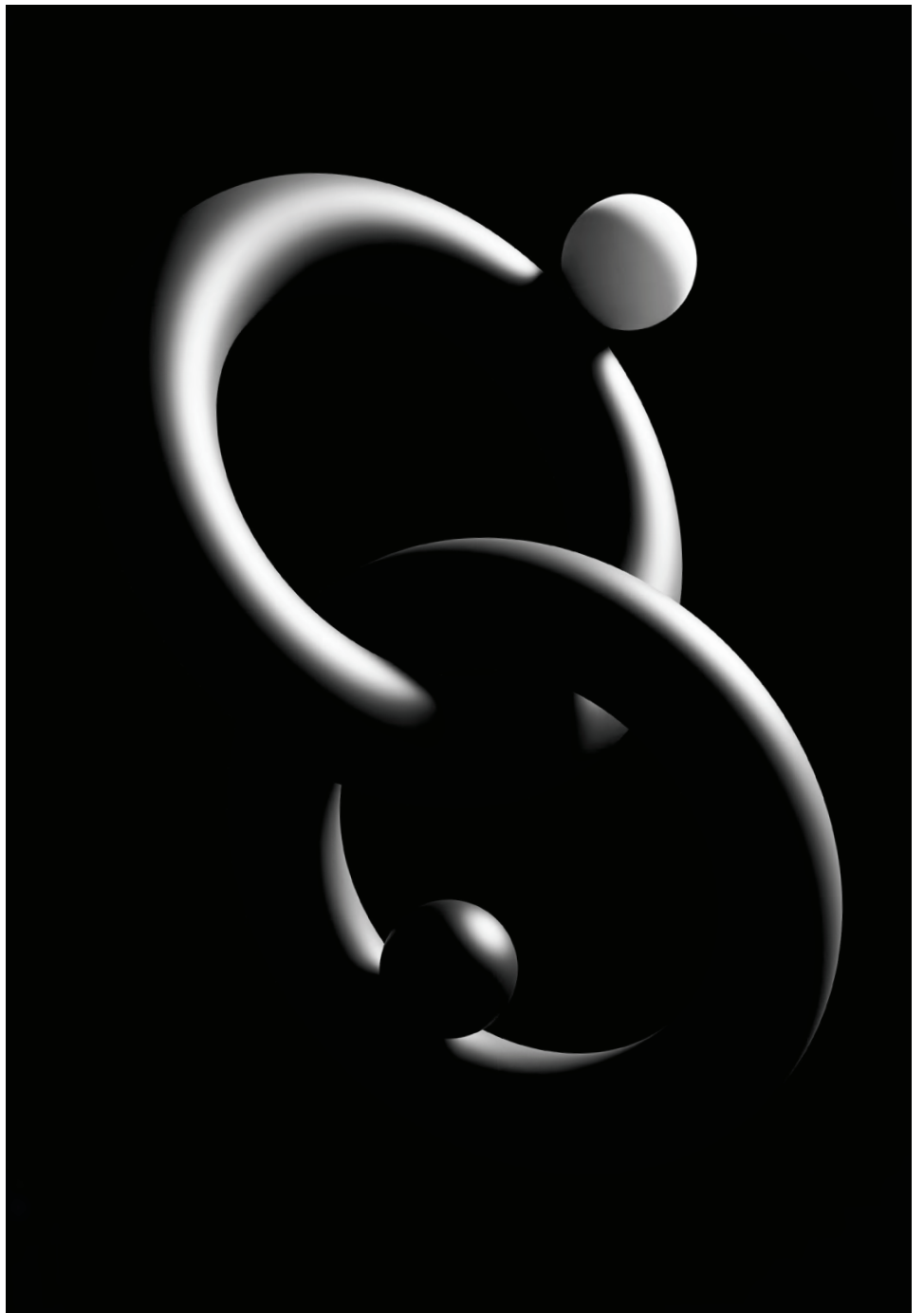


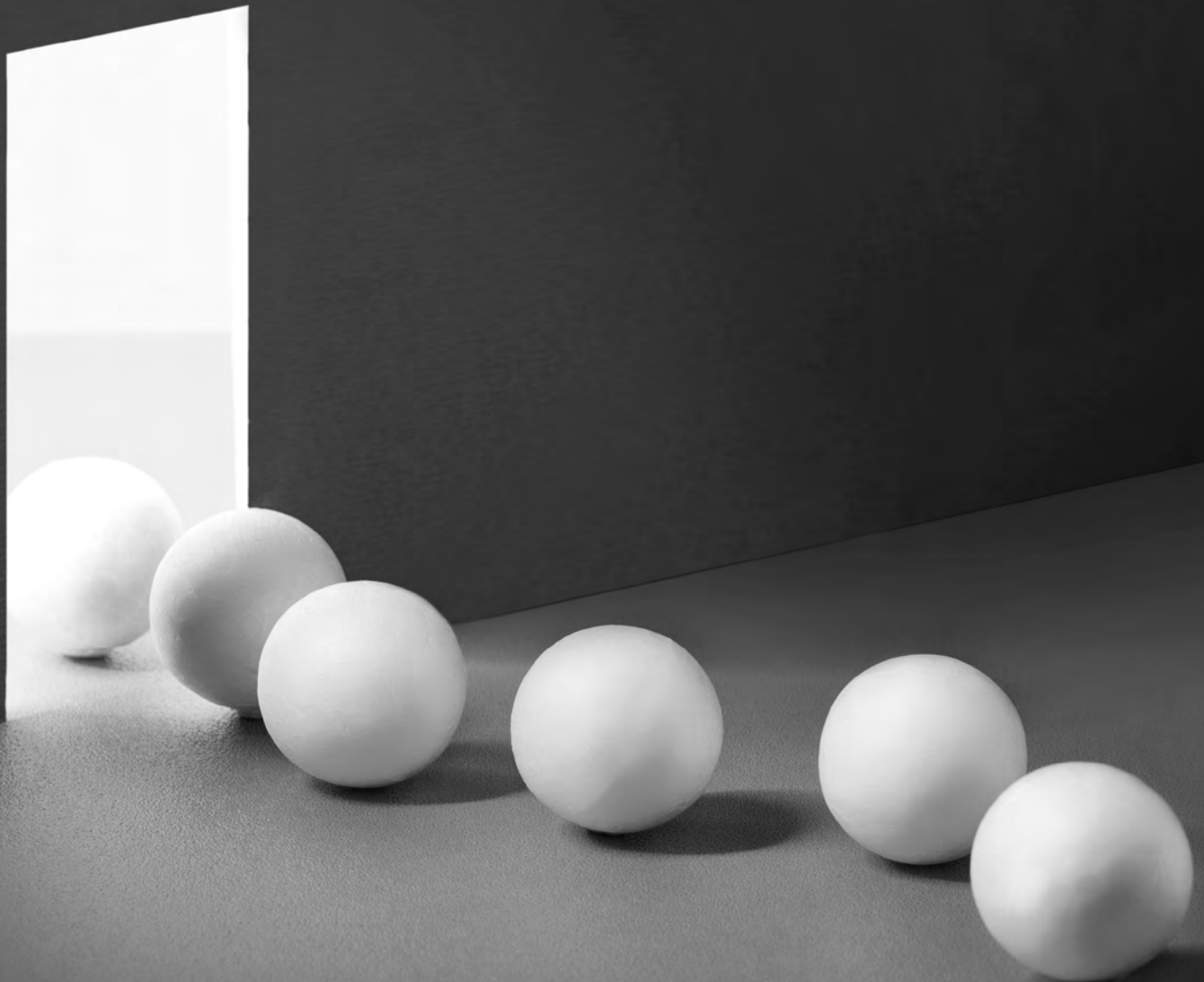


Works Council Elections in Germany in Spring 2026

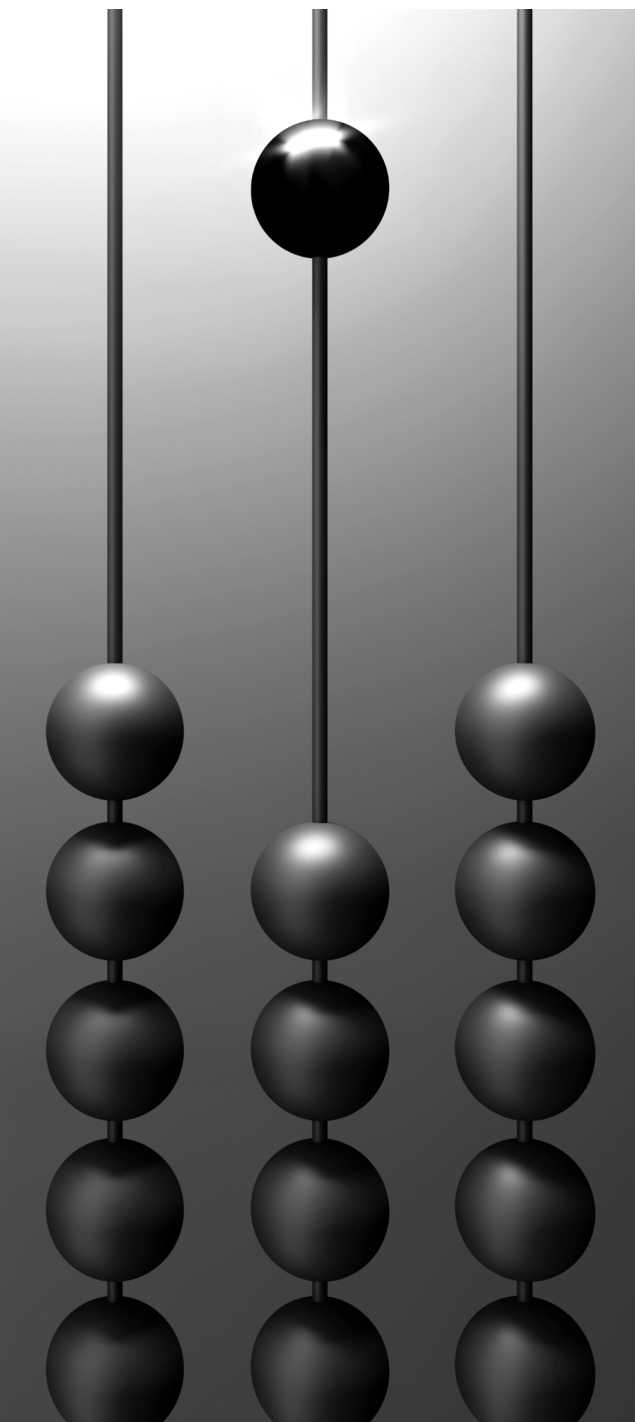
AN OVERVIEW FOR INTERNATIONAL EMPLOYERS
2026 EDITION

Contents

- 03** What is the Works Council and why are the elections important?
- 04** Timeline for Works Council elections
- 05** What does it cost and who pays for it?
- 06** Who does the Works Council represent? Who participates in the elections?
- 07** Employees involved in the election are subject to special protection against dismissal
- 08** Who is responsible for organizing the election?
- 10** Regular and simplified election procedures
- 11** Common pitfalls, don'ts and practical tips
- 12** After the election: Constituting the Works Council and cooperation
- 13** What to expect?
- 15** Step-by-step election procedure



What is the Works Council and why are the elections important?



