

Matrix Reloaded

Double blow from the BAG
ahead of the 2026 election
year

Introduction

Last year, the German Federal Labor Court (BAG) ruled on two cases involving questions of affiliation with the operation in so-called “matrix organizations.” Both decisions are of particular significance, especially in light of the scheduled works council elections in the spring of 2026. If an employee’s affiliation is incorrectly assessed, this

could lead to the works council election being challenged.

Matrix Organization

Jurisprudence distinguishes between intra-company and cross-company matrix organizations. In an intra-company matrix organization, all employees work within the same company, but technical and disciplinary authority may be exercised by individuals assigned to different operations. Cross-

company matrix organizations are characterized by the fact that technical authority is typically exercised by supervisors from outside the company, while disciplinary authority remains with the contractual employer.

Last year, the BAG clarified the requirements regarding affiliation with the operation for both organizational forms. In light of the upcoming works council elections in 2026, it is worth taking a closer look:

BAG, judgment of 22 May 2025 – 7 ABR 28/24

In the context of a works-council-election challenge, the BAG ruled in May 2025 that employees in *intra-company* matrix organizations belonging to multiple operations of the same company are also eligible to vote in all of these operations.

The multiple voting rights resulting from multiple affiliations with operations do not conflict with the principles of the



German Works Council Act (BetrVG). The concept of integration in Sec. 7 BetrVG and Sec. 99 BetrVG must be interpreted identically. Whether an employee is integrated into a particular operation must be assessed on a case-by-case basis within an overall context. According to the standards of the BAG, affiliation with the operation exists if the manager regularly collaborates with the employees working at the operation to perform the tasks assigned to them and thereby actually exercises their technical authority to issue instructions. Disciplinary authority is just as irrelevant as the existence of a “physical” workplace.

BAG, judgment of 23 September 2025 - 1 ABR 25/24

In connection with the repeal of individual personnel measures, the BAG also commented in September 2025 on requirements regarding affiliation with the operation for *cross-company* matrix organizations. The voting eligibility of executives was not at issue in the proceedings.

The BAG ruled that the affiliation of executives whose employment relationship is with the parent company or another group-affiliated company - in practice, usually based abroad - can only be established if the owner of the German-based business, i.e., the German subsidiary, has the authority to issue instructions to these executives. Without such - at least partial - employer status of the German subsidiary, there could be no affiliation of this executive at the German operation.

Furthermore, the First Senate concurred with the Seventh Senate’s decision regarding intra-company matrix organization organizations.

Implications for Practice

The practical implications for employers with multiple operations should not be underestimated, particularly with regard to the 2026 works council elections.

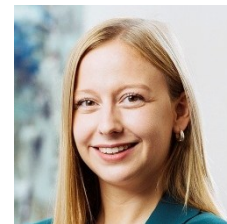
Employers with *intra-company* matrix organizations must, in particular, verify whether individual managers are affiliated to multiple operations. Multiple operation affiliations can have significant implications in connection with works council elections. In particular, multiple operation affiliations may affect thresholds under labor law (e.g., Sec. 1, 9, 38 BetrVG). Employers must also take into account that, pursuant to Sec. 2 para.2 of the First Ordinance Implementing the German Works Council Act (WO), they are obligated to provide the election committee with information enabling the respective election committee to assess potential multiple affiliations. Last but not least, multiple affiliations may also affect the eligibility of executives to stand for election. The multiple affiliation of a manager would mean that they could also be a member of several works councils.

It remains unclear whether a manager in a *cross-company* matrix organization can also be affiliated and eligible to vote. The 7th Senate expressly left this question open, and the 1st Senate also did not comment on it. The BAG’s reasoning suggests that such executives’ voting rights should be upheld. It remains unclear, however, whether the lack of personal jurisdiction under the BetrVG can be invoked against the voting eligibility of foreign executives.

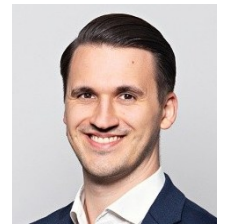
In short: Works council elections always present certain pitfalls, and this is particularly true in the case of actual matrix organizations. Dual or even

multiple affiliations appear possible, even in an international context; nevertheless, jurisprudence highlights corresponding limitations. Careful election preparation must, in any case, take these aspects into account.

Please do not hesitate to contact us if you have questions concerning this topic. If you would like to be included on our mailing list of the subscribers to our free newsletter, please send us a brief [E-Mail](#) with your request.



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