

GUIDE

# How to partner with your Works Council



In the dynamic landscape of human resources, harnessing the transformative potential of artificial intelligence (AI) presents a compelling opportunity for European organizations.

However, navigating this frontier necessitates a collaborative approach that acknowledges the critical role of a company's Works Councils.

That's why we created this guide to work with the Works Councils as strategic partners to ensure smooth and successful adoption of AI in HR practices.

It is essential to recognize that the Works Councils serve not to impede technological progress, but rather to safeguard employee rights and interests during such transitions. The Works Council's focus rests not on the technology itself, but rather on how any new tool impacts the rights and well-being of employees.

By engaging proactively with the Works Councils, providing comprehensive information, and addressing concerns in a collaborative manner, employers can significantly enhance the likelihood of successful implementation, fostering a work environment empowered by this innovative technology.

This guide serves as a comprehensive resource, outlining the process of considering, procuring, implementing, and using an HR technology platform like Eightfold, all while emphasizing collaborative engagement with your Works Council throughout the endeavor. While the focus is on German Works Councils, the framework presented here may hold applicability for similar employee council structures found in countries like Spain.

## The rise of AI in HR

AI has transformed almost all aspects of business, and the talent landscape has not been left behind. It is undergoing a seismic shift with AI rapidly transforming HR processes, offering immense potential for streamlining talent acquisition, optimizing performance management, and enhancing the overall employee experience.

Some key areas where AI is revolutionizing HR processes are:

- **Discovering hidden talent:** AI can analyze vast data to find top talent beyond résumés (based on skills, experience, and cultural fit) and identify underrepresented talent pools for a more inclusive workforce.
- **Optimizing talent experience:** AI can streamline applications, provide timely feedback, and promote objective processes with skills-based approaches.
- **Faster time to hire:** AI can analyze data (résumés, job descriptions) to recommend qualified candidates and shorten time to hire. AI also provides transparent justifications for these recommendations so you can make informed decisions.

- **Better employee engagement:** AI can analyze skills to personalize learning and development for a more engaged workforce. AI can also identify high-potential employees and predict flight risks, allowing for targeted retention strategies.
- **Workforce planning:** It can also forecast future talent needs for proactive recruitment.

## The role of the German Works Councils

Germany has a unique system of employee representation through the Works Councils (Betriebsrat). These elected bodies represent employee interests on a range of issues, including working conditions, personnel planning, and social welfare. They possess significant authority, particularly regarding issues that impact employees, such as data privacy. When it comes to AI implementation in HR, the Works Councils play a crucial role:

- **Function:** The Works Councils act as a bridge between employees and management. They have the right to be informed and consulted on any significant changes impacting the workforce, including the introduction of new technologies. They also serve as a voice for employee concerns regarding potential biases, transparency, and data privacy related to technology implementation.
- **Authority:** The Works Councils have co-determination rights on certain aspects of HR processes, such as training programs and performance evaluation systems. In matters of co-determination the employer may not make decisions without the consent of the Works Council. Instead, the Works Council must authorize any planned measures or the parties must come to an agreement (e.g., a works agreement). They can also negotiate agreements with management regarding the use of AI in HR.

## The importance of a proactive approach

In Germany, the Works Council has significant rights regarding changes in the workplace that affect employees, including the introduction of new technologies like AI. The Works Council has information and consultation rights (Unterrichtungs- und Beratungsrechte) or even co-determination rights (Mitbestimmungsrechte) in certain areas. In particular the latter can influence how, when, and even if an AI system is implemented. Here are some ways the Works Council could influence the process:

1. **Impact on working conditions (Section 90 (1) No. 3 BetrVG):** If the introduction of a new tool affects working conditions, the Works Council has a right to be involved in the decision-making process. This includes changes to job roles, work processes, and the work environment. The employer is required to consult with the Works Council regarding the planned measures and their effect on employees so that the Works Council's suggestions and concerns can be taken on board in the planning process.

- 2. Data privacy and protection (Section 80 (1) BetrVG & GDPR):** The Works Council has a role in ensuring that the implementation of AI and data complies with data protection laws, especially concerning employee data. If the proposed tool poses risks to employee privacy that cannot be adequately mitigated, the Works Council could oppose its implementation until satisfactory protections are in place (further strengthened by the GDPR). While Section 80 (2) BetrVG deals with information and consultation rights, Section 80 (1) establishes the general right for the Works Council to be involved in matters concerning personnel planning and social affairs, which includes data privacy considerations in the context of AI.
- 3. Health and safety (Section 89 BetrVG):** The introduction of AI tools that could potentially impact the health and safety of employees would also require consultation with the Works Council. They would need to ensure that all necessary measures are taken to protect employees (covered under general employee well-being within the BetrVG).
- 4. Training and skills development (Section 98 BetrVG):** If the use of AI requires employees to acquire new skills or undergo training, the Works Council has co-determination rights to ensure that appropriate training programs are provided and that employees are given fair opportunities to adapt to the changes.

Further, it's important to note that Section 95 (2a) of the BetrVG specifically requires Works Council involvement when using AI to draft guidelines for selection procedures (recruitment, transfer, regrading, dismissal).

This underlines the importance of collaboration on AI implementation that might touch upon personnel selection. Additionally, in cases where the employer and the Works Council cannot reach a necessary agreement on issues related to the introduction of AI, the matter may be brought before a conciliation committee (Einigungsstelle), which is body specifically established by the employer and the Works Council but headed by an external, neutral chairperson – often a labor court judge – that makes a binding decision.

