



Enterprises and business units

Corporate structure determines the remuneration and composition of the works council

Works councils are elected for a specific enterprise. The legal requirements of an enterprise are fundamental to works council elections. In addition to "enterprises", the law also applies to business units and joint enterprises. Collective bargaining agreements – and exceptionally works agreements – allow for works council structures that deviate from the law.

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Definition of the term enterprise

The law does not define the term enterprise (Betrieb). The Federal Labour Court's definition is also unclear. According to the Court, an enterprise is an organisational unit within which the entrepreneur, alone or together with his employees, pursues determined technical work objectives with the help of material and immaterial resources. For this purpose, material and immaterial resources available in the permanent establishment must be combined, organised and used in a targeted manner and manpower must be controlled by a consistent management institution. The goal is to provide employees with direct and rapid access to the works council. The term enterprise therefore refers to the lowest unit of work organisation.

Joint enterprise

Several undertakings can form a joint enterprise (Gemeinsamer Betrieb). This may be presumed if the material and immaterial resources available in a permanent establishment are combined, organised and used for a unified technical work purpose

and if the use of manpower is controlled by a consistent management institution. The undertakings involved must at least be joined legally to form a joint management. This common management must cover the essential functions of an employer in social and personnel matters. It is decisive that cross-employer deployment of staff is practiced, which is characteristic and formative of the ordinary course of business. If there is a joint enterprise, a single works council must be elected for it.

Business units

Works councils can also be elected for single business units (Betriebssteile). In order to separate the business unit from the enterprise, the degree of independence of the business unit is decisive: which competences are assigned to the enterprise/business unit's management? According to the Federal Labour Court, a business unit is geared toward the purpose of the main enterprise and integrated into its organisation, but can be defined in terms of organisation and is relatively independent. For a business unit, a minimal degree of organisational independence from the main enterprise will suffice. To this end, it is sufficient for the organisational unit to have a management that determines the deployment of staff and exercises the employer's right to issue instructions. In business units that are far from the main operation or are independent due to their area of responsibility and organisation, and are therefore considered independent enterprises, a separate works council must be elected. Irrespective of this provision, employees may however decide to take part in the main enterprise's works council election. The physical distance described is given if, as a result, the proper support of the business unit's staff is no longer guaranteed by a works council based at the main enterprise. This is the case if easy accessibility of the works council is not given for employees, but also vice versa. Mileage alone is not enough. Nevertheless, the independence required for an independent business unit does not necessitate an own consistent management institution. There must however be an independent management in the business unit able to perform the employer functions in the essential areas of corporate co-determination.

Different business structures

The law makes it possible to form a company-wide works council for a grouping of enterprises if this facilitates the establishment of works councils or serves to ensure that the interests of employees are properly represented. The establishment of divisional works councils and other employee representation structures is also permitted. Moreover, additional works council boards (working groups) can be created, which serve the purpose of cross-company cooperation between employee representatives as well as other works councils. Such provisions – that deviate from the law concerning organisational units under works constitution law – or the establishment of additional boards, are primarily reserved for a collective agreement. With the exception of the creation of other employee structures, provisions regulating the works council structure are also permitted by works agreement. This applies if there is no collective bargaining agreement on this matter and no other collective bargaining agreement applies in a normative manner (for example, a collective bargaining agreement based on the employer's membership in an employers' association or a company collective bargaining agreement). The statutory provisions prohibit works council agreements that

modify works council structures in the event that a collective bargaining agreement applies in a normative manner. It is therefore not important that the collective agreement contains provisions on the corporate structure.

Recommendation for practice

In order to ensure legal certainty in the run-up to a works council election, in which business units may elect a works council, the law provides for a procedure before the labour court. It should be borne in mind that such a procedure may involve several instances and therefore be time-consuming. In the event that differences of opinion show between the works council and the employer, it is advisable to initiate proceedings promptly. This can be decisive, at least in the case of a challenge to the works council election.

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