Confidentiality of information and worker participation

Comparative and selected country handbook

Jane Parker
Contributing editor

etui.

Confidentiality of information and worker participation

Comparative and selected country handbook

Jane Parker
Contributing editor

european trade union institute

Attribution and disclaimer

This handbook aims to provide readers with an introductory reference to key regulations and concepts concerning workplace representation bodies and the regulation of confidential information in the workplace in various EU Member States and the United Kingdom. Each country chapter presents an overview of the industrial relations setting written by the contributing editor. The remainder is based on 2020 reports by national experts and more recent sources.

No responsibility or liability is assumed for any errors or omissions in its content by the contributors, including in relation to machine or human translation of regulations noted in this inaugural resource

Brussels, 2024

Print: ETUI Printshop, Brussels

D/2024/10.574/22
ISBN: 978-2-87452-721-0 (print version)
ISBN: 978-2-87452-720-3 (electronic version)

The ETUI is co-funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the ETUI. Neither the European Union nor the ETUI can be held responsible for them.

Contents

Part 1
Introduction

Confidentiality is a cornerstone workplace issue, involving the protection of sensitive company and employee matters, and of individual workers' and collective rights to information and consultation (I&C), board-level representation, health and safety (H&S) representation, and privacy. For many worker representatives, however, it is not always clear what and when information will be shared with them, nor the extent to which they will be consulted on key workplace issues. For example, in the restructuring of transnational companies, European Works Council (EWC) involvement in related processes has long been shown to be limited (De Spiegelaere 2016), and EWCs are often informed only after strategic decisions have been taken. In part, this may reflect limited dialogue in the contexts in which national I&C structures are comparatively weaker (Eurofound 2022).

Thus, the exercise of confidentiality represents a prominent challenge to worker representatives' capacity to fulfil their role in full. Representatives need to know – and to be able to query – what specific information is confidential, the duration of the confidentiality period, and for whom it is confidential and why, in order to prevent management from simply stipulating that all or a vague body of information is not for disclosure. The significance of this is underscored by explosive growth in companies' intangible assets, digitalisation and flexible ways of working. Furthermore, Franca (2020) points out that management's fear of information reaching the media can have a significant impact on the labelling of documents as confidential.

The confidentiality of workplace information also spans various areas of law, including company, data protection, and labour law. Worker representatives thus function in a context of legal uncertainty and may face personal liability for breaches of confidentiality in their workplace. We can distinguish between management's right not to disclose (in other words, to withhold) information to protect sensitive (corporate) data, and its right to impose a duty of confidentiality in relation to shared information. Although this distinction 'often causes confusion because the legislation itself is ambiguous' (Jagodziński and Stoop 2021: 6), both sets of rights impact on (usually by limiting) collective rights to I&C. Arguments supporting employers' non-disclosure of information are also underpinned by ownership and property rights, as well as by enterprise regulations. Furthermore, the rules around confidentiality are frequently complex yet not sufficient for creating a transparent and coherent framework for the adequate, timely flow of information between management, worker representatives and workers. Indeed, confidentiality arrangements help to underscore and often limit the imbalance in power relations between labour and capital in the workplace context.

Effective I&C is thus central to effective worker representation, through which influence can be exercised over company decision-making and strategy. While national regulation helps to frame what management must share with worker representatives, this is often partial. This handbook provides workers and their workplace representatives with a guide to key regulations concerning confidentiality obligations and employers' confidentiality rights within certain national industrial relations systems and regulatory parameters.