This process may require additional time for thorough discussion and consideration. However, by engaging with the Works Council early, transparently, and constructively, such potential challenges can be addressed proactively. Starting these discussions early can lead to a smoother and more successful implementation process.

## **Collaborative framework for procuring, adopting, and implementing AI:**

Building on these principles, a collaborative framework with the Works Council can be established, structured around three key phases:

## 1. Planning and development:

- **Early engagement:** Before initiating development, engage with the Works Council to explain the goals, intended benefits, and potential risks associated with AI in HR. Explain the objectives behind introducing technologies and develop a shared understanding and agreement on the overall objectives. This includes how AI is expected to improve operations, enhance productivity, or provide other benefits.
- **Joint development:** Facilitate workshops or focus groups where the Works Council can participate in discussions about the design, purpose, ethical considerations, testing, and implementation of the new system. Detail the specific areas or processes within the company that will be affected. Discuss how AI implementation will impact the workforce, including changes to job roles, potential job displacements, and new opportunities for upskilling. Outline plans for workforce adjustments, including retraining programs, redeployment options, or, if unavoidable, reduction strategies. Jointly define success metrics to ensure alignment between company goals and employee well-being. Leverage their insights and experience to ensure responsible development from the outset.
- **Data sharing and explainability:** Provide the Works Council with clear information about the data used by the AI system, how it is collected and stored, and how the AI arrives at its decisions. Focus on explainability, allowing the Works Council to understand the AI's reasoning process across the following categories:
  - **Data privacy and security:** Detail how employee data will be used in the context of AI systems, ensuring compliance with data protection laws such as the GDPR. Explain measures in place to protect sensitive data and ensure the security of AI systems against unauthorized access or breaches. For more information on Eightfold's Data Privacy and Security, [read here](#).
  - **Legal and regulatory compliance:** Provide information on compliance with relevant laws and regulations governing the use of AI in the workplace. Discuss any certifications, audits, or assessments that will be conducted to ensure compliance. For more information on Eightfold's Compliance, [read here](#).
  - **Ethical considerations:** Share the ethical guidelines or principles that the company will adhere to in the deployment of AI, including measures to prevent bias and discrimination. Discuss the company's approach to AI transparency and accountability. For more information on Eightfold's framework on responsible AI, [read here](#).

## 2. Implementation:

- **Timeline:** Provide a clear timeline for the AI implementation, including key milestones and phases. Explain the process for piloting AI technologies, if applicable, and how findings from pilot phases will inform broader rollout plans. Consider implementing a staged or pilot

approach, initially targeting a specific subset of the population or various geographical areas. This strategy allows for the demonstration of immediate, measurable results, which can help in building a case for broader implementation based on proven successes.

- **Regular meetings:** As mandated by the Works Council Act, hold at least bi-annual meetings with the Works Council to discuss the AI's implementation, performance and any monitoring results. In the context of specific projects more frequent meetings will usually be warranted and helpful.
- **Training:** Work jointly with the Works Council to develop training programs for employees. These programs should empower employees by increasing their understanding of the AI system, data usage, and their rights.

### 3. Continuous improvement:

- **Collaborative monitoring and joint problem-solving:** Conduct joint assessments with the Works Council, evaluating potential impacts on data privacy, job security, and decision-making processes. Describe the criteria and processes for monitoring the impact of the new tool on the workplace and evaluating its effectiveness. Outline how employees will be involved in the implementation process and share plans for periodic reviews to assess their continued relevance, effectiveness, and impact on employees. Prepare clear and concise reports for the Works Council to effectively discuss monitoring results. If any issues or concerns arise during monitoring, work collaboratively with the Works Council to identify solutions and ensure responsible AI use.
- **Feedback and evaluation:** Conduct regular evaluations of the system's effectiveness and impact on employees, including the Works Council. This can involve:
  - **Performance reviews:** Assess performance against established goals, measuring its effectiveness in tasks such as recruitment screening or performance management.
  - **Employee surveys:** Conduct surveys to understand employee perceptions of the new tool, including its fairness, transparency, and impact on their work experience.
  - **Works council feedback:** Actively solicit feedback from the Works Council on their experience and any concerns they may have.
- **Iterative adjustments:** Based on feedback and evaluation results, work with the Works Council to make continuous improvements. This might involve adjustments to algorithms, data sets, or training protocols, ensuring the system aligns with evolving needs and responsible AI principles.

By adopting the above collaborative approach, employers can engage the Works Council in a constructive dialogue, addressing concerns and leveraging insights to ensure that AI implementation is beneficial and fair for all parties involved. It's important to present information in a clear, accessible manner and to be open to questions and feedback from the Works Council.

## Conclusion: A collaborative path to responsible AI in HR

Partnering with the Works Council is not just a legal requirement but a strategic imperative for successfully implementing AI in HR.

By building a strong partnership based on transparency, trust, and collaboration, organizations can navigate the complexities while ensuring the rights and interests of employees are protected. Seeking external expertise, like consulting with Eightfold, can further enhance this collaboration, ensuring a smooth and responsible AI implementation process.

Through this collaborative approach, organizations can harness the full potential of AI in HR, leading to improved decision-making, enhanced transparency, and ultimately, positive outcomes for both the company and its workforce.

### About Eightfold AI

Eightfold AI's market-leading Talent Intelligence Platform™ helps organizations retain top performers, upskill and reskill their workforce, recruit talent efficiently, and reach diversity goals. Eightfold's patented deep-learning artificial intelligence platform is available in more than 155 countries and 24 languages, enabling cutting-edge enterprises to transform their talent into a competitive advantage. For more information, visit [www.eightfold.ai](http://www.eightfold.ai).