

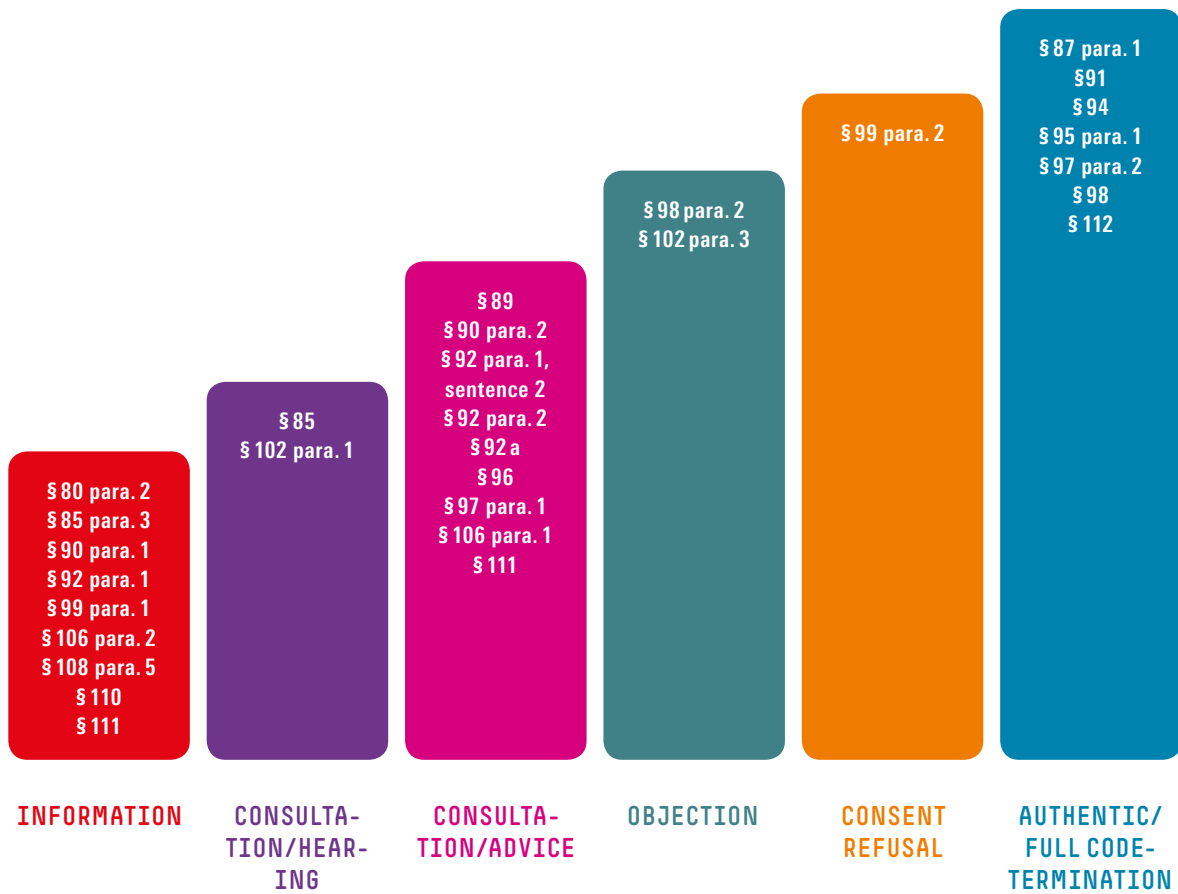
## Works council participation rights

|                        | Description  | Examples  |
|------------------------|--|---|
| <b>Codetermination</b> | <p>The employer may not implement measures without the agreement of the works council; this includes the right of initiative of the works council, which can take action of its own to (differently) regulate certain matters. If there is no agreement with the employer the arbitration board shall decide.</p>  | <ul style="list-style-type: none"> <li>– Issues of business operations</li> <li>– Beginning and end of daily working time</li> <li>– Temporary extension/curtailment of working time at the firm</li> <li>– Issues concerning monitoring of workers' performance/behaviour by means of technology</li> <li>– Selection guidelines with regard to hiring or dismissals</li> <li>– Establishment and design of a social plan</li> </ul> |
| <b>Participation</b>   | <p>Besides the realm of enforceable codetermination the employer needs the agreement of the works council with regard to a number of measures. If the employer is unable to obtain it they can have it reviewed by the labour court, which can set aside the works council's veto. Rights of objection and rights to withhold agreement do not include codetermination on an equal footing.</p>  | <ul style="list-style-type: none"> <li>– Limited possibilities to object in the event of dismissals on the part of the employer</li> <li>– Requirement of consent in the case of individual staff-related measures, hiring, transfers, job grading and regrading, although restricted to six justifications for withholding agreement.</li> </ul>   |
|                        | <p>Works councils' information and consultation rights are weakest as regards their ability to enforce them. Timely and comprehensive information on measures planned by the employer are very important for effective works council activities, however. But exercising effective influence over such measures solely on the basis of these rights is usually very difficult in practice. Nevertheless it is generally possible for the works council to exert influence because of time constraints, given that in some cases the employer can implement the planned measures only after the works council has been fully informed and its views and arguments have been taken on board in the course of consultations. Moreover the legislator assumes that the employer, after consultations with the works council, will include the latter's viewpoint and arguments in its final decision-making.</p> | <ul style="list-style-type: none"> <li>– Planning with regard to technical installations, work processes and jobs</li> <li>– Operational changes (coordination of interests)</li> <li>– Establishment of training measures in the firm</li> <li>– Personnel planning</li> <li>– Safeguarding employment at the recommendation of the works council</li> </ul>   |
|                        | <p>Information rights</p>  | <ul style="list-style-type: none"> <li>– in the case of all dismissals on the employer's part</li> <li>– The works council's general entitlement to be informed in order to be able to perform its statutory tasks, such as reconciliation of work and family life, integration of vulnerable people, environmental protection</li> <li>– Informing the economic committee of the company's economic affairs</li> </ul>               |

