

# Co-Determination Law [Mitbestimmungsgesetz] (May 21, 1951)

## Abstract

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The Hitler dictatorship had banned the free trade unions of the Weimar Republic and had imprisoned and murdered its leaders and members. One of the first measures that the Western Allies took after liberation in 1945 was to encourage the formation of trade unions. With their simultaneous decision to rebuild industry, it was also merely a matter of time before employers' associations would be formed and former labor relations were reconstituted. In 1945, some trade union leaders and also politicians in the revived Social Democratic Party (SPD), blaming German business of having brought Hitler to power, demanded the nationalization of industry, for which there was also support in the British Labour Party that had gained power in 1945 and, as an occupying power, was in charge of the West German Ruhr region, the traditional center of coal-mining and steel-making. But by 1947, the leaders of the trade unions and Hans Böckler in particular had begun to develop another solution to industrial relations that also harkened back to ideas of the 1920s, i.e., a direct participation of workers in the decision-making of a particular enterprise. The aim was to achieve a parity of representation on the supervisory boards of large companies, with an equal number of workers and shareholder representatives. To gain influence on the actual management, a "worker director" was to be put on the management board with an equal vote. The British representatives in the Ruhr liked this model, and in 1947 it was introduced in the coal and steel industries against the opposition of the employers.

The new system worked fairly well until 1949 when the Federal Republic was founded, and the new parliament became responsible for the promulgation of laws. It was therefore not surprising that the employers wanted to introduce a law abolishing the 1947 coal-and-steel model of codetermination. The unions by contrast wanted to extend this model to all industries. Worried about a major confrontation between the two sides, the employers' association initiated talks with Böckler in the hope of finding a compromise solution. When these talks failed, the employers escalated to conflict. The trade unions responded by threatening a major strike. At this critical point chancellor Konrad Adenauer intervened and finally brought about a compromise that was put on the statute book in May 1951. The "coal-and-steel model" was retained in the heavy industries of the Ruhr, but the unions had to give up their goal of introducing that model for the rest of West German industry. Instead, they were given a consolation prize, the Work Constitution Act of 1952, also featured in this chapter.

## Source

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### **Law on the Co-Determination of Employees in the Supervisory Boards and Boards of Management of Companies in the Mining and Iron and Steel Producing Industries.**

#### **Part One**

#### **General stipulations**

##### **§ 1**

(1) The employees shall have a right of co-determination in the supervisory boards and in the bodies appointed to represent them by law in accordance with the provisions of this Act in

(a) undertakings the principal purpose of which is the extraction of coal, lignite or iron ore or the

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preparation, coking, carbonization or briquetting of such raw materials and the operation of which is under the supervision of the mining authorities,

(b) the enterprises of the iron and steel producing industry to the extent designated in Law No. 27 of the Allied High Commission of May 16, 1950 (Official Gazette of the Allied High Commission for Germany p. 299), provided that such enterprises are transferred to “unitary companies” within the meaning of Law No. 27 or continue to operate in another form and are not liquidated,

(c) the enterprises which are dependent on an enterprise designated above or to be liquidated under Law No. 27 of the Allied High Commission, if they meet the requirements of subparagraph (a) or produce mainly iron and steel.

(2) This Act shall apply only to those enterprises referred to in subsection (1) which are operated in the form of a joint stock company, a limited liability company or a mining union with its own legal personality and which, as a rule, employ more than one thousand employees or are “unitary companies”.

## § 2

The provisions of the Stock Corporation Act, of the Act Concerning Limited Liability Companies, of the Mining Laws and of the Works Constitution Act shall not apply to the companies referred to in § 1 to the extent that they conflict with the provisions of this Act.

## **Part Two**

### **Supervisory Boards**

## § 3

(1) If a limited liability company or a mining union with its own legal personality operates an enterprise within the meaning of section 1, a supervisory board shall be established in accordance with the provisions of this Act.

(2) The provisions of the Companies Act shall apply mutatis mutandis to the supervisory board, its rights and duties.

## § 4

The Supervisory Board shall consist of eleven members. It shall be composed of

- a) four shareholder representatives and one additional member,
- b) four employee representatives and one further member,
- c) one further member.

The further members referred to in paragraph 1 may not

- a) be a representative of a trade union or an association of employers or an umbrella organization of such associations or be in a permanent employment or agency relationship with such associations,
- b) have held a position referred to in letter a) during the year preceding the election,
- c) be active in the company as an employee or employer,

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d) have a material economic interest in the enterprise.

(3) All Supervisory Board members shall have the same rights and duties. They shall not be bound by orders or instructions.

#### § 5

The members of the Supervisory Board referred to in § 4 (1) letter a shall be elected by the body appointed by law, the Articles of Association or the Articles of Association to elect Supervisory Board members (election body) in accordance with the Articles of Association or the Articles of Association. In the case of delegation of Supervisory Board members pursuant to § 88 of the Stock Corporation Act, their total number may not exceed one third of the shareholder representatives.

#### § 6

Among the members of the Supervisory Board referred to in § 4 (1) letter b there must be one blue-collar worker and one white-collar worker employed in a business of the enterprise. These members shall be proposed to the election body by the works councils of the establishments of the enterprise after consultation with the trade unions represented in the establishments of the enterprise and their umbrella organizations. For the purpose of drawing up these nominations, the workers' members and the employees' members of the works councils shall each form an electoral body. Each electoral body shall elect its members by secret ballot.