The handbook opens with a short comparison of the legal regimes governing confidentiality of information in seven EU Member States and the United Kingdom (no longer an EU Member State but relevant here because of its transposition of European I&C legislation), with their diverse national labour and industrial relations systems. The body of this resource, Part 3, focuses on seven Member States (Belgium, Finland, Hungary, Italy, Poland, Slovenia and Sweden) and the United Kingdom to assess how, under what circumstances, and with whom workplace representative bodies – including **EWCs, board-level employee representation (BLER), employee H&S bodies**, such as committees for prevention and protection at work (CPPWs) or H&S committees, **trade union delegations**, and others – must receive confidential information and challenge employers who resort to confidentiality excessively, effectively 'straitjacketing' worker representatives in their functions. A qualitatively different but related focus concerns the regulatory provisions for whistleblowing, which involves an individual (who may be a worker representative) confidentially providing information about a designated person or organisation's wrongdoing, their identity being kept confidential to protect the whistleblower from retaliation.

In particular, each country is examined on areas addressed in a question template to which national experts responded (or indicated that no material was available):

- regulatory context and I&C mechanisms (forms of worker representation);
- national law and regulatory provisions concerning confidentiality and worker representation;
- national provisions concerning whistleblowing and whistleblower protection;
- implications of whistleblower protections for worker representatives handling confidential information;
- confidential information versus trade secrets;
- worker representation bodies and representatives' I&C rights and duties;
- challenging company decisions and accessing justice;
- scope of confidentiality rules, and worker representatives' contacts with other representatives and stakeholders;
- worker representatives' duties in relation to maintaining confidentiality;
- sanctions for breaching confidentiality of I&C and remedies for workers and worker representatives;
- limitations on companies' application of confidentiality rules to I&C and to codetermination (by workers), and criteria for their application;
- sanctions on companies or company representatives for abusing confidentiality rules;

- illustrative case law;
- relevant EU legislation; and
- references.

The countries covered in this handbook are those for which the ETUI received in-depth reports from national experts in 2020 (see Acknowledgements). Where relevant, the report information has been updated until early 2024. In due course, this inaugural handbook may be extended in a follow-up publication that will describe and more critically examine a wider array of EU Member States with regard to confidentiality at work.

Part 2
Comparative overview

1. National approaches to confidentiality

Confidentiality provisions are of crucial importance for worker representatives dealing with I&C, BLER, and H&S enforcement. Not least, this is because management may use confidentiality clauses to limit the dissemination of information. This has sometimes occurred in ways not always justified by 'objective criteria' as likely to harm their organisation, and does not facilitate the execution and efficiency of workers' and their representatives' right to I&C. Indeed, the longevity of this challenge is emphasised by the European Trade Union Confederation's (ETUC) (2016) proposal for a horizontal framework directive on information, consultation and participation, which suggested that too many topics are marked 'confidential' by management, leading to poor or a lack of information for works councils. Others have also pointed to excessive use of confidentiality of information constraining the quality of work on these topics as worker representatives lack essential information with which to participate meaningfully (for example, Munkholm 2018). EWC competence[1] is also impacted by managerial refusals to discuss a matter because of an alleged lack of transnationality or to consult more generally on these grounds (Jagodziński and Stoop 2023).

Various EU-level sources deal with confidentiality and workers' I&C rights. Within the context of Article (Art.) 27 of the Charter of Fundamental Rights of the European Union (CFREU), the main EU regulations comprising rules on or related to confidentiality include the:

- Framework Directive on information and consultation 2002/14/EC (ICD) establishing a general framework for informing and consulting employees;
- EWC Recast Directive 2009/38/EC; and
- Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees (SE Directive).

Other significant EU rules include the Market Abuse Regulation 2014/596; the Whistleblowing Directive 2019/1937/EC; the Directive on Transparent and Predictable Working Conditions 2019/1152; the General Data Protection Regulation 2016/679/EC (GDPR); and the Trade Secrets Directive 2016/943, which explicitly curb disclosure of certain 'types' of information in certain

1. Despite the EWC Recast Directive's guidelines, some countries do not provide a clear delimitation of EWC competences on transnational matters (Laulom and Dorssemont 2015).

situations related to I&C processes, as well as the Directive on the Transfer of Undertakings 2001/23/EC; the Directive on Collective Redundancies 98/59/EC; and the Directive on Corporate Sustainability Reporting 2022/2464.[2]

