

Acquisition of the works council software “Mandat” under Section 40 (2) BetrVG

Sender (works council): _____

To the management / employer: _____

Date: _____

Dear Sir or Madam,

at its quorate meeting on _____ the works council resolved to acquire the software “Mandat” to support the conduct of its ongoing business. We ask you to bear the resulting costs in accordance with Section 40 (2) BetrVG.

1. Legal basis

Under Section 40 (2) BetrVG the employer must provide the works council with the resources necessary for the conduct of its ongoing business, to the extent required. The works council decides on necessity within its margin of judgement and must set it out in a comprehensible manner. We do so with this letter.

2. Necessity in detail

Mandat is tailored to the specific requirements of works council activity and provides functions that are necessary for legally sound council work:

- Quorum check under Section 33 BetrVG: automatic determination of the quorum, taking into account members present and substitute members stepping in.
- Notice and deadline management: structured preparation of meetings including the agenda and timely convening.
- Prevention of formal errors: a guided meeting flow from agenda through minutes to resolution that avoids typical procedural errors.
- Audit-proof minutes under Section 34 BetrVG: minutes that become immutable once approved, with evidentiary value.
- Data sovereignty and data protection (Section 79a BetrVG): self-hosted provision in your own infrastructure and encryption of sensitive data facilitate compliance with data protection obligations.

3. No functionally equivalent alternative

Under the case law of the Federal Labour Court (decision of 20 April 2016 – 7 ABR 50/14) the employer may point to existing, functionally equivalent resources. No such equivalence exists here: general office and communication software (such as MS Teams or Office) offers neither the quorum check under Section 33, nor the substitute-member logic, nor the calculation of notice periods, nor audit-proof, immutable minutes under

Section 34. It is therefore not a functionally equivalent resource.

4. Modernising council work

The modernising line of case law (Munich Regional Labour Court, decision of 7 December 2023 – 2 TaBV 31/23) recognises the need for digital tools for video and hybrid meetings. Where rules of procedure under Section 30 (2) BetrVG govern the conduct of digital meetings, Mandat directly supports this way of working.

5. Request to cover the costs

We ask you to bear the costs for “Mandat” of _____ (plus VAT) per _____ and to enable the acquisition by _____. We are happy to answer any questions and to clarify the data-protection arrangements (data processing under Section 79a BetrVG).

Yours faithfully

For the works council