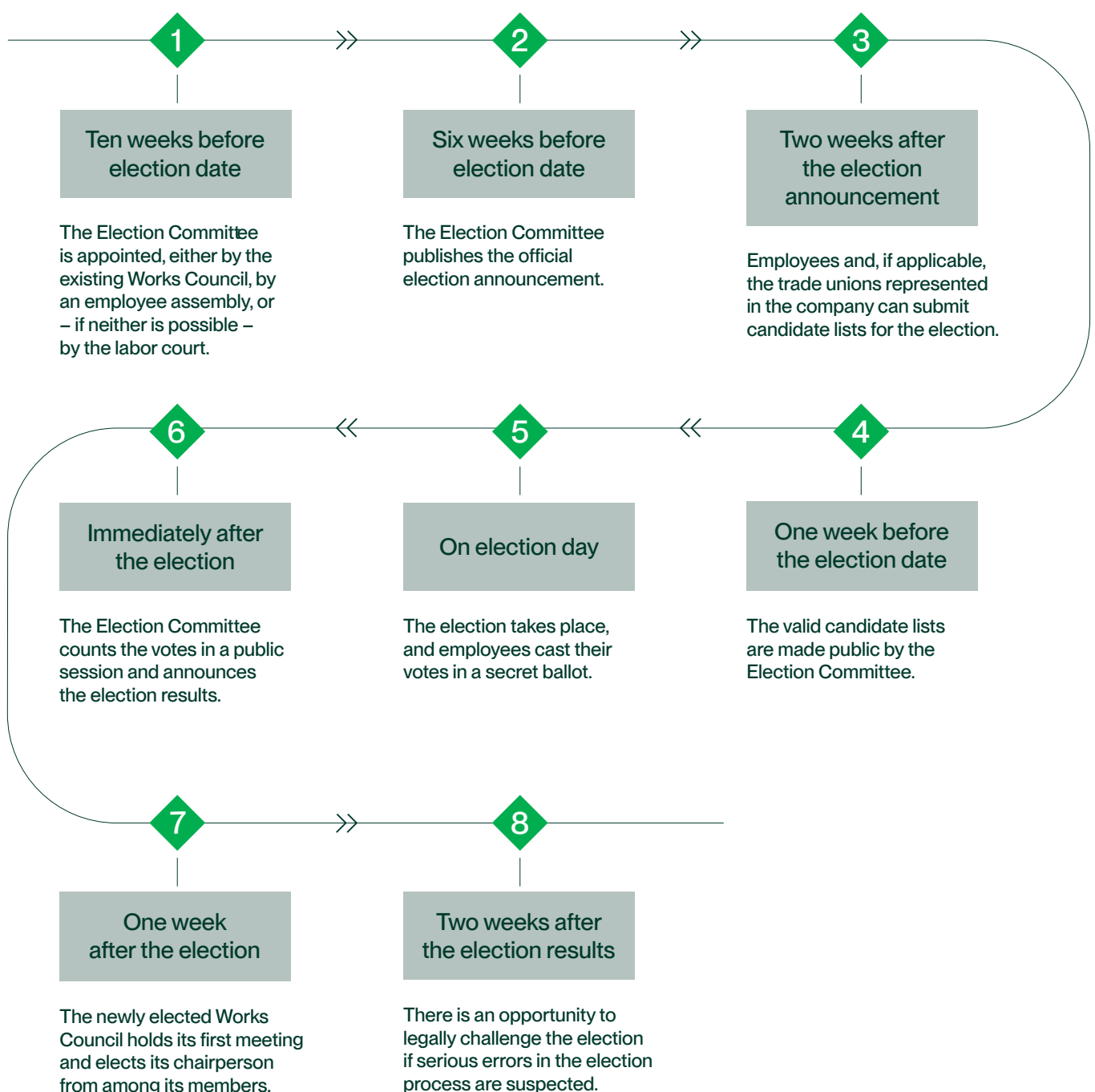
Every four years, Works Council elections take place in Germany. The next round of these regular elections will be between 1 March to 31 May 2026, Section 13 (1) sentence 1 of the Works Constitution Act (*ger.: “Betriebsverfassungsgesetz”*, see here for an English translation: **Works Constitution Act**).

The Works Council is a key element of employee participation in Germany and has a **significant impact on the relationship** between employer and workforce. The Works Council represents employees’ interests in matters such as working conditions, organizational changes, terminations and social affairs. For employers, having a Works Council in the company presents both opportunities and challenges: while a functioning Works Council can promote dialogue and help resolve conflicts early, ongoing conflicts with the Works Council can negatively impact productivity and overall workplace culture.

A Works Council is not established at company level, but per operational unit, (*ger.: “Betrieb”*). For that reason a company may have a separate Works Council, at every site. This results in separate elections.

