

Communication between the board and the works council

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Confidentiality in SE boardrooms

■ German Code of Corporate Governance (3.5)

*„Good corporate governance requires an **open discussion** between the Management Board and Supervisory Board as well as among the members within the Management Board and the Supervisory Board. The comprehensive **observance of confidentiality is of paramount importance for this**. All Board members ensure that the staff members they employ observe the confidentiality obligation accordingly.“*

Confidentiality between board and work council

Board members:

- Art. 49 SE-Regulation (EC 2157/2001)

The members of an SE's organs shall be under a duty, even after they have ceased to hold office, **not to divulge any information which they have concerning the SE the disclosure of which might be prejudicial to the company's interests**, except where such disclosure is required or permitted under national law provisions applicable to public limited-liability companies or is in the public interest.

Confidentiality between board and work council

SE Works Council Members

- Art. 8 sec. 1 SE-Directive (2001/86/EC)

Member States shall provide that members of the special negotiating body or the representative body, and experts who assist them, are **not authorised to reveal any information which has been given to them in confidence.**

The same shall apply to employees` representatives in the context of an information and consultation procedure.

This obligation shall continue to apply, wherever the persons referred to may be, even after the expiry of their terms of office.

Confidentiality of the SE Works Council

- **SE Works Council: Confidentiality (§ 41 SEBG)**
 - **Trade business secret on basis of objective criteria**
 - Not the decision of management
 - Which comes to knowledge **as result to membership** of the SE Works Council
 - And has **explicitly been designated** as confidential by the management

Confidentiality

■ No confidentiality

- Between members of one organ (board or works council)
- From works council member to board member
- If the matter is publicly known

■ Confidentiality

- As a general rule (*only for confidential matters*):
from board member to works council member
- Involvement of external consultants possible, if obliged to confidentiality

Confidentiality – Practical Consequences

- Wide information rights of SE-Works Council:
Communication expected
- Depending on when the SE-Works Council meets the
Problem might dissolve
- The SE Works Council must demand the information
from the management
 - →right questions, especially by members who are
supervisory board members aswell

Confidentiality – Practical Consequences

- Discuss confidentiality among employee representatives within board
- Discussions in works council can effect the agenda of the board and vice versa. (company matters, e.g. relocations, transfers)
- **Balance between communication and confidentiality?**

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Annex to the charts:

- Rights on Information and Competences of the SE-Works Council
- Provision on Confidentiality in the German SE-Law

Confidentiality between board and work council

■ Part 2: Standard rules SE-Directive (2001/86/EC)

b) ... *The meeting shall relate in particular to **the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.***

c) *Where there are **exceptional circumstances affecting the employees` interests** to a considerable extent, particularly in the event of **relocations, transfers, the closure of establishments or undertakings or collective redundancies**, the representative body shall have the right to be informed....*

e) *Without prejudice to Article 8, the members of the representative body **shall inform** the representatives of the employees of the SE and of its subsidiaries and establishments of the content and outcome of the information and consultation procedures.*

Confidentiality between board and work council

■ § 41 Abs. 2-4 SEBG (German SE-Law)

(2) Die Mitglieder und Ersatzmitglieder eines SE-Betriebsrats sind unabhängig von ihrem Aufenthaltsort verpflichtet, Betriebs- oder Geschäftsgeheimnisse, die ihnen wegen ihrer Zugehörigkeit zum SE-Betriebsrat bekannt geworden und von der Leitung der SE ausdrücklich als geheimhaltungsbedürftig bezeichnet worden sind, nicht zu offenbaren und nicht zu verwerfen. Dies gilt auch nach dem Ausscheiden aus dem SE-Betriebsrat.

(3) Die Pflicht zur Vertraulichkeit des SE-Betriebsrats nach Absatz 2 gilt nicht gegenüber den

1. Mitgliedern des SE-Betriebsrats;

2. Arbeitnehmervertretern der SE, ihrer Tochtergesellschaften und Betriebe, wenn diese auf Grund einer Vereinbarung nach § 21 oder nach § 30 über den Inhalt der Unterrichtung und die Ergebnisse der Anhörung zu informieren sind;

3. Arbeitnehmervertretern im Aufsichts- oder Verwaltungsorgan der SE sowie

4. Dolmetschern und Sachverständigen, die zur Unterstützung herangezogen werden.

Confidentiality between board and work council

■ § 41 Abs. 2-4 SEBG (German SE-Law)

(4) Die Pflicht zur Vertraulichkeit nach Absatz 2 gilt entsprechend für

1. die Mitglieder und Ersatzmitglieder des besonderen Verhandlungsgremiums;
2. die Arbeitnehmervertreter der SE, ihrer Tochtergesellschaften und Betriebe;
3. die Arbeitnehmervertreter, die in sonstiger Weise an einem Verfahren zur Unterrichtung und Anhörung teilnehmen;
4. die Sachverständigen und Dolmetscher.