The Framework Directive on information and consultation, the EWC Recast Directive and the SE Directive adopt a similar, though not identical, approach and emphasise information as either secret or confidential such that it is not provided to **worker representatives** or is shared with **representatives** but labelled 'confidential', limiting its further dissemination and with implications for its being challenged in law and/or practice (Rasnača and Jagodziński forthcoming). As Rasnača and Jagodziński (forthcoming: 3) note, however,

> 'these multiple bits and pieces of EU law do not currently form a coherent system that fully addresses either the matter of workers' information and consultation rights as such, or the issue of confidentiality in particular. Instead, they remain partial in their scope, and, at times, vague or ambivalent in their substance.'

National rules, some of which have their source in EU law, are the focus of this resource book. In 2020, the ETUI commissioned national experts from various EU Member States (including Belgium, Finland, Hungary, Italy, Poland, Slovenia and Sweden) and the United Kingdom to respond to a question template to help identify the national context, regulation and character of confidentiality of information as they affect worker representatives in relation to worker I&C and participation. Their national approaches to confidentiality were shown to comprise both common and differing elements and interpretations, with commonalities reflecting in part the prevalence of almost verbatim transpositions of EU-based rules (particularly the ICD and the EWC Recast Directive) into national systems of confidentiality provisions related to workers' I&C rights. However, the 'looseness' of confidentiality used in these provisions has meant that national rules are not always clear, easily applied or able to provide legal certainty. As Rasnača and Jagodziński (forthcoming) observe, Member States have generally not used the scope available to them to operate more effectively within their national system.

Our analysis of expert commentary on eight countries along various dimensions of national regulatory frameworks concerning confidentiality on I&C for worker participation thus found that most have adopted a statutory approach to the main body of rules governing confidentiality, although actors have some discretion to complement statutory regulations with company-level rules (see also Rasnača and Jagodziński forthcoming). Furthermore, in the context of a 'loose' definition of confidential information in the directives, which leaves confidentiality to be regulated in private relationships, national approaches range from an employer/management-led approach to determining which information should be kept confidential (for example, in Hungary, Poland, Slovenia and the United Kingdom) to bargaining-based approaches (for example, in Sweden and Finland). Although not examined in depth here, it is interesting to note the broad economic context

2. See Hoffmann et al.'s (2017) palette of EU worker participation regulations.

of these approaches. For instance, apart from the United Kingdom, all of the examined countries with 'employer-led' arrangements are in central and eastern Europe, which have liberal market economies (LMEs) or emerging market economies (EMEs) (see Table 1).

Table 1 **National confidentiality frameworks for seven EU Member States and the United Kingdom**

Country	Country clusters by economy type[a]	Employer-dominated confidentiality definition	Cooperative/bargained confidentiality definition	Statutory definition of confidentiality	Agreement-based definition
Belgium	CME			X[d]	
Finland	Nordic[b]/CME[c]		X	X[d]	X
Hungary	EME[b]/LME[c]	X		X	
Italy	MME		X	X	X
Poland	EME[b]/LME[c]	X		X	
Slovenia	EME[b]/CME[c]	X		X	
Sweden	Nordic[b]/CME[c]		X		X
United Kingdom	LME	X		X	

[a] Liberal market economies (LMEs) reflect a relatively decentralised system of industrial relations, with collective bargaining occurring at enterprise or workplace level, while emerging market economies (EMEs) are still in the process of developing. Coordinated market economies (CMEs) rely on non-market forms of interaction between economic actors and stronger institutions in their industrial relations' models. Mixed market economies (MMEs) involve strong state intervention combined with market dynamics.[3] Unless specified, these categories are employed by [b] De Spiegelaere et al. (2022) and [c] Pulignano and Turk (2016).
[d] These countries have confidentiality rules specific to EWCs.

Source: Lafuente et al. (2024: 147).

