

TOOLKIT

# Negotiating AI Works Agreements in Germany

*How to broker a successful AI deployment*

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# § Betriebsrat

## Begriff und Erklärung: Un

## First: How Does German Co-Determination Work?

### The Works Council

Every German establishment with five or more employees has the right to elect a works council (Betriebsrat). The works council is not a union, but an in-house body of elected employee representatives (who are often also union members), distinct from the trade unions that bargain sector collective agreements. Most large multinationals operating in Germany interact with unions for wages, broad employment conditions, and just about everything that happens inside the company with works councils.

### Co-Determination vs. Consultation

Co-determination is a *veto right*, not a *consultation right*—the employer cannot proceed without the works council's agreement, if the WC decides to make use of its right. If the two sides cannot agree, the matter either stops or goes at the request of either party to a conciliation board whose decision is binding. This is fundamentally different from “inform and consult” obligations in other parts of Europe (i.e., France, UK) where the employer can ultimately overrule the works council's objection.

### The Works Agreement

A works agreement is a binding, written contract between the employer and the works council. Once signed, it has direct legal effect on the employment relationship and will be the framework for how AI will be deployed. Two components shape every negotiation: 1) the works council holds legal force, not just political weight, and 2) once a works agreement is signed, it binds the employer for a set term and termination requires months, so speed and quality are key.

# 53%

Percentage of works councils that introduce AI in the workplace. In these cases, the acceptance rate of AI is higher and workflow is reportedly smoother.

—[Weizenbaum Institut, AI Study](#),  
[March 24, 2026](#)

## AI-Related Laws

There are four provisions of German law that cover most of AI negotiations:

Provision	What It Does
<a href="#">Section 80</a> of the Works Constitution Act	Gives the works council the right to call in outside experts, at the employer's expense, to evaluate complex technical matters including AI systems
<a href="#">Section 87</a> of the Works Constitution Act	Establishes mandatory co-determination over any system capable of monitoring employee behavior or performance
<a href="#">Section 90</a> of the Works Constitution Act	Provides information and consultation rights on workplace design, including how technology changes job content and working conditions
<a href="#">Section 95</a> of the Works Constitution Act	Offers co-determination over hiring, promotion, and transfers—must be consulted when AI is used to support those decisions



## CHRO-Tested Tips for a Smooth AI Agreement

Successful companies negotiating AI implementation in Germany ensure the following:

1. **A master AI works agreement** at the group or country level, with system-specific addenda—avoid bottom-up negotiations per tool.
2. **A standing joint AI committee** with the works council, meeting on a defined cadence regardless of whether a specific system is in flight.
3. **Co-invested AI literacy programs** for employees and council members, treated as a workforce development investment rather than a negotiation tactic.
4. **An internal AI governance function** that sits between legal, HR, and technology. This function supports all negotiations tied to the works council and ensures consistency across deployments.

# Now: What Do I Do About It?

The key to implementing AI in Germany is understanding how to negotiate.

## 1

### Legal Issues: Governing AI with Pre-Internet Laws

#### The Problem

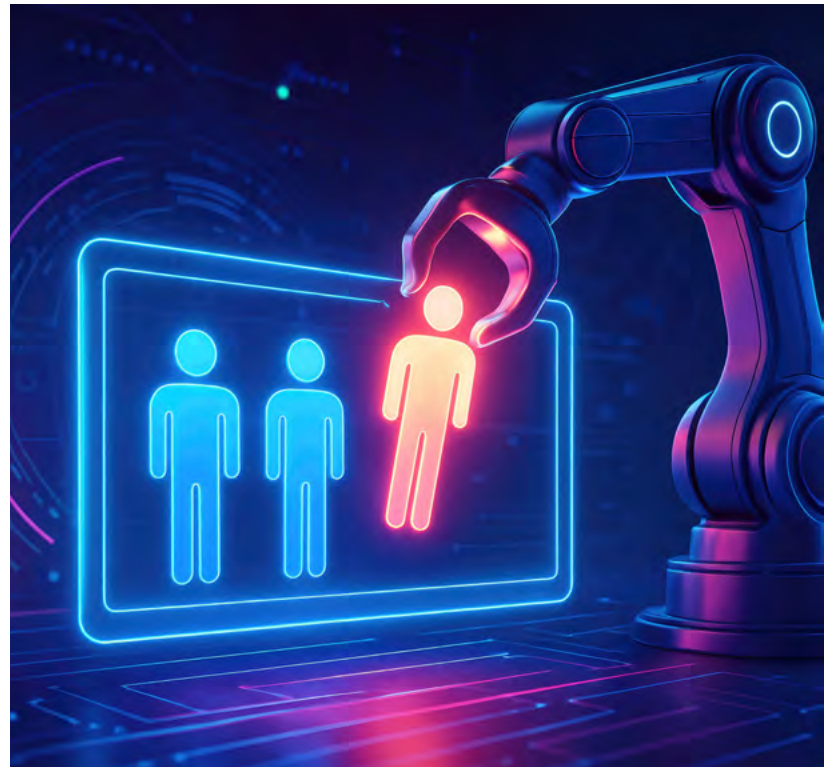
[Section 87](#) of the Works Constitution Act is the core provision for AI usage. It grants mandatory co-determination over any technical systems capable of monitoring employee behavior or performance. The Federal Labor Court has a loose interpretation of the word “capable.” As a result, AI systems that generate scoring outputs, behavioral inferences, or performance signals fall within the scope—whether or not it is the employer’s intent.