Once the employees have established a Works Council this will affect the company’s flexibility, particularly when it comes to implementing restructuring measures or organizational changes. Dealing with Works Councils becomes even **more challenging in a global environment**, where companies prefer to implement decisions uniformly across all locations, but must involve the Works Council in Germany in advance.

Timeline for Works Council elections



What does it cost and who pays for it?

The employer bears all the costs necessary for the proper conduct of the election, Section 20 (3) of the Works Constitution Act. The employer's financial responsibility is limited to the costs necessary for organizing and conducting the election itself, such as providing ballots, setting up polling stations, and ensuring the proper administration of the election process itself. This generally includes:



Training costs for election committee members



Travel expenses for election committee members including travel to training sessions or to different company sites, if applicable



Necessary **legal advice** for the election committee



Costs for **external experts or advisors**, if their involvement is necessary for the proper conduct of the election (e.g., interpreters or IT specialists for electronic voting)



Material and **supply** costs, such as ballot boxes, ballots, voting booths, posters, and stationery



Postage and **shipping costs** for absentee voting



Costs for the use of rooms and **technical equipment** (e.g., rental of meeting rooms, use of company IT infrastructure, printers, and copiers)



Costs for **publicizing the election**, such as notices, information sessions or mandatory announcements



Costs for safeguarding the secrecy and integrity of the election process (for example, security measures or special storage for ballots). Campaign costs (e.g. promotional materials for candidates or unions) **are not covered** by the employer

The candidates themselves or the respective trade union supporting them bear the costs associated with campaigning, such as printing flyers, making posters, or organizing campaign events. The employer is not liable for these expenses.

Who does the Works Council represent? Who participates in the elections?

All employees older than 16 years and allocated to the relevant site are eligible to vote. Temporary agency workers, known as “temps”, are eligible to vote if they are employed at the site for more than three months.

Generally, **all employees of the same site are represented by the same Works Council.**

A “site” is an operational unit, which under joint leadership works together for a common purpose such as creating goods and services. As a rule of thumb, a production facility or an office would commonly be regarded as a site. Determining what and who is part of a site and what is not can be challenging at times, even more so considering the vast number of employees working from home, on the road or remotely at any given time. German case law even allows for attributing employees to multiple sites.

When providing the election committee with the **voter list** an employer must therefore **carefully assess** who is allocated to which site or sites.

The Works Council represents all regular employees, but it **does not represent executive employees** or the managing director.

Often, it is far from easy to determine if an employee qualifies as an executive employee. This makes it difficult to determine if they are allowed to vote in the Works Council elections. But excluding employees from exercising their right to vote or including employees who are ineligible can **jeopardize the whole election** process..

Broadly put, executive employees are individuals who have an unusually high level of autonomy, meaning that they make relevant business decisions themselves, have a general power of attorney, and/or have the legal authority to hire and fire other employees without needing additional approval from management.



Employees involved in the election are subject to special protection against dismissal

The German Protection Against Dismissal Act (*Kündigungsschutzgesetz* - "KSchG") and the German Works Constitution Act provide **robust protection against dismissal for individuals** involved in the Works Council election process. The special protection is intended to prevent any form of intimidation, reprisal, or discrimination against those involved in the Works Council election process, thereby promoting fair and democratic employee representation.

THIS SPECIAL PROTECTION EXTENDS TO

- members of the election committee from the time of their appointment until six months after the election;
- candidates in the election **from the moment they declare their candidacy** until six months after the election;
- elected Works Council members during their entire term and one year after they leave office.

WHILE EMPLOYEES ARE UNDER SPECIAL PROTECTION, THEY

- generally **cannot be terminated with notice for regular cause**, such as non-severe instances of misconduct or redundancy;
- can still be terminated for a compelling reason without notice, such as severe instances of misconduct, harassment or fraud. This requires **prior consent** of the Works Council or of the court;
- can be terminated in the event of the full closure of a site.



Who is responsible for organizing the election?

Procedural errors in the election process may result in legal challenges, potentially leading to the annulment of the election, in turn resulting in a rerun of the election process. The employer will bear the legal expenses as well as the costs for the election process but the employees will organize the election themselves.

ROLE OF THE ELECTION COMMITTEE

The election committee is the central body responsible for the proper conduct of the Works Council election ("Election Committee"). The existing Works Council is responsible for establishing the Election Committee by appointing at least three employees as members of the Election Committee.

Mistakes by the Election Committee **can render the election invalid**. Its independence, diligence, and neutrality are crucial for the success and impact of the Works Council election.

KEY TASKS OF THE ELECTION COMMITTEE:

- Compiling an **up-to-date and complete voter list**, which is made available to all employees for review.
- **Issuing an election notice** containing all important information about the process, deadlines, and the number of Works Council members to be elected.
- Assessing the formal validity of the candidate nominations.
- Organizing the election by preparing the necessary materials, setting up the polling station, and ensuring a **proper and orderly election**, including the option for postal voting.
- Publicly counting the votes, determining and announcing the results, and documenting everything in an official record.

COMPOSITION OF THE ELECTION COMMITTEE:

- The **Election Committee typically consists of three eligible employees**. If necessary, the number of members can be increased to accommodate the specific circumstances of the workplace.
- The Election Committee must be appointed no later than ten weeks before the current Works Council's term expires. At sites without an existing Works Council, the committee is appointed either by the company Works Council or the group Works Council. If neither exists, the workforce can elect the committee during a staff meeting. Alternatively, the labor court can appoint an Election Committee upon request.
- **Trade unions** represented in the company have the right to delegate a non-voting member to the Election Committee. This member may participate in an advisory capacity but does not have voting rights in the committee's decisions.

