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*German Tax and Legal News*

## **Extent of Claim by the Works Council to Communication Technology**

German Federal Labor Court Negates Claim to Separate Telephone Line and Internet Connection / Works Council Activity Justifies a Claim to Communication Technology, but not to a Separate Telephone Line and Internet Connection

An employer does not generally have to provide a works council with internet access which is separate from its network nor does it have to set up a telephone line which is separate from its telephone system.

### **Works Council Does Not Have a Claim to Separate Internet and Telephone Access**

Pursuant to § 40 Subsection 2 Works Council Constitution Act (Betriebsverfassungsgesetz – BetrVG) the employer must provide the works council with sufficient information and communication technology, among other things. The works council can request its own telephone line and, as far as the employer does not have any opposing reasonable interests, internet access and that the works council's own e-mail addresses are set up without the works council having to demonstrate that said aspects are necessary in order to perform specific tasks under the works constitution law.

The German Federal Labor Court (Bundesarbeitsgericht – BAG) believes that a separate connection to communication technology is not required solely due to the theoretical risk of the employer being able to exploit technical monitoring possibilities in a detrimental manner (ruling dated April 20, 2016 – Case No.: 7 ABR 50/14.)

### **Facts of the Case**

In the instant case the office of the works council had a separate extension number which was connected to the employer's telephone system. The telephone system was set up in a way that different types of data (including dialed numbers in full) could be saved and evaluated along with personal data.

The works council was also provided with a PC and a laptop. The internet access could be attributed to the works council and was transmitted in the corporate group by the business proxy server where the access could be administered and monitored. The works council argued that it was also possible "to record the user and IP addresses and all the URLs accessed with the browser and evaluate these along with personal data".

The works council was afraid of being monitored by the employer without authorization and applied for a separate telephone line and internet access. The works council did not state any indication that the employer had already carried out any exploitative monitoring.

The previous instances dismissed the legal action.

### **Decision**

The works council was not successful either. The federal judges decided that the works council did not have a claim to a separate telephone line and internet connection, which would therefore eliminate any monitoring possibility, based on the mere theoretical risk of the employer (and/or its administrators) being able to monitor unlawfully the communication systems which had been provided to the works council. They therefore rejected the all-round technical protection as applied for.

### **Comment**

The BAG decision sends a clear message that everybody working in the company must generally ultimately be able to trust on a daily basis that there is no unlawful conduct. In general we agree with this as it corresponds to the principle of trusting cooperation and also rests upon the rule of law as the basis of living (and also working) together.

It might be possible to come to a different conclusion in an individual case if there is a justified suspicion due to specific and verifiable events that the employer has previously carried out unlawful monitoring (either once or on repeated occasions). The BAG did not need to make a ruling on such circumstances in the specific case.

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