

EWC

- Directive 2009/38/EC has been transposed into legal system of the Republic of Croatia by the EUROPEAN WORKS COUNCILS ACT, passed by the Croatian Parliament on 15 July 2014 and published in the Official Gazette 93/14,127/17

- The Croatian legal system **did not provide** possibility that in specific cases the central management is **not obliged to transmit information** when it would **seriously harm** the functioning of the undertakings concerned or would be prejudicial to them.

- **According to the national law there are legal sanctions envisaged in case of untimely release of the information:**
- An undertaking as a legal person shall receive a misdemeanor fine from HRK 7,000.00 to 15,000.00 in the following cases:
- if it fails to convene the inaugural meeting of the negotiating committee, or if the negotiating committee fails to provide **timely** information relevant to the decision

- if it fails to inform, **at least once in a calendar year**, the European Works Council of the business results and plans of an undertaking or group undertaking operating in the European Union, or fails to submit to the Council a **timely** report with appropriate documentation, or fails to notify the undertaking, establishment or group undertakings of the meeting

- if it fails to inform **in a timely manner** the Select Committee, or the European Works Council if the committee has not been established, of special circumstances that significantly affect the workers' interests, or fails to present proper documentation and consult with it on the matter

- if, **within two years** of the inaugural meeting of the European Works Council, it fails to deliver information on changes in the number of workers in the EU Member States and in the undertakings, establishments or group undertakings

- **According to the national law, there is no legal mechanisms allowing for enforcement of the information from the central board**

While transposing the Directive into national law, lawmaker did not define confidential information

- Neither, the Act on EWC nor the national Labour Act contain the term “confidential information”.
- Both acts contain term “trade secret” in sense of secrecy instead
- The Croatian legal system uses the term “**confidentiality**” in The Implementation Act of the General Data Protection Regulation in a way that confidentiality **means protection of personal data.**
- According to the GDPR and Croatian Implementation Act of the General Data Protection Regulation **personal data are confidential** information.

- In the legislation of the Republic of Croatia, the **trade secret** is defined in two Acts:
- The Privacy Protection Act (in force since 1996) defines trade secret as follows:
- Trade secret is **information** that is defined as a trade secret by law, other regulation or general act of a company which is a production secret, the results of research or construction work, and other data for which *communication to the unauthorized person could have adverse consequences for her economic interests.*

- It is **not** considered **revealing the trade secret to disclose information** that is considered a trade secret if it is communicated to the natural or legal persons with which such information may or must be communicated:
 - 1) **Based on laws and other regulations,**
 - 2) **based on the authority** deriving from the ***duty*** they are performing, the ***position*** they are occupied or the place of employment.

- Revealing the trade secret shall **not be considered to be a disclosure** to a person who is aware of the secret data in the commission of a criminal offense, a commercial offense or a misdemeanor to the competent authority and to communicate to the supervisory body **for the purpose of exercising his employment rights**

The Act on the Protection of Undisclosed information with Market Value came in force in 2018:

»trade secret« means information which meets the following requirements:

- a) **it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;**
- b) **it has market (commercial) value because it is secret;**
- c) **it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.**

- information that are considered trade secret by The Act on the Protection of Undisclosed information with Market Value are mainly :
 - *know-how* and *experience*
 - *business* information
 - *technological* information.

- **Information has market (commercial) value** where its unlawful use or disclosure is likely to **harm the interests** of the person lawfully controlling it, in the way that it **undermines** that person's *scientific* and *technical* **potential, *business* or *financial* interests, *strategic* positions or *ability to compete*.**

- **The acquisition of a trade secret shall be considered lawful** when the trade secret is obtained to **exercise of the right of workers or workers' representatives** to *information, consultation and participation* in accordance with specific regulations or the European Union law

- Croatian European Works Council Act **did not** create any **possibility** for the EWC to **force** the undertaking to **provide EWC with *business or financial* information** important for workers participation in the decision making process.
- Croatian European Works Council Act provides penalties in **inappropriate small amounts**. The highest penalty for the undertaking as a legal person is 15 000 HRK (**2 000 euros**) and for the responsible person in the undertaking is 2 000 HRK (which is **less than 300 euros**).

- Such low penalties **can not achieve the purpose of punishment** and **will not make the undertaking to comply with its legal obligations** arising from the EWC Act.
- It is interesting that at the same time penalties for identical offenses at national level are prescribed in the amount of 31 000 up to 60 000 HRK (4 000 up to 7400 euros)

- there are no EWCs in the Republic of Croatia
- There are members of EWC of Deutsche Telekom(Deutschland) A1 (Austria) Mol Group (Hungary) Raiffeisen Bank (Austria) und Unikredit Bank (Italia)
- The transmission of information is carried out in different ways, but mostly **during the meeting orally with projection on the wall** from the projector

- **additional data is usually not comprehensible**
- Employers consider **most of the financial information** to be **confidential**
- passing of confidential information is subject to restrictions
- Usually are mentioned national and international regulation mainly **regulation regarding stock market** than **confidentiality, trade secret** and **GDPR**

- The EWC members couldn't recall any case that MB changed the decision because of EWC proposal
- Often the most important financial information is given only after its publication on the stock exchange.
- Such information is not timely relevant and it's not useful for EWC

- EWC members think that if the establishment of EWC would be mandatory it would strengthen its position
- prerogatives of EWCs should be updated but not at expense of TU
- EWC should not take over the negotiating role from TU
- In the process of collective negotiations TU can strike in order to increase the workers' rights
- EWC does not have such powerful tool as a strike

- The EWC members think that a white list could be published as well, but the black list would be much more effective because no employer would like a bad publicity