

Co-determination by the works council on compliance measures

Works councils have numerous co-determination rights in relation to compliance measures implemented by companies. The first table provides a brief overview on co-determination in general, the second table gives examples of compliance-related measures which are subject to co-determination by the works council and others which are not, and outlines the consequences of non-compliance.

Overview on works council's information and consultation rights			
Type of cooperation		Examples	Decision if non-settlement
Co-determination	mandatory co-determination (veto right – consent / agreement required)	<ul style="list-style-type: none"> social matters personnel questionnaire standard form contract dismissal without notice of works council's members selection guidelines for dismissals 	arbitration committee or labour court
	veto right (within one week for specific reasons only)	<ul style="list-style-type: none"> hiring relocation regrouping of employees 	labour court
Participation	information right	<ul style="list-style-type: none"> human resources planning vacant positions 	employer or arbitration committee (but subject to review by labour courts)
	consultation right	<ul style="list-style-type: none"> prior to any dismissal personnel planning planned operational changes 	

Measures / examples	Works council co-determination right	Consequences of non-compliance
Implementation of internal compliance measures		
Rules concerning use of company internet access, email, and social media	Right of co-determination (Section 87(1) No. 1 of the German Works Constitution Act (<i>Betriebsverfassungsgesetz</i> , BetrVG) – rules of operation of the establishment and No. 6 BetrVG – introduction and use of technical facilities)	Injunctive relief in accordance with Section 23(3) BetrVG General claim to injunctive relief
Rules concerning personal relationships in the workplace		
Introduction of a technical facility to monitor employee accounts automatically	Right of co-determination (Section 87(1) No. 1 BetrVG – rules of operation of the establishment and No. 6 BetrVG – introduction and use of technical facilities)	
Introduction of a technical facility to monitor trading in securities		

Measures / examples	Works council co-determination right	Consequences of non-compliance
Introduction of a reporting and / or ombudsman system		
Establishment of a compliance hotline Obligation to report serious breaches of compliance policy Mere recommendation to use reporting channels to report non-compliance	Right of co-determination (Section 87(1) No. 1 BetrVG – rules of operation of the establishment and No. 6 BetrVG – introduction and use of technical facilities)	Injunctive relief in accordance with Section 23(3) BetrVG General claim to injunctive relief
Introduction of a technical whistleblowing system that allows whistleblowers to be identified (call recording, storage of IP addresses or telephone numbers)	Right of co-determination (Section 87(1) No. 1 BetrVG – rules of operation of the establishment and No. 6 BetrVG – introduction and use of technical facilities)	
Establishment of a compliance organisation and appointment of a compliance officer		
Major changes to the organisation of the establishment	Reconciliation of interests and where applicable social compensation plan (Section 111 et seq. BetrVG) in the event of structural changes to the establishment	Interim injunction against structural changes; fine and where applicable indemnity for prejudice to individual employees (Section 121 in conjunction with Sections 111, 113 BetrVG)
Appointment / transfer of a compliance officer or his or her staff	Consent requirement (Section 99(1) BetrVG – co-determination in case of individual staff movements) – exception: executive staff (Section 105 BetrVG)	The recruitment or transfer of staff cannot take effect without the consent of the works council Failure to comply with this requirement constitutes grounds for a prohibition on employment under works constitution law
Compliance training and tests		
Content, scope, and method of training and testing	Right of co-determination (Section 98(6) BetrVG – vocational training in the establishment)	If an employee causes loss or damage despite undergoing training, the employer may not cite the training as evidence of serious fault
Electronic storage of participant lists and test results	Right of co-determination (Section 87(1) No. 6 BetrVG – introduction and use of technical equipment)	Injunctive relief in accordance with Section 23(3) BetrVG General claim to injunctive relief
Verification of observance of compliance rules and internal investigations		
Evaluation of private documents and data		
Standardised workflow for internal investigations specifying procedure for evaluating private records and data	Right of co-determination (Section 87(1) No. 1 BetrVG – rules of operation of the establishment)	Injunctive relief in accordance with Section 23(3) BetrVG General claim to injunctive relief

Measures / examples	Works council co-determination right	Consequences of non-compliance
Employee surveys going beyond conduct at work		
Standardised workflow for employee surveys providing for questions going beyond conduct at work	Right of co-determination (Section 87(1) No. 1 BetrVG – rules of operation of the establishment)	Injunctive relief in accordance with Section 23(3) BetrVG General claim to injunctive relief
Use of a standardised questionnaire giving information concerning the respondent and his / her knowledge and skills		
Establishment of principles for evaluation of standardised questionnaires	Right of co-determination (Section 94(2) BetrVG – staff questionnaires)	Injunctive relief If questionnaires are evaluated without the consent of the works council, an employee can object the evaluation and where applicable request that his or her office personnel file will be adjusted
Use of a computer to record and evaluate completed questionnaires	Co-determination (Section 87(1) No. 6 BetrVG – introduction and use of technical facilities)	
Introduction and use of a database or software for data analysis		
Use of an email screening program	Co-determination (Section 87(1) No. 6 BetrVG – introduction and use of technical facilities)	Injunctive relief

Measures not subject to co-determination / examples	Reasons	Legal consequences
Prohibition of reprisals against employees reporting sexual harassment (corresponds to the prohibition on disciplinary action in the first sentence of Section 16(1) of the General Law on Equal Treatment (<i>Allgemeines Gleichbehandlungsgesetz, AGG</i>))	Repeats content of statute / existing obligations under employment law	Section 87(1) No. 1 BetrVG does not apply
Obligation to report secondary employment		
General prohibition of private internet use in the workplace	Handling of company property	Section 87(1) Nos 1 and 6 BetrVG do not apply
Obligation to ensure equal opportunities when conducting an evaluation	Voluntary commitment by the undertaking	Section 94(2) BetrVG does not apply
Provision of compliance training if that training involves the issuing of instructions	Detailed specifications regarding conduct at work (Section 106 of the Industrial Code (<i>Gewerbeordnung, GewO</i>), authority to issue instructions)	Section 98(6) BetrVG does not apply
Appointment of an executive staff member as compliance officer	Mere notification of the works council (Section 105 BetrVG) and the executive staff committee (Section 31(1) of the Executive Staff Committee Act (<i>Sprecherausschussgesetz, SprAuG</i>))	Section 99(1) BetrVG does not apply

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