The persons elected in accordance with subsection 1 shall, before the proposals are forwarded to the electoral body, be notified within two weeks of the election to the central organizations to which the trade unions represented in the establishments of the enterprise belong. Each umbrella organization may, within two weeks of receipt of the notification, lodge an objection with the works councils if there are grounds for suspecting that a nominee does not offer the guarantee of working responsibly on the Supervisory Board for the benefit of the enterprise and the economy as a whole. If the works councils reject the objection by a simple majority of votes, the works councils or the central organization which lodged the objection may appeal to the Federal Minister of Labor, who shall make the final decision.

Two of the members referred to in Section 4 (1) (b) shall be proposed to the electoral body by the central organizations after prior consultation with the trade unions represented in the establishment and the works councils. The central organizations shall be entitled to make proposals in proportion to their representation in the establishments; in making their proposals, they shall take due account of the minorities existing within the workforces.

Paragraph 3 shall apply mutatis mutandis to the additional member referred to in section 4 (1) (b).

The election body shall be bound by the proposals of the works councils and the central organizations.

#### § 7

If the Supervisory Board has fewer than five members to be elected in accordance with § 5 or fewer than five members to be elected in accordance with § 6 for more than three months, § 89 of the Stock Corporation Act shall apply mutatis mutandis.

#### § 8

The additional member of the Supervisory Board referred to in § 4 (1) letter c shall be elected by the election body on the proposal of the other members of the Supervisory Board. The proposal shall be adopted by these Supervisory Board members by a majority of all votes. However, it shall require the

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approval of at least three members elected in accordance with § 5 and three members elected in accordance with § 6.

If no proposal is made in accordance with paragraph 1 or if a proposed person is not elected, a Mediation Committee consisting of four members shall be formed. Two members each shall be elected by the members of the Supervisory Board elected in accordance with § 5 and those elected in accordance with § 6.

Within one month, the Mediation Committee shall propose three persons to the election body for election from among whom the election body shall elect the Supervisory Board member. If the election is not held on the basis of the proposal of the Mediation Committee for important reasons, in particular if none of the persons proposed offers a guarantee of successful work for the Company, the rejection must be established by resolution. This resolution must be accompanied by reasons; the Higher Regional Court responsible for the company shall decide on the justification of the rejection of the election at the request of the Mediation Committee. In the event of confirmation of the rejection, the Mediation Committee shall propose three further persons to the election body; the above provision (sentences 2 to 4) shall apply *mutatis mutandis* to this second proposal. If the rejection of the election is declared unjustified by the court, the election body shall elect one of the proposed persons. If the rejection of the election from the second nomination is declared justified by the court, or if no nomination is made, the election body shall elect the additional member on its own initiative.

If the number of members of the Conciliation Committee provided for in paragraph 2 is not elected, or if members of the Conciliation Committee remain absent from a meeting without sufficient excuse despite being invited in due time, the Conciliation Committee may act if at least two members participate.

#### § 9

In the case of companies with a nominal capital of more than twenty million German marks, the Articles of Association or partnership agreement may stipulate that the Supervisory Board shall consist of fifteen members. The provisions of §§ 4 to 8 shall apply *mutatis mutandis*, provided that the number of workers to be elected in accordance with § 6 (1 and 2) shall be two and the number of employee representatives referred to in § 6 (3) shall be three.

In the case of companies with a nominal capital of more than fifty million German marks, the articles of association or partnership agreement may stipulate that the supervisory board shall consist of twenty-one members. The provisions of sections 4 to 8 shall apply *mutatis mutandis*, provided that the number of additional members referred to in section 4 (1) letters a and b shall be two each, the number of workers to be elected in accordance with section 6 (1 and 2) shall be three and the number of employee representatives referred to in section 6 (3) shall be four.

#### § 10

The Supervisory Board shall constitute a quorum if at least half of its members are present.

#### § 11

Sections 87 (2) and 88 (4) of the Stock Corporation Act shall apply to the members of the Supervisory Board referred to in § 5.

Section 87 (2) of the Stock Corporation Act shall apply to the members of the Supervisory Board referred to in § 6, subject to the proviso that dismissal shall be effected on the proposal of the body on whose proposal the Supervisory Board member was elected.

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A member of the Supervisory Board referred to in § 8 may be dismissed by the court for cause upon application by at least three members of the Supervisory Board.

### **Part Three**

#### **Management Boards**

##### **§ 12**

The appointment of the members of the body appointed to legally represent the Company and the revocation of their appointment shall be made by the Supervisory Board in accordance with § 75 of the Stock Corporation Act.

##### **§ 13**

A Labor Director shall be appointed as an equal member of the body appointed to represent the Company by law. The Labor Director may not be appointed against the votes of the majority of the Supervisory Board members elected in accordance with § 6. The same shall apply to the revocation of the appointment.

Like the other members of the body appointed to represent the Company by law, the Director of Labor Relations shall perform his duties in the closest possible consultation with the body as a whole. Further details are set out in the Rules of Procedure.

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Source or original German text: *Bundesgesetzblatt I*, 1951, May 23, 1951, pp. 347–350.

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