Furthermore, our analysis confirmed that most countries do not have any, or have a fairly vague, statutory definition of what constitutes confidential information, although several countries' definitions (particularly Germany's) have developed, mostly in practice. Elsewhere, its definition has been structured and specified by other legal notions (for example, around trade, business or manufacturing secrets).

In their analysis of 10 countries,[4] Rasnača and Jagodziński (forthcoming) reveal that, in most cases, there are also special rules expanding general confidentiality regimes that relate to certain areas (for example, company or competition law in the case of mergers); groups of workers; or types and levels of worker representation (for example, EWCs, H&S representatives). Moreover, some countries (for example, Germany regarding privacy; the United Kingdom and France on whistleblowing rules) have created hierarchies in which one set of rules

3. CMEs range from the social partnership approaches of central western European countries, such as Belgium, Germany and the Netherlands, to the organised corporatism typical of Nordic countries. Southern European countries generally fit within a mixed model (see also Pulignano and Turk 2016; De Spiegelaere et al. 2022).
4. Belgium, France, Italy, Germany, Hungary, the Netherlands, Poland, Slovenia, Sweden and the United Kingdom.

(usually those concerning individual rights or stock market regulations) prevails over another (typically collective rights, including workers' I&C) in relation to confidentiality. Elsewhere, stricter confidentiality rules typically exist in the public sector, or relate to specific areas of law or actors. They add that some 'special regimes' also seem to be triggered by certain EU-level rules (such as the EWC Recast Directive 2009/38/EC or the Market Abuse Regulation 2014/596).

Other dimensions of national confidentiality regimes can be compared. Our study of eight countries found that they generally have sanctions for confidentiality breaches by **worker representative bodies** or individuals, though these vary in their emphasis on disciplinary, civil law, financial, penal and internal disciplinary measures. Another analysis of national confidentiality regimes by Laulom and Dorssemont (2015) noted that 10 EU Member States are limited in the degree to which confidentiality applies to worker representatives in their processing of I&C. Hungary's laws transposing the EWC Directive 94/95/EC and EWC Recast 2009/38/EC, for instance, indicate that confidentiality does not apply to EWC members' contacts with other worker representatives, other EWC members, experts and/or translators; and supervisory board members: 'thus there is no risk of confidential information being released to third parties' (Laulom and Dorssemont 2015: 47). In Hungary and the nine other countries, however, application of the confidentiality clause does not obstruct or make processing of information and preparation of opinions and consultation impossible, while

> '(i)n the remaining countries, any use of information deemed confidential, even in contacts with fellow workers' representatives or EWC members, may represent enough ground for companies to charge workers' representatives with violations of secrecy of information.' (Laulom and Dorssemont 2015: 46)

Furthermore, in the EU, court rulings exist on managerial abuse of confidentiality, including in relation to restructuring and redundancies (ETUI EWC jurisprudence database 2024; Lafuente et al. 2024). For EWCs, for example, sanctions included in Recital 36 of the EWC Recast Directive's Preamble (rather than in its operative parts) have proven insufficient to ensure managerial compliance, while no court cases are known to have been brought specifically against an **EWC representative** (ETUI EWC jurisprudence database (2024); De Spiegelaere et al. 2022). Indeed, in a recent ETUI study, nearly four in 10 EWC members reported that management often refuses to provide information on the grounds that it has to be kept confidential (De Spiegelaere and Jagodziński 2019), while around one-third said that management does not impose confidentiality often. Moreover, while many Member States regulate breaches of **worker representatives**' duty to maintain confidentiality of information, little mention is made of corporate responsibility for abuses, reflecting 'a stark imbalance in how national authorities value company interests over against those of workers and how they differ in their approach to corporate violations of law and those of workers' representatives' (Laulom and Dorssemont 2015: 47).

