

## Matrix, The Next Act – The Federal Labor Court Rules on the Right to Issue Functional Instructions

### THE FACTS

Matrix structures have been occupying HR and the literature for a long time, and the case law is progressively catching up and providing – though not always practical – orientation. Following the key decisions of June 12, 2019 (1 ABR 5/18) and May 26, 2021 (7 ABR 17/20, see our Client Newsletter [07/2021](#)), the Federal Labor Court (BAG) has now added another piece to the puzzle with the recently published decision of June 14, 2022 (1 ABR 13/21):

### CORE STATEMENT OF THE FEDERAL LABOR COURT

This decision once more addressed the situation of whether a matrix manager is integrated into an operation and the works council must therefore be heard under Sec. 99 Works Constitution Act prior to their hiring. The practice of differentiating between matrix managers with the right to issue solely functional instructions and those having the (additional) right to issue disciplinary instructions had gained broad acceptance in businesses. Based on the protective purpose of Sec. 99 Works Constitution Act, merely functional instructions did not suffice to establish integration into an operation – so the argumentation of practitioners and major voices in the literature.

As good as this differentiation was in handling such situations, the BAG does not accept this clear guiding principle. According to the BAG, one must undertake an overall assessment of all of the governing circumstances of the individual case. In such an assessment, the authority of a manager to **issue functional instructions** could be taken into account, provided that the exercise of such authority results in an integration into the operative duties to be performed by employees and the working processes. Integration into an operation may typically be assumed if the manager must regularly work together with the employees working in the operation and thus actually exercises the authority to issue functional instructions.

### CONSEQUENCES

This does not make life easy for businesses. The right to issue functional instructions may but does not have to mean that a manager is integrated into an operation. Once again, the individual case is what counts. Business will have to take this into account and wait and see how court rulings will fill this requirement of an overall assessment with life and how this will apply to open situations such as matrix managers from abroad and third-party matrix managers.

The next acts in the play „Matrix Structures“ are sure to follow.

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