

Works Council Rights in AI Implementation Projects

German co-determination framework for employers (As of July 2026)

Why does the following overview matter?

Rapidly increasing use and importance of Artificial intelligence (AI):

AI has rapidly moved from experimental use cases to everyday business applications. Employers are increasingly deploying AI tools to support a wide range of functions, including knowledge management, document drafting, recruitment, workforce planning, performance management, and personnel decision-making. As AI becomes more deeply embedded in workplace processes, companies operating in Germany should assess at an early stage whether and to what extent the involvement of the works council (*Betriebsrat*) is required.

Extensive works council rights in Germany:

German works council participation rights are highly relevant in AI implementation projects and may significantly affect project timelines and deployment strategies. Depending on the functionality, purpose, and intended use of the AI system, employers may be subject to all relevant rights of participation granted to the works council under the German Works Constitution Act (*Betriebsverfassungsgesetz – BetrVG*), in particular such as providing information, consultation, or full co-determination. This is likely true in AI projects with a significant impact on employees, such as an AI-based performance management system. However, not every AI tool implementation will trigger every participation right. The analysis must always be conducted on a case-by-case basis, taking into account the specific features and intended use of the system.

That said, certain works council rights should generally be considered in every AI project. In particular, employers should expect to comply with the works council's general information right under Section 80 BetrVG as well as the co-determination rights under Section 87 BetrVG, which frequently play a central role where AI systems affect workplace conduct, health and safety, or are capable of monitoring employee behavior or performance.

Other rights arise only in specific circumstances. For example, Article 26(7) of the EU AI Act requires the employer to inform the works council before putting a high-risk AI system into use in the workplace, whereas this obligation does not apply to AI systems that do not fall within the AI Act's high-risk category. Similarly, co-determination rights under Section 95 BetrVG may be triggered where AI is used to establish or apply selection guidelines for personnel decisions, such as an AI tool that filters employees for purposes of a redundancy-related social selection (*Sozialauswahl*). By contrast, the use of a general-purpose AI assistant that merely answers questions, summarizes information, or assists with drafting tasks (for example, Microsoft Copilot) would typically not, in itself, trigger co-determination rights under Section 95 BetrVG.

Potentially serious consequences in the event of non-compliance:

Employers that fail to properly involve the works council may face significant legal and operational consequences. The works council may initiate conciliation committee proceedings (e.g., to determine whether and under what conditions an AI tool may be deployed), often causing substantial delays to the project. It may also seek a preliminary injunction before the labor courts (e.g., to prevent the rollout of an AI-based monitoring tool until co-determination requirements have been satisfied, or to suspend the operation of an AI system already in use until the required co-determination process has been completed). For certain co-determination matters, measures implemented without the required works council consent may be considered legally ineffective until consent has been obtained or replaced by a conciliation committee decision (e.g., a court may determine that employees were not required to follow instructions based on the AI system). Certain breaches may additionally lead to fines (e.g., where an employer fails to inform workers' representatives and affected employees that they will be subject to the use of a high-risk AI system, as required by Article 26(7) of the AI Act).

“Checklist” for AI projects/implementation:

The table below provides an overview of the principal works council rights that must be considered when implementing AI systems in Germany. Early assessment of works council involvement is key to ensure a smooth and compliant implementation.

Risk level: ● High ● Medium ● Low

LEGAL BASIS	CATEGORY	EMPLOYER OBLIGATION	TIMELINE	RISK	CONSEQUENCES OF NON-COMPLIANCE
Works Council's Right to Information for the Performance of Its Duties , Sec. 80(2) BetrVG	Information	Provide all necessary documents and information regarding the introduction and use of AI tools	Throughout the project lifecycle	● MEDIUM	Court enforcement of information claims
Information Right of Workers' Representatives Regarding the Use of High-Risk AI Systems , Art. 26(7) AI Act	Information	Inform works council before putting a high-risk AI system into use in the workplace	Before deployment of the high-risk AI system	● MEDIUM	Court enforcement of information claims and administrative fines
Right to Expert Involvement , Sec. 80(3) BetrVG	Expert involvement	Enable and fund required expert support for evaluating the implementation and use of AI	As soon as technical assessment becomes necessary	● MEDIUM	Judicial enforcement; project delays possible
Conduct Rules Co-Determination , Sec. 87(1) No. 1 BetrVG	Co-determination	Agree AI usage rules (if clear rules are established regarding how to use AI tools)	Before implementation	● HIGH	Injunctions and conciliation committee proceedings
Technical Monitoring Co-Determination , Sec. 87(1) No. 6 BetrVG	Co-determination	Reach agreement before introducing monitoring-capable AI	Before productive use (but also applies if the AI system was implemented before the works council was established and the works council subsequently claims co-determination rights in relation to the system)	● HIGH	Injunctions, conciliation committee, possible suspension of introduction and/or operation of the AI tools
Health and Safety Co-Determination , Sec. 87(1) No. 7 BetrVG	Co-determination	Address health and safety impacts	Before and during operation	● HIGH	Injunctions and conciliation committee proceedings
Operational Planning Information Rights , Sec. 90(1) No. 3 BetrVG	Information	Provide early and comprehensive information on the planned AI system, functionality, purpose and impact on employees	Planning stage before implementation decisions are finalized	● MEDIUM	Works council may enforce information rights through labor court proceedings
Operational Planning Consultation Rights , Sec. 90(2) BetrVG	Consultation	Consult with the works council on AI impacts	Before rollout	● MEDIUM	Consultation claims enforceable in labor court

Adverse Effects Remediation Rights , Sec. 91 BetrVG	Corrective rights	Remedy adverse effects on humane working conditions	When adverse effects arise	● LOW	Conciliation committee proceedings; in rare cases injunction to prevent implementation of such measures
Workforce Planning Participation Rights , Secs. 92, 92a BetrVG	Participation	Discuss workforce planning and employment protection measures	Early planning stage	● MEDIUM	Enforceable consultation obligations
Assessment Principles Co-Determination , Sec. 94(2) BetrVG	Co-determination	Agree AI-based assessment principles	Before first use	● HIGH	Measures may be ineffective; injunctions to secure works council information and consultation rights
Selection Guidelines Co-Determination , Sec. 95 BetrVG	Co-determination	Agree AI-supported selection guidelines	Before use	● HIGH	Conciliation committee proceedings; injunction aimed at preventing unilateral application of employer guidelines
Training and Development Participation Rights , Secs. 96–98 BetrVG	Participation	Assess and implement training/upskilling measures	Before or during rollout	● LOW	Possible conciliation committee proceedings
Operational Change Participation Rights , Secs. 111, 112 BetrVG	Participation	Inform and consult the works council regarding the planned AI-related operational change and negotiate a reconciliation of interests (works council cannot enforce) and a social plan (works council can enforce)	At the planning stage and before implementation of measures constituting an operational change	● HIGH	Injunctions (but controversial) and conciliation committee proceedings, and potential claims for compensation for disadvantages

Note: Changes are expected following the governing coalition's latest reform proposals under its "Program for Growth and Employment". The aim is to make it easier and faster for employers to introduce AI in the workplace while respecting the works council's co-determination rights. To achieve this, employers' associations and trade unions are expected to develop proposals, including potential changes to German works constitution law. Employers should therefore be aware that some of the participation rights summarized in the table above could change in the near future as the proposed reforms are further developed and implemented.