

Confidentiality in SE Boardrooms

a (very) brief presentation
by
Hannes Schneller

hannes.schneller@akwien.at



2 basic Recommendations

- Which information does the enquiring person really need for her/his legal position (→ almost never: exact numbers, datas or calculations...) → **approximate values and tendencies of developments** do it as well!
- **Written documents are poison!**
„Ein Schriftl ist ein Giftl“ – (an Austrian Labour-Court-Judge) → think before putting it down → E-Mails, SMS, Facebook, Interviews/Newspapers...



...as far as necessary for the representation of employees' interests

- Political interests of Trade Unions cannot be solved within the legal framework (?)
- Workforce Rep.s should check thoroughly, **which information ist indispensable** and which is only an „extra“ (don't risk Your communication-partnership for it!)
- History of Austria's WC-Confidentiality-Rule (§ 115 Abs 4 ArbVG):
Would the **disadvantage of the employees** be higher than that of the company, confidentiality can be broken.



Balance of interests as goal of the legislation ?

- There is a large „terra incognita“ of what is permitted and prohibited on data-transfer (to WC, employee-groups, all employees, media, ... → 5 levels of confidentiality)
- Dependence on the topic:
 - M&A, Outsourcing, ...
 - Investment decisions
 - Financing decisions (→ stock market can be a special problem: Insider-Trading)
 - Personell-Decisions
 - Change in company's strategie
 - ...



Agreement with the Management ?

- **Information-Policy** could be topic of periodic talks
Workforce Representatives – Board President –
Managing Directors
- Exceptions from the agreement in case of
„circumstances affecting the employees' interests to
a considerable extent“ (Directive 2001/86/EC,
Standard Rules Part 2 c))
→ Commitment of Management to inform the
workforce by themselves; subsidiarily by the Works
Council



Exceptional Circumstances

- In cases of transfers, closures, mass redundancies
etc the Workforce Representatives will not be
successful by staring at the law like a rabbit caught by
the headlights
- We always have to balance between the worker's
legal possibilities (information and consultation and
certain measures) and the company's reputation /
market-position



The strategic approach: How to deal with data

- SPOT-Analysis as tool?
- Keep close contact to supporters from EWC, Trade Union, legal experts, ...
- It is no shame to refuse information-demands (for some days...)
- Balance between best- and worst-case-scenarios
- Some words about the Austrian „Sozialpartnerschaft“ (1957 ff) – Equality Reports since 2011-03-01