“Keep that in mind: drafting choices made in 2026 will shape what is negotiable in 2028.”

#### What to Do

Draft for the framework, not the system. The strongest agreements define categories of AI use (decision support, automation, generation, profiling) with differentiated obligations by category, rather than enumerating specific tools that will be replaced within 18 months.

- Unlike SAP rollouts or ERP migrations, there are no set agreement templates for AI. Each negotiation produces text that opposing counsel will surface the next go around. Keep that in mind: drafting choices made in 2026 will shape what is negotiable in 2028.



## 2

# Technical Issues: A Lack of AI Literacy

### The Problem

The legal framework is only half the challenge. The negotiation itself is shaped by a structural information gap between employer and works council:

- **Limited technical expertise.** AI systems are difficult to assess without specialized knowledge. While works councils may consult external experts, doing so requires time, budget, and coordination—resources that are often stretched thin.
- **Information asymmetry with employers.** Employers have access to detailed vendor documentation and internal assessments. Works councils, by contrast, depend on the employer's willingness to disclose information. In practice, this often results in high-level descriptions that do not fully illuminate the system's risks or operational logic.
- **Vendor black boxes.** Many AI tools are proprietary systems whose internal workings are not disclosed. Even employers may not fully understand how decisions are generated. This lack of transparency undermines the ability to negotiate meaningful audit rights, explainability standards, or safeguards against unintended consequences.

### What to Do

First, we recommend involving labor relations as early as possible, even before a decision has been made regarding buying or implementing AI tools in Germany.

Before going to table negotiations, invest in the AI fluency of your team (ER, HR, IT) to prepare for equal AI literacy at the negotiation table.

Build the technical briefing before the negotiation, not during it. Companies that prime AI negotiations with the works council before any specific system comes up report shorter negotiation cycles and narrower dispute times. It also moves the council off “vendor black box” objections, because they have seen the documentation in a non-adversarial setting.

“Build the technical briefing before the negotiation, not during it.”





### 3

## Structural Issues: AI Software Is Moving Faster Than Governance

### The Problem

AI moves at the pace of software, while co-determination moves at the pace of governance. The two cycles are fundamentally mismatched.

Often, AI deployments span multiple negotiations simultaneously, including data protection, performance management, work organization, and training. This usually means that multiple stakeholders, committees, and subject-matter sub-negotiations run in parallel. For a CEO or CHRO, this is the moment where the discussion stops being about labor relations and becomes more about organizational design.

### What to Do

Once the negotiations start, they cannot be retrofitted, so it's better to design the operating model around them from the start.

Here are two important factors to consider:

1. **A defined update mechanism.** Distinguish material changes (that require formal re-negotiation) from non-material updates (that require only notification and a defined review window). Without this, every retrained model and the deployment timeline can collapse under the weight of repeated negotiation cycles.
2. **A negotiating team on the employer side.** When various departments negotiate multiple AI tools with the same works council, each from a different position, the council will harmonize the commitments at the highest level, locking the company into the most restrictive terms across every deployment. One single coordinating team can help the employer arrive with one position, not several that can be pitted against each other.

# 4

## Language Issues: Every Word Becomes Precedent

### The Problem

In any AI works council agreement, a small number of clauses determine whether the deal ages well. Careful attention to these phrases can make the difference between a durable argument that remains workable or one that is weaker, forcing the company into commitments it cannot meet.

### What to Do

- **Narrow the Scope.** Define what the agreement covers by function and risk category, not by named system. A clause that regulates “AI systems used in recruitment, performance evaluation, or compensation decisions” is better than a more general clause that regulates, say, “the 2.0 version of an AI platform.”
- **Conduct Bias Testing and Adverse Impact Review First.** Define the testing methodology, the trigger thresholds, and the remediation path before the council decides for you. Also, put high-stakes use cases such as hiring, promotion, and performance ratings in writing.
- **Call Out Performance Data.** Even systems not designed to monitor performance generate data that could be used that way. So, negotiate the usage and limitations explicitly: purpose, retention period, access rights, and prohibited usage on the AI system’s outputs to draw conclusions about how well an individual employee is performing. *This is often the council’s*

*deepest concern, and it is usually negotiable on terms that do not constrain legitimate operations.*

- **Clarify Human Oversight.** To say “a human reviews every decision” is operationally untenable and the council knows it. However, it’s still important to define which types of decisions require a human in the loop and why. Set a clear documentation standard and add specificity to protect both sides, such as:
  - **A potential rejection of a job candidate during initial screening.** An HR professional should review and apply reasoning against best-fit criteria for the job.
  - **A performance-rating recommendation that requires manager sign-off,** with documented reasoning whenever the manager accepts the AI suggestion without modification. This could include performance improvement plans (PIPs) or mid-year assessments.
  - **A compensation-adjustment suggestion** that requires second-level review for any increase in salary greater than a defined threshold (e.g., 5% above or below what an AI model might say).
  - **Terminations, layoffs, accommodation and leave requests, non-disclosure and separation agreements, and assessment of tone or sentiment** in the workplace are other examples. For instance, AI could misread a sarcastic or playful tone between co-workers over email or business collaboration platforms and wrongfully categorize it.

## Bottom Line

German works councils are negotiating AI alongside restructuring, RIF programs, and other co-determination matters. Your AI agreement is competing for attention, so make it count. Clarity, framing, and clear writing matter.

Employers frame AI as opportunity; councils frame it as a risk to the workforce. Neither frame is wrong, but defining shared success metrics (productivity, employment quality, efficiency, and skill development) will improve your chances of success.