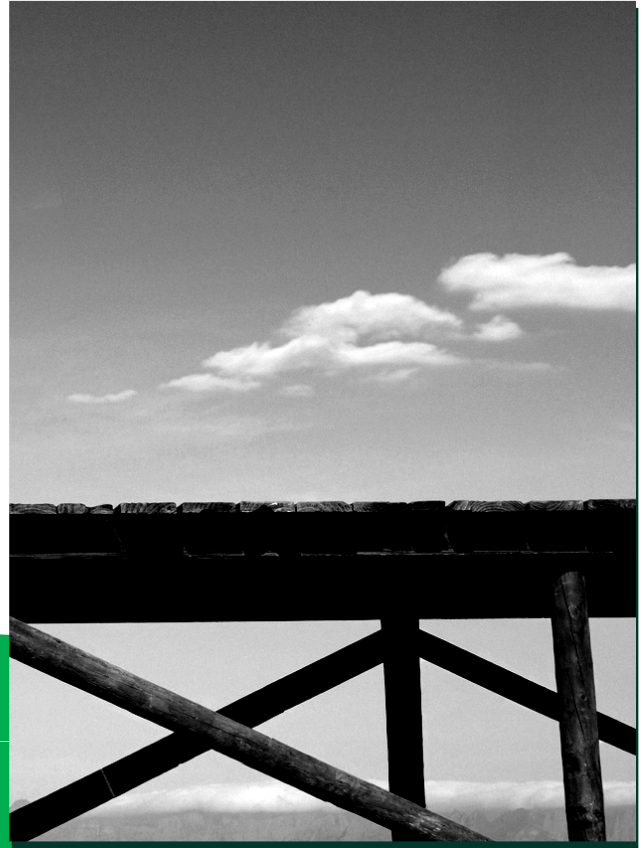
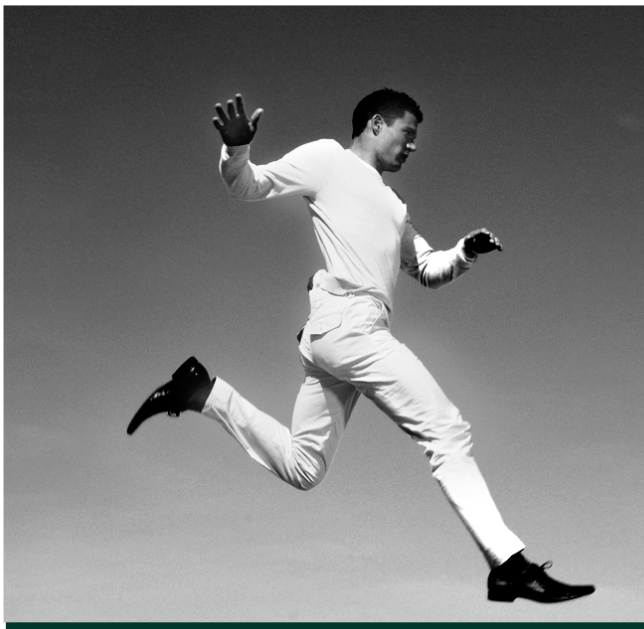


ROLE OF THE EMPLOYER

- The employer is required to **support the Election Committee** in its work. This includes providing all necessary information, documents, and resources (such as rooms, materials, and lists of employees).
- The **employer may not interfere** with the substantive work of the Election Committee or attempt to influence it. The independence of the Election Committee is legally protected.

ROLE OF THE TRADE UNIONS

- Trade unions may also choose to participate in the election process campaign. They are **permitted to conduct campaign activities** on company premises. This includes distributing flyers, putting up posters, and using the employer's email system for campaign purposes to an appropriate extent.
- The employer is required to **allow unions access to the workplace** for these activities but is strictly prohibited from supporting or hindering any particular candidate or list of candidates.



Regular and simplified election procedures

The election of Works Councils can follow either a simplified or a regular procedure, depending on the size of the site. The **simplified procedure is faster and less formal**, making it ideal for small companies, while the regular procedure is more structured and includes more legal requirements, such as proportional representation and gender balance.

The simplified election procedure is designed for smaller sites, with up to 100 eligible voters, or up to 200 eligible voters if the employer and employees agree. This procedure is characterized by its speed and informality. Usually, **all essential steps**, such as nominating candidates and conducting the vote, **take place in a single meeting**. As a result, the entire election can be completed within a few weeks, making it particularly suitable for smaller workplaces.

For larger sites with more than 100 eligible voters, the regular election procedure applies unless the simplified process is agreed for up to 200 voters. The Election Committee compiles the voter list, issues an official election notice and collects candidate lists that meet legal requirements. Voting is by secret ballot, usually at the workplace and council seats are allocated proportionally. **The Works Council's gender composition** must reflect the gender composition of the workforce, and the process must follow strict deadlines and formalities to ensure fairness and compliance.

