

Works Council not Entitled to “Independent” Internet

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Headnote

A works council cannot require that an employer provide Internet connectivity that is independent of the employer's server (Federal Labour Court, order of 20 April 2016, 7 ABR 50/14).

Facts

A works council brought an action to have the court compel an employer to provide an Internet and telephone connection that was independent of its group proxy server, arguing that it was technically possible for administrators to track IP addresses and browser settings and access the works council's email correspondence through the central server. The Federal Labour Court had to decide whether the works council was entitled to a completely autonomous technical infrastructure for its telecommunication needs.

Decision

The Federal Labour Court concurred with the lower courts and denied the petition of the works council. The court first of all emphasized that § 40(2) of the Works Constitution Act (*Betriebsverfassungsgesetz – BetrVG*) does entitle works councils to access to information and communication technology. Accordingly, that means a right to Internet access, email connectivity and telephone service, but the court also emphasized that employers have a legitimate interest in limiting the concomitant costs.

Ultimately, the Federal Labour Court concluded that the works council could be reasonably expected to use the means of telecommunication made available even if they are connected to the employer's proxy server, reasoning that the mere theoretical possibility that the em-

ployer could access communication of the works council did not suffice to justify any need for a separate server. The court also stated that an exception could be made at best if objective facts justified suspicion of abusive controls.

Comments

The decision of the Federal Labour Court is encouragingly clear and practical and provides legal clarity for all parties involved. The question as to whether works councils can be reasonably expected to allow their communication to pass through the central server of their employers has recently been a frequent subject of dispute due to the theoretical possibility of controls. Obviously, employers still do not have the right to monitor the communication activities of their works councils. In its decision of 18 July 2012 (7 ABR 23/11), the Federal Labour Court had already ruled that works council Internet access may not be personalized and that such access is provided for the work council as a whole and not for the individual members.

It is also encouraging to note that the Federal Labour Court referred to the need of employers for security. For example, it is regularly necessary to take special measures to protect central servers from invasive attacks (firewall). Routing operational communication through an external server gives rise to concerns as regards security and data privacy. The use of external free mail services should be avoided and works councils or other employee bodies should not be allowed to use such services.

Legal Update

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Jens Völksen on +49 221 33660-503 or by email to jvoelksen@goerg.de. For further information about the author visit our website www.goerg.com.

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