Rasnača and Jagodziński (forthcoming) also note that it is difficult for confidentiality rules to function well, particularly in systems where it is 'seen as a foreign concept with no roots in the national system', as in Belgium, Slovenia,

Poland and the United Kingdom. Indeed, they suggest that none of the countries in their sample

> 'has a comprehensive approach (vertical and horizontal) to confidentiality (the closest is probably Germany, but there is still significant fragmentation even there). Hence, confidentiality rules can be different for certain areas of law or for certain actors or specific sectors … This creates further fragmentation and might result in additional uncertainty for any actors trying to navigate this system from the workers' perspective.' (Rasnača and Jagodziński forthcoming: 21)

The circle(s) of worker representative bodies and persons who are privy to, can pass on and/or receive confidential information or trade secrets also varies from country to country. How they safeguard and categorise the level of sensitivity of information can also differ, with implications for how worker representatives can deal with those issues. The situation is further complicated by the degree of presence, constitution, articulation (coordination) between, and the impact of particular workplace representation forms (for example, under Slovenia's Companies Act, no distinction is made between the role and duties of BLER and those of shareholder representatives on the supervisory board, and both have the same rights in terms of access to information).

However, the overall 'quantum' of transposition of EU directives of relevance for confidentiality has recently increased somewhat across EU Member States, as indicated by the widespread adoption of the Whistleblowing Directive 2019/1937/EC which protects individuals who confidentially report wrongdoing, in contrast with confidentiality obligations on worker representatives specifically. Despite some national differences, this aims to lower the barriers for a wide range of people who wish to bring an end to malpractice; to protect those who have acquired information on breaches in a work-related context; and to resolve problems and disputes with which **worker representatives** seek to engage in timely and meaningful consultation.

These illustrative themes stress that national confidentiality rules share elements of convergence, including a widespread emphasis of a statutory approach. However, many of their features vary, including their history, regulation and scope; the extent to which confidentiality is defined and its nature; what and who are categorised into a 'special regime'; the types of sanctions that are applied; and how well confidentiality notions and practices are embedded within and influenced by national political economy, industrial relations and cultural settings.

Crucially, this can lead **worker representatives** to act without full (legal) certainty, particularly in contexts where there are overlapping laws and practices that impose specific and independent (sometimes even contradictory) obligations on them. This variety also has clear implications for their capacity in different settings to effectively learn about, coordinate over, challenge, and represent workers on matters of confidential information, underscoring the need for more coherent and dynamic EU law on its regulation, and for countries to ensure

comprehensive transposition and adherence to universal principles that reflect local conditions.

2. Forms of worker representation

As illustrated by national transpositions of directives, countries vary in terms of the extent to which their **worker representation bodies** are privy to confidential information and/or can legitimately share it among their members and with other worker representation bodies and individuals or third parties.

For context, Table 2 overviews the prevalence of forms of worker representation in the seven EU Member States and the United Kingdom whose confidentiality regimes are examined in Part 3 of this handbook.

Table 2 **Prevalence of worker representation bodies in seven EU Member States and the United Kingdom**

Country	Works councils	EWCs, SEWCs and SCEWCs	BLER	H&S	Union represent-ation
Belgium	■	■	□	■	■
Finland	□	■	■	■	■
Hungary	■	■	■	■	■
Italy	■	■	□	■	■
Poland	■	■	■	■	■
Slovenia	■	■	■	■	■
Sweden	□	■	■	■	■
United Kingdom	■	■	□	■	■

Scale: ■ Prevalent ■ Less frequent □ No presence

Sources: national reports.

Each of the countries examined in Part 3 has some level of **trade union** representation in the workplace. Most have **works council** representation, although they are rare in Poland, and in the United Kingdom, while some exist, they have no specific statutory basis or powers. Neither Finland nor Sweden have works councils in their national structures. **BLER** is similarly variable. In Finland, Hungary, Slovenia and Sweden, BLER extends to private companies, although some differ in their arrangements or employment thresholds for state-owned enterprises; the proportion of board seats taken up by employee representatives; and whether the representatives take their seats on a supervisory board or a single-tier board, the latter being the case in Sweden, for example. In Poland, BLER exists only in state-owned and partially privatised companies, and in Belgium, Italy and the United Kingdom, it is found only in a handful of companies on a voluntary basis.