The main participation rights of the works council in terms of the extent of its rights and matters within its competence with reference to the Works Constitution Act (BetrVG)

|                   |  | Codetermination on an equal footing (arbitration board)               | Veto rights and rights of objection after consultation | Information and additional consultation rights | Information rights only      |
|-------------------|--|---|--|--|------------------------------|
| Economic matters  | – Production and sales situation<br>– Financial situation of the company<br>– Production and investment plans<br>– Rationalisation plans   | § 109<br>(only with regard to the scope of the right of information)  |  |  | §§ 106, 110                  |
|                   | – Operational changes with conciliation of interests and social plan   | § 112<br>(social plan)  |  | §§ 111, 112<br>(conciliation of interests)     |                              |
|                   | – Planning of new facilities, renovations and expansions<br>– Planning of technical installations<br>– Planning of work processes and jobs | § 91<br>(only in the case of health hazards with regard to employees) |  | § 90   |                              |
|                   | – Training facilities and measures   | § 97 para. 2<br>(only limited)  |  | § 97 para. 1<br>§ 96                           |                              |
| Personnel matters | – Personnel planning and safeguarding employment   |   |  | §§ 92, 92 a                                    |                              |
|                   | – Staff questionnaires and evaluation principles   | § 94  |  |  |                              |
|                   | – Hiring and transfers<br>– Job grading and regrading<br>– Selection guidelines  | § 95 para. 1 and 2  | § 99 and §§ 100, 101<br>§ 99 and §§ 100, 101           | § 93<br>(request for tender)                   | § 105<br>(senior executives) |
|                   | – Dismissals   | § 103<br>(labour court)   | § 102  |  | § 105<br>(senior executives) |
|                   | – Implementation of training measures in the firm  | § 98<br>§ 97 para. 2  |  | § 96   |                              |
| Social matters    | – Workplace regulations and employee conduct   | § 87 para. 1 no. 1  |  |  |                              |
|                   | – Allocation of working time and breaks  | § 87 para. 1 no. 2  |  |  |                              |
|                   | – Overtime and short-time working  | § 87 para. 1 no. 3  |  |  |                              |
|                   | – Vacation policy and plan, company holidays   | § 87 para. 1 no. 5  |  |  |                              |
|                   | – Monitoring of conduct and performance  | § 87 para. 1 no. 6  |  |  |                              |
|                   | – Health and safety  | § 87 para. 1 no. 7  |  |  |                              |
|                   | – Wage setting<br>– Team work  | § 87 para. 1 no. 10, 11<br>§ 87 para. 1 no. 13                        |  |  |                              |

Overview of works council participation rights with reference to the Works Constitution Act (BetrVG)



Works Constitution Act codetermination curve