Common pitfalls, don'ts and practical tips

AVOID ACTIONS OR STATEMENTS THAT COULD BE PERCEIVED AS INFLUENCING THE OUTCOME

In general, employers in Germany are required to **stay strictly neutral** during Works Council election campaigns. Employers do retain the right to freedom of expression under Section 5 (1) of the German Constitution, which allows them to communicate their views during the election period. That means employers may present their opinions on the election, including expressing criticism of the current Works Council or individual candidates, provided that such criticism is objective and factually substantiated. But the employer may not cross the line into unlawful influence or obstruction of the election process.

Interfering in the elections can have **serious legal consequences**, including the annulment of the election, and can be regarded as a criminal offense. All statements should remain objective, fact-based, and not exert any undue pressure.

CROSS-CHECK THE VOTER LIST WITH UP-TO-DATE PERSONNEL DATA TO ENSURE THAT ALL ELIGIBLE EMPLOYEES ARE INCLUDED AND INELIGIBLE INDIVIDUALS ARE EXCLUDED

If the voter list is incorrect, any employee can lodge an objection within two weeks of the election notice being issued to preserve their right to challenge the election results at a later point. The employer can only contest the election based on an incorrect voter list if the mistake is not a result of incorrect information by the employer.

DO NOT WITHHOLD OR DELAY NECESSARY INFORMATION AND DOCUMENTS

Always provide the Election Committee with all required data and materials promptly. Failing to do so can jeopardize the validity of the election.

DO NOT DENY ACCESS TO UNIONS OR THE ELECTION COMMITTEE

Unions and the Election Committee must be granted access to the workplace for campaign activities. Preventing access can be grounds for legal challenge.

DO NOT DISREGARD SPECIAL PROTECTION AGAINST DISMISSAL

Do not attempt to dismiss members of the Election Committee, candidates, or Works Council members except for serious cause. **Seek legal counsel** before engaging in **disciplinary measures** towards these groups of employees. Be aware of the extended protection periods before, during, and after the election.

DO NOT REFUSE TO COVER THE NECESSARY COSTS OF THE ELECTION

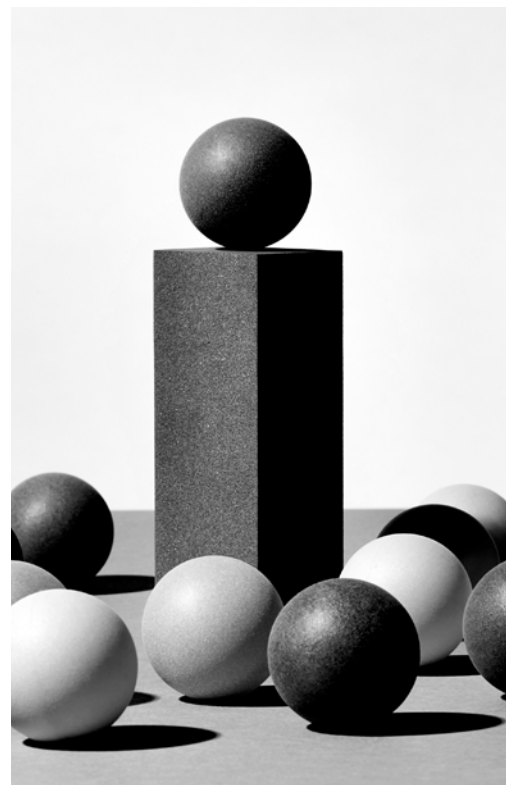
The employer bears all cost required for the proper organization and conduct of the election (training, materials, postage, travel, legal advice) must be borne by the employer. Do not shift these costs to employees or the Election Committee.

DO NOT NEGLECT COOPERATION AFTER THE ELECTION

Once the Works Council is elected, promptly inform the new members and begin constructive cooperation. Continue to provide all necessary resources and support for the council's ongoing activities. Especially **consider providing external training opportunities for new members**. Experience shows that a well-informed works councils are often a better partner to work with.

After the election: Constituting the Works Council and cooperation

The Election Committee must promptly convene the inaugural meeting of the newly elected Works Council, during which the council elects its chairperson and deputy from among its members.



INITIATE COOPERATION

The employer should reach out to the new Works Council to **arrange an initial meeting**, where both parties can discuss expectations, upcoming projects, and any immediate issues requiring attention. Open and respectful communication at this stage sets the tone for future collaboration and helps build mutual trust. Trust is easily lost and rebuilding it can prove difficult. It is important to keep in mind that Works Council members are often re-elected, which may perpetuate the issue.

It is advisable to agree on **regular meeting schedules** and clear communication channels with the Works Council. Early discussions should address how information will be shared, how consultations will be conducted, and how potential conflicts will be managed. A constructive and transparent approach from the outset can help prevent misunderstandings and foster a productive partnership.

It is important to remember that **members of the Works Council are also under pressure from the workforce** which will affect each member of the Works Council differently.