Overall, then, each country has multiple forms of **worker representation**, and although it varies in extent, **trade union** presence is generally key, suggesting

unions' potential for helping to fully articulate confidential and other matters for workers. Indeed, union organisations must continue to improve their performance and develop their own policies to Europeanise and strengthen worker participation at all levels. This includes union and wider training that recognises cultural, gender and other diversity among representatives of workplace representation bodies, workers and management; cultivation of representatives' knowledge of regulations and agreements and their assessment and negotiation skills; and development of an internal 'protocol' as a precursor to contesting undue withholding or confidentialisation of information (Parker and Jagodziński 2023).

Moreover, recent ETUI research points to the need for a general policy shift such that corporate planning and shareholder interests are not prioritised over a worker participation agenda. Trustful employment relations must be supported, as they underpin the scope and weight of confidentiality provisions and worker agency (Lafuente et al. 2024). When such relations are absent, management's level of engagement in I&C can circumscribe **worker representatives'** involvement in decision-making. Indeed, 'involving, trusting and influential' types of establishments score markedly better than moderate- or low-trust enterprises on establishment performance and workplace well-being (Eurofound and Cedefop 2020). Moreover, worker representation institutions at the company level, be they **EWCs, BLER** or otherwise (for example, **H&S representation**), should be regarded as 'insiders' that enhance corporate strategising (Jagodziński and Stoop 2021; Parker and Jagodziński 2023) rather than as 'contested' institutions that are not privy to sensitive corporate information, although it would facilitate their effective operation.

In terms of regulatory frameworks, change is in the wind with the current discussions in the European Parliament and the European Council about a revision of the EWC Recast Directive 2009/38/EC. For instance, MEP Dennis Radtke's recent report proposed the strengthening of **EWCs** to reinforce employee voice (Radtke 2022). While EWC agency is emphasised, key challenges stemming from a lack of relevant involvement from management who cite business secrets are acknowledged. The report includes proposals such as the use of a standardised definition of what qualifies as a business secret; assured **EWC** access to justice; companies paying for legal costs of court proceedings between the EWC and management (as in Germany); and increased fines for not respecting EWC rights. Particularly amid green, digital and other transitions involving rapid changes and decision-making, **EWCs** and wider workplace participation add value, rather than inhibit, company development. Proposed changes to the EWC Recast Directive also include a focus on adequate deterrent sanctions and infringement procedures in cases of wrongful transposition, and a potential deepening of links between EWCs and other worker representation bodies. Other critical developments include an evaluation of EU Directive 2019/2121 as regards cross-border conversions, mergers and divisions (due in early 2027), during which the European Commission will need to assess the effectiveness of safeguards for worker participation rights in the context of cross-border operations and the pertinence of a horizontal framework on I&C and participation in Union law, as demanded by the ETUC (for example, ETUC 2016).

References

De Matteis A., Accardo P. and Mammone G. (2011) National labour law profile: Italy, ILO. https://www.ilo.org/resource/national-labour-law-profile-italy

De Spiegelaere S. (2016) Too little, too late? Evaluating the European Works Council Recast Directive, Report 138, ETUI. https://www.etui.org/publications/reports/too-little-too-late-evaluating-the-european-works-councils-recast-directive#:~:text=The%20results%20show%20that%20the,insufficient%20instruments%20to%20do%20so

De Spiegelaere S. and Jagodziński J. (2019) Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives, ETUI. https://www.etui.org/publications/guides/can-anybody-hear-us

De Spiegelaere S., Jagodziński R. and Waddington J. (2022) European Works Councils: contested and still in the making, ETUI. https://www.etui.org/publications/european-works-councils-contested-and-still-making

ETUC (2016) ETUC position paper - Orientation for a new EU framework on information, consultation and board-level representation rights, 13.04.2016. https://www.etuc.org/en/document/etuc-position-paper-orientation-new-eu-framework-information-consultation-and-board-level

Eurofound (2022) Industrial relations and social dialogue – Challenges and solutions: case studies on European Works Councils. https://www.eurofound.europa.eu/en/publications/2022/challenges-and-solutions-case-studies-european-works-councils

Eurofound and Cedefop (2020) European Company Survey 2019 – Workplace practices unlocking employee potential. https://www.eurofound.europa.eu/en/publications/2020/european-company-survey-2019-workplace-practices-unlocking-employee-potential

Franca V. (2020) Mapping confidentiality in national law concerning workers' representation, Report commissioned by the ETUI.

Hoffmann A. et al. (2017) One step forward, two steps back? Taking stock of social dialogue and workers' participation, in Jepsen M. (ed.) Benchmarking Working Europe 2017, ETUI and ETUC, 49–65. https://www.etui.org/publications/books/benchmarking-working-europe-2017

Jagodziński R. and Stoop S. (2021) How to deal with confidential information, Manual for European Workers' Representatives 04, ETUI. https://www.etui.org/publications/how-deal-confidential-information

Jagodziński R. and Stoop S. (2023) Access to justice for European Works Councils: a hands-on overview for practitioners, ETUC. https://www.etuc.org/en/access-justice-european-works-councils

Lafuente S., Parker J. and Vitols S. (2024) The state of democracy at work in the EU: institutions at the company level, in Theodoropoulou S. and Piasna A. (eds.) Benchmarking Working Europe 2024: the ongoing quest for Social Europe, ETUI and ETUC, 141–159. https://www.etui.org/publications/benchmarking-working-europe-2024

Laulom S. and Dorssemont F. (2015) Fundamental principles of EWC Directive 2009/38/EC, in Jagodziński R. (ed.) Variations on a theme? The Implementation of the EWC Recast Directive, ETUI, 33–68. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

Munkholm N. (2018) Board-level employee representation in Europe: an overview, European Commission. https://eu.eventscloud.com/file_uploads/e0bd9a01e363e66c18f92cf50aa88485_Munkholm_Final_EN.pdf

Parker J. and Jagodziński R. (2023) European Works Councils and confidentiality rules, Powerpoint presentation at the ETUC annual European Works Council conference, Madrid, 4–6 October. https://worker-participation.eu/other-resources-2

Pulignano V. and Turk F. (2016) European Works Councils on the move: management perspectives on the development of a transnational institution for social dialogue, KU Leuven. https://soc.kuleuven.be/ceso/wo/erlm/files/permewc-final-report-eng

Radtke D. (2022) Draft report with recommendations to the Commission on Revision of EWC Directive (2019/2183(INL)), 12.05.2022, European Parliament. https://www.europarl.europa.eu/doceo/document/EMPL-PR-730043_EN.pdf

Rasnača Z. and Jagodziński R. (forthcoming) Confidentiality and workers' information and consultation rights: a jigsaw puzzle.

Part 3
Country overviews

In this part of the handbook, we overview key contextual and regulatory features concerning confidentiality arrangements in the workplace for seven EU Member States (Belgium, Finland, Hungary, Italy, Poland, Slovenia and Sweden) and the United Kingdom. Experts from each of these countries provided a national report that underpins the main part of the relevant country chapter, supplemented by more recent practitioner and academic material. As indicated in Part 2, each country's industrial relations system comprises an array of worker representation bodies (see Table 2 in Part 2). In the aggregate, the countries encompass various economic regimes, with employer-led confidentiality definitions predominating in liberal market economies (LMEs), bargained and agreement-based definitions in Nordic coordinated market economies (CMEs), and statutory definitions found in most national settings (see Table 1 in Part 2). In the ensuing chapters, the main statutes and regulations, as well as forms of workplace representation, are presented in bold for ease of reference.

Belgium

Based on a national report by Frank Hendrickx

1. Regulatory context and information and consultation