Board is elected, pursuant to Section 17a No. 3 of the Act (Section 14a (1) of the Act), and make proposals for the composition of the Electoral Board. The invitation must be made at least seven days before the date of the election meeting. It must be displayed at suitable locations within the establishment. In addition, the invitation can be publicised using the IT and communication technology available in the establishment; Section 2 (4) Sentence 4 applies analogously. The invitation must contain the following information:

- a) location, date and time of the election meeting for the election of the Electoral Board;
- b) that nominations for the Works Council election can be made up until the end of the election meeting for the election of the Electoral Board (Section 14a (2) of the Act);

- c) that nominations from employees for the election of the Works Council must be signed by at least one-twentieth of the eligible voters, and at least by three eligible voters; in establishments with normally up to twenty eligible voters signatures of only two eligible voters are required;
- d) that nominations for the election of the Works Council that are first submitted in the election meeting for the election of the Electoral Board do not need to be made in writing.

(2) After the invitation to the election meeting (as per Sub-section (1)) has been displayed, the employer shall without delay provide the inviting body with all necessary documents for preparing the electoral list (Section 2) in a sealed envelope.

Section 29 Election of the Electoral Board

The Electoral Board shall be elected in the election meeting for the election of the Electoral Board by the majority of employees present (Section 17a No. 3 Sentence 1 of the Act). It shall consist of three members (Section 17a No. 2 of the Act). Sentence 1 applies analogously for the election of the Chairperson of the Electoral Board.

Second sub-division Election of the Works Council

Section 30 Electoral Board and electoral list

(1) Immediately after its election, the Electoral Board shall in the election meeting for the election of the Electoral Board commence the Works Council election process. Section 1 applies analogously. It shall prepare immediately in the election meeting a list of eligible voters (electoral list), broken down by gender. The inviting body shall hand over to the Electoral Board the sealed envelope that was given to it as per Section 28 (2). The eligible voters are to be included in the electoral list in alphabetical order with family name, first name and date of birth. Section 2 (1) Sentence 3 and Section 2 (2) to (4) apply analogously.

(2) In order to have validity with regard to the Works Council election, objections relating to the correctness of the electoral list must be submitted in writing to the Electoral Board within three days of issue of the election declaration. Section 4 (2) and (3) apply analogously.

Section 31 Election declaration

(1) Following the preparation of the electoral list, the Electoral Board shall issue in the election meeting the election declaration, which must be signed by the Chairperson and at least one other member of the Electoral Board eligible to vote. The issuing of the election declaration denotes the commencement of the election process for the Works Council. The election declaration must contain the following details:

1. the date of its issue;
2. specification of the location at which the electoral list and this Ordinance are displayed and, in the event of notification in electronic form (pursuant to Section 2 (4) Sentences 3 and 4), where and how it is possible to access the electoral list and the Ordinance;

3. that only employees who are registered on the electoral list can vote or be elected, and that any objections to the electoral list (Section 4) must be made in writing within three days of issue of the election declaration; the latest date for objections must be stated;
4. the relative proportions of the two genders and the information that the minority gender must be represented on the Works Council at least in this proportion provided the Works Council consists of at least three members (Section 15 (2) of the Act);
5. the number of members of the Works Council to be elected (Section 9 of the Act) and the minimum number of seats on the Works Council to be allocated to the minority gender (Section 15 (2) of the Act);
6. the minimum number of eligible voters who must sign a nomination (Section 14 (4) of the Act) and the information that nominations that are first submitted in the election meeting for election of the Electoral Board do not need to be made in writing (Section 14a (2) Second half-sentence of the Act);
7. that a nomination from a trade union represented in the establishment must be signed by two union representatives (Section 14 (5) of the Act);
8. that nominations must be submitted to the Electoral Board before the close of the election meeting for the election of the Electoral Board (Section 14a (2) First half-sentence of the Act);
9. that voting is tied to the nominations and that only such nominations as are submitted within the specified time period (Point 8) may be considered;
10. specification of the location where the nominations should be displayed up until the end of voting;
11. location, date and time of the election meeting for the election of the Works Council (date of voting - Section 14a (1) Sentences 3 and 4 of the Act);
12. that eligible voters who are unable to participate in the election meeting for the election of the Works Council have an opportunity to cast their votes subsequently by post (Section 14a (4) of the Act); the request for a subsequent postal vote must be notified to the Electoral Board at the latest three days before the date of the election meeting for the election of the Works Council;
13. location, date and time of the subsequent postal vote (Section 14a (4) of the Act) as well as the separate departments (separate business units) and very small establishments for which subsequent postal voting is agreed as per Section 24 (3);
14. the location at which objections, nominations and other declarations to the Electoral Board can be submitted (business address of the Electoral Board);
15. location, date and time of the public vote count.

(2) A copy of the election declaration shall be displayed and maintained in a legible condition by the Electoral Board from the day of its issue up until the last day of voting at one or more suitable locations accessible to the eligible voters. In addition, the election declaration may be publicised using the IT and communication technology available in the establishment. Section 2 (4) Sentence 4 applies analogously.

Section 32 Determination of the minimum seats for the minority gender

If the Works Council to be elected consists of at least three members, the Electoral Board shall calculate the minimum number of Works Council seats for the minority gender (Section 15 (2) of the Act) in accordance with Section 5.

Section 33 Nominations

(1) The election of the Works Council shall be conducted on the basis of nominations. Nominations shall be submitted to the Electoral Board by eligible voters and trade unions represented in the establishment up until the end of the election meeting for the election of the Electoral Board. Nominations that are first submitted in this election meeting do not need to be made in writing (Section 14a (2) of the Act).

(2) Section 6 (2) to (4) apply analogously for nominations. Section 6 (5) applies analogously subject to the proviso that an eligible voter who supports more than one nomination must declare at the request of the Electoral Board in the election meeting which nomination he/she continues to support. Section 27 applies analogously for nominations by trade unions represented in the establishment.

(3) Section 7 applies analogously. Section 8 applies analogously subject to the proviso that deficiencies in the nominations as described in Section 8 (2) can only be rectified in the election meeting to elect the Electoral Board.

(4) Without delay after the end of the election meeting, the Electoral Board shall publicise the valid nominations up until the end of voting in the same manner as the election declaration (Section 31 (2)).

(5) If no nomination for election to the Works Council is made in the election meeting, the Electoral Board shall announce that the election will not take place. This announcement shall be made in the same manner as the election declaration (Section 31 (2)).

Section 34 Election procedure

(1) The voter can cast his/her vote only for those candidates that are named in a nomination. The candidates shall be listed on the ballot papers in alphabetical order stating family name, first name and type of employment in the establishment. The voter shall identify his/her chosen candidate by placing a cross at the designated place on the ballot paper; the voter may not place a cross against more candidates than there are Works Council members to be elected. Section 11 (1) Sentence 2, Section 11 (2) Sentences 2 and 3 and Section 11 (4) as well as Section 12 apply analogously.

(2) In the case of subsequent postal voting (Section 35), the Electoral Board shall seal and safeguard the ballot box at the end of the election meeting to elect the Works Council.

(3) If there is no subsequent postal voting, the Electoral Board shall conduct the public count of the votes immediately after conclusion of the election and announce the results of the election. Sections 21 and 23 (1) apply analogously.

(4) If only one Works Council member is to be elected, the person elected is the one who receives the most votes. In the event of a tie, the elected person shall be decided by drawing lots. If an elected person

declines the election, the non-elected person with the next highest number of votes shall take his/her place.

(5) If more than one Works Council member is to be elected, Sections 22 and 23 (2) apply analogously for determination of the elected persons.

Section 35 Subsequent postal voting

(1) If eligible voters are unable to take part in the election meeting for the election of the Works Council in order to cast their vote in person, they can apply to the Electoral Board for a subsequent postal vote (Section 14a (4) of the Act). The eligible voter must notify the Electoral Board of the request for a subsequent postal vote at the latest three days before the date of the election meeting for the election of the Works Council. Sections 24 and 25 apply analogously.

(2) If a subsequent postal vote has been required because of an application as per Sub-section 1 Sentence 1, this shall be notified by the Electoral Board stating the location, date and time of the public vote count in the same manner as for the election declaration (Section 31 (2)).

(3) Immediately after the deadline for submitting subsequent postal votes has passed, the Electoral Board shall open the prepaid envelopes received up to this time in a public session and take out the ballot envelopes and pre-printed declarations. If the subsequent postal vote has been carried out correctly (Section 25), the Electoral Board shall place the ballot envelope in the sealed ballot box after noting in the electoral list that the vote was cast.

(4) After all correctly subsequently submitted ballot envelopes have been placed in the ballot box, the Electoral Board shall conduct the vote count. Section 34 (3) to (5) apply analogously.

Second division

Election of the Works Council using the single-stage procedure (Section 14a (3) of the Act)

Section 36 Electoral Board and election procedure

(1) After the appointment of the Electoral Board by the Works Council, Central Works Council [*Gesamtbetriebsrat*], Combined Works Council [*Konzernbetriebsrat*] or Labour Tribunal [*Arbeitsgericht*] (Section 14a (3) and Section 17a of the Act) the Electoral Board shall without delay commence the election process for the Works Council. The election of the Works Council shall take place at an election meeting (Section 14a (3) of the Act). Sections 1, 2 and 30 (2) apply analogously.

(2) Following the preparation of the electoral list, the Electoral Board shall issue the election declaration, which has to be signed by the Chairperson and at least one other member of the Electoral Board eligible to vote. The issuing of the election declaration denotes the commencement of the election process for the Works Council. If a Works Council exists in the establishment, the last day of voting (subsequent postal voting) should be one week before the date on which the period of office of the Works Council expires.

(3) The election declaration shall contain the details specified in Section 31 (1) Sentence 3, unless otherwise specified in the following:

1. In contrast to Point 6, only the minimum number of eligible voters who must sign a nomination for election (Section 14 (4) of the Act) needs to be stated.
2. In contrast to Point 8, the Electoral Board shall state that nominations are to be submitted to the Electoral Board at the latest one week before the date of the election meeting for election of the Works Council (Section 14a (3) Sentence 2 of the Act); the final date shall be specified. Section 31 (2) applies analogously for the publicising of the election declaration.

(4) The provisions governing determination of the minimum seats as per Section 32, the election procedure as per Section 34 and subsequent postal voting as per Section 35 apply analogously.

(5) Section 33 (1) applies analogously for nominations subject to the proviso that nominations from eligible voters and trade unions represented in the establishment are to be submitted in writing to the Electoral Board at least one week before the election meeting for the election of the Works Council (Section 14a (3) Sentence 2 Second half-sentence of the Act). Section 6 (2) to (5) and Sections 7 and 8 apply analogously subject to the proviso that the deadlines stated in Section 6 (5) and Section 8 (2) may not exceed the statutory minimum time period for submitting nominations as per Section 14a (3) Sentence 2 First half-sentence of the Act. At the end of the statutory minimum period for submitting nominations, the Electoral Board shall publicise up until the conclusion of voting the nominations recognised as valid in the same manner as the election declaration (Sub-section 3).

(6) If no nomination for election to the Works Council has been made, the Electoral Board shall announce that the election will not take place. This announcement shall be made in the same manner as the election declaration (Sub-section 3).

Third division

Election of the Works Council in establishments with normally 51 to 100 eligible voters (Section 14a (5) of the Act)

Section 37 Election procedure

If the employer and Electoral Board in an establishment with normally 51 to 100 eligible voters have agreed on holding the election of the Works Council using the simplified election procedure (Section 14a (5) of the Act), the election procedure shall be based on Section 36.

Third part

Election to the Youth and Trainee Representative Council

Section 38 Electoral Board and election preparations

In respect of the election of the Youth and Trainee Representative Council, the regulations in Sections 1 to 5 regarding the Electoral Board, electoral list, election declaration and determination of the minimum seats for the minority gender apply analogously. The Electoral Board must have at least one person eligible for election in accordance with Section 8 of the Act.

Section 39 Conduct of the election

(1) If more than three members are to be elected to the Youth and Trainee Representative Council, the election shall be based on nomination lists. Section 6 (1) Sentence 2, Section 6 (2) and (4) to (7), Sections 7 to 10 and Section 27 apply analogously. Section 6 (3) applies analogously subject to the proviso that the occupation of the young person or trainee should also be listed for the individual candidates.

(2) If more than one valid nomination list is submitted, the voter's vote can only be cast for one nomination list. Section 11 (1) Sentence 2, Section 11 (3) and (4) and Sections 12 to 19 apply analogously. Section 11 (2) applies analogously subject to the proviso that the occupation of the young person or trainee should be stated on the ballot papers for the individual candidates.

(3) If only one valid nomination list is submitted, the voter's vote can only be cast for those candidates contained on the nomination list. Section 20 (3) and Sections 21 to 23 apply analogously. Section 20 (2) applies analogously subject to the proviso that the occupation of the young person or trainee should also be stated on the ballot papers for the individual candidates.

(4) Sections 24 to 26 apply analogously for postal voting.

Section 40 Election to the Youth and Trainee Representative Council using the simplified election procedure

(1) In establishments with normally five to fifty employees as defined in Section 60 (1) of the Act, the Youth and Trainee Representative Council shall be elected using the simplified election procedure (Section 63 (4) Sentence 1 of the Act). Section 36 applies analogously for the election procedure subject to the proviso that the occupation of the young person or trainee should also be stated on the nominations and ballot papers for the individual candidates. Section 38 Sentence 2 applies analogously.

(2) Sub-section 1 Sentences 2 and 3 apply analogously if in an establishment with normally 51 to 100 employees as defined in Section 60 (1) of the Act the employer and Electoral Board have agreed on the use of the simplified election procedure (Section 63 (5) of the Act).

Fourth part Transitional and final provisions

Section 41 Calculation of time periods

When calculating time periods specified in this Ordinance, Section 186 to 193 of the German Civil Code shall apply analogously.

Section 42 Maritime shipping sector

The regulations for the On-Board Representative Council and the Maritime Works Council (Sections 115 and 116 of the Act) are subject to a separate legal Ordinance.

Section 43 Coming into force

- (1) This Ordinance comes into force on the day after its promulgation.
- (2) (deleted)

Closing statement

The Bundesrat has passed the Ordinance.