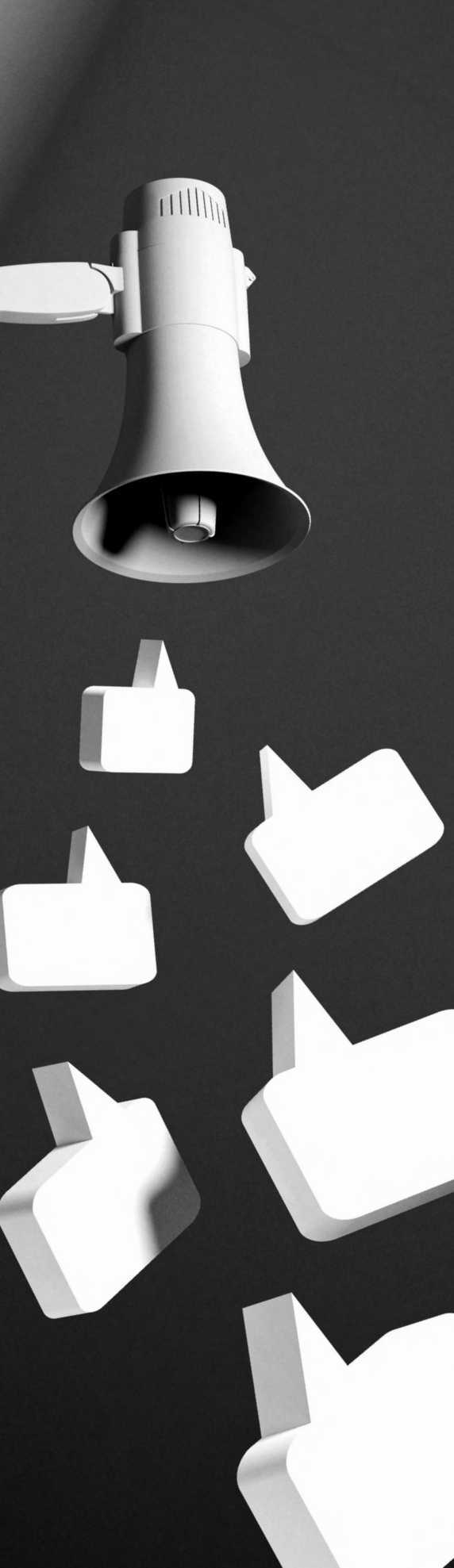
ONGOING SUPPORT AND RESOURCES

The employer is responsible for providing the Works Council with the **necessary resources** to perform its duties effectively. This includes:

- providing suitable office space and equipment (such as computers, telephones, and filing cabinets)
- granting access to relevant information and documents
- allowing time off work for Works Council members to attend meetings and training sessions without loss of pay
- covering the costs of training and education for council members, so they can fulfil their legal and practical responsibilities.

LEGAL AND FINANCIAL RESPONSIBILITIES

The employer has to bear the cost associated with the Works Council's activities. This includes the expenses for material resources as well as for external experts or legal advisors if required for specific issues. If a Works Council requests external legal advice, then the bar for the employer to refuse such a request is quite high. Also, refusing external legal advice will often impact the relationship with the Works Council significantly.



What to expect?

The Works Council election is a significant event that can have a lasting impact on your company's operations, workplace culture and management processes. As an employer, you should be prepared for a period of increased activity, heightened employee engagement and **close scrutiny of your actions and communications**. This is what is to be expected during and following the election procedure and how it may affect your business:

INCREASED EMPLOYEE ENGAGEMENT AND VISIBILITY OF EMPLOYEE INTERESTS

During the election period, employees and trade unions will be more active in the workplace. You may notice **more discussions among staff**, distribution of campaign materials, and requests for information or access to company facilities. Trade unions may also seek greater visibility and contact with employees. This heightened activity is a normal part of the democratic process and should be supported within the legal framework.

TEMPORARY DISRUPTIONS TO DAILY OPERATIONS

The election process can lead to temporary disruptions, such as:

- employees participating in campaign activities or attending election-related meetings during working hours
- members of the **Election Committee or candidates being released from their regular duties** to fulfil election-related tasks
- use of company resources (meeting rooms, IT systems, notice boards) for election purposes.

While these disruptions are generally manageable, they may affect productivity in the short term. Planning ahead and maintaining open communication with the Election Committee can help minimize operational impact.

LEGAL AND FINANCIAL RESPONSIBILITIES

As the employer, you are legally required to bear all necessary costs of the election and to provide the Election Committee with the resources and information they need. You must also respect the **special protection against dismissal** for those involved in the election. Failure to comply with these obligations can result in legal challenges, financial penalties, or the invalidation of the election.

CHANGES IN CO-DETERMINATION AND MANAGEMENT PROCESSES

The newly elected Works Council will have extensive co-determination rights in many areas, including working conditions, organizational changes, and social matters. This means that certain management decisions will require **consultation or agreement with the Works Council**, potentially leading to more complex and time-consuming processes. The composition and approach of the new Works Council may also influence the tone and effectiveness of future cooperation.

POTENTIAL FOR LEGAL DISPUTES

Works Council elections are subject to strict legal requirements. Common scenarios that may require you to seek legal advice include:

- disputes over the **definition of the “site”** (e.g., whether multiple sites constitute one or several operations for election purposes), which can affect the number and structure of Works Councils and have significant cost implications
- **Challenges to the voter list** or the eligibility of candidates, which can lead to objections or legal proceedings
- Allegations of employer interference or breach of neutrality, such as **accusations of influencing the election** or denying access to unions or the Election Committee
- Missed deadlines or procedural errors by the Election Committee or the employer, which can result in the election being contested or repeated
- Questions regarding the application of gender quotas or the handling of absentee voting.

In any of these situations, **prompt legal advice** is essential to assess risks, ensure compliance, and protect your interests.

IMPACTS ON STRATEGIC PLANNING

In the months following up to the Works Council election considerations on any decisions regarding **strategic changes should be handled carefully**. This applies especially to any considerations on reorganizations, which include terminations.

Any announcement on operational changes can lead to increased participation within the Works Council elections as employees (i) may try to gain a seat at the negotiation table to discuss planned changes and (ii) may try to seek special protection from dismissal by running for Member of the Works Council.

Additionally, it should be noted that **negotiations tend to be more intense** before Works Council elections as Works Council members have re-election on their mind and therefore tend to make higher demands.



ONGOING COOPERATION AND RELATIONSHIP BUILDING

After the election, you will need to establish a constructive working relationship with the new Works Council. Early engagement, **clear communication, and a willingness to cooperate are key** to building trust and ensuring effective collaboration. The Works Council will play a central role in representing employee interests, and a positive relationship can help prevent conflicts and support your business's long-term success.

Step-by-step election procedure

1. ESTABLISHMENT OF THE ELECTION COMMITTEE

The Election Committee is **appointed by the Works Council, a staff meeting or by the labour court**. It is typically composed of an odd number of employees appointed from among the workforce. Any trade union represented at the company may add a non-voting member.

2. COMPILING THE VOTER LIST

The Election Committee compiles the voter list which contains **all employees eligible to vote and to run**. Only those listed may participate in the election. Employees have the right to object to the voter list within two weeks.

3. ISSUING THE ELECTION NOTICE

The election notice marks the official start of the election process. It must contain all essential information, such as the location and time of the election, the number of seats to be filled, the procedures for submitting nominations, relevant deadlines, and any other important details. The notice must be **posted in a prominent and accessible location** in the workplace and remain visible until the end of the voting period.

4. SUBMISSION OF NOMINATIONS

Nominations for candidates can be submitted either by employees or by trade unions. Each nomination list must be supported by **at least 5% of eligible voters**, with a minimum of two or three for small companies and a maximum of fifty signatures. The deadline for submitting nominations is specified in the election notice.

5. EXAMINATION AND APPROVAL OF NOMINATIONS

The Election Committee reviews all submitted nominations to ensure they meet the legal requirements.

6. PREPARATION FOR VOTING

The Election Committee organizes the **logistics for the election**, including preparing ballots, setting up polling stations, and arranging for absentee (postal) voting for employees who cannot be present on election day.

7. CONDUCTING THE ELECTION

Voting is conducted by **secret ballot** and must be direct, meaning each voter casts their own vote without intermediaries. The election is typically held during working hours to maximize participation. The current administration has been discussing allowing an online voting system as well. But so far there are no signs that the respective laws will be amended in time before the next election cycle in 2026. We are monitoring this closely.

9. ANNOUNCING THE RESULTS

The election results are formally announced and communicated to the elected candidates and the employer. Elected candidates have the **right to decline their election** within three days of being notified.

11. CONSTITUTING THE NEW WORKS COUNCIL

Once the results are finalized and any objections have been resolved, the newly elected Works Council holds its first meeting. During this meeting, the **Works Council elects their chairperson** and deputy and begins its official duties.

8. COUNTING THE VOTES

After the polls close, the Election Committee **publicly counts the votes**. The counting process must be transparent and open to observation by interested parties. The results are recorded in an official protocol.

10. HANDLING OBJECTIONS AND CHALLENGES

Any objections against the election process or the results must be submitted **within two weeks of the announcement of the election results**. The Election Committee or, if necessary, the labor court will review and decide on any challenges.

Our legal experts



Markulf Behrendt
Partner, Hamburg

Tel +49 40 82221 2171
markulf.behrendt@aoshearman.com



Peter Wehner
Partner, Frankfurt

Tel +49 69 2648 5988
peter.wehner@aoshearman.com



Dr. Sebastian Schulz
Partner, Frankfurt

Tel +49 69 2648 5915
sebastian.schulz@aoshearman.com



Merle Herrmann
Senior Associate, Hamburg

Tel +49 40 82221 2246
merle.herrmann@aoshearman.com



Dr. Thomas Hohe
Senior Associate, Frankfurt

Tel +49 69 2648 5672
thomas.hohe@aoshearman.com

Global presence

A&O Shearman is an international legal practice with nearly 4,000 lawyers, including some 800 partners, working in 28 countries worldwide. A current list of A&O Shearman offices is available at aoshearman.com/en/global-coverage.

A&O Shearman means Allen Overy Shearman Sterling LLP and/or its affiliated undertakings. Allen Overy Shearman Sterling LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen Overy Shearman Sterling (Holdings) Limited is a limited company registered in England and Wales with registered number 07462870. Allen Overy Shearman Sterling LLP (SRA number 401323) and Allen Overy Shearman Sterling (Holdings) Limited (SRA number 557139) are authorised and regulated by the Solicitors Regulation Authority of England and Wales.

The term partner is used to refer to a member of Allen Overy Shearman Sterling LLP or a director of Allen Overy Shearman Sterling (Holdings) Limited or, in either case, an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen Overy Shearman Sterling LLP's affiliated undertakings. A list of the members of Allen Overy Shearman Sterling LLP and of the non-members who are designated as partners, and a list of the directors of Allen Overy Shearman Sterling (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD.

A&O Shearman was formed on 1 May 2024 by the combination of Shearman & Sterling LLP and Allen & Overy LLP and their respective affiliates (the legacy firms). This content may include material generated and matters undertaken by one or more of the legacy firms rather than A&O Shearman.

© Allen Overy Shearman Sterling LLP 2025. This document is for general information purposes only and is not intended to provide legal or other professional advice.

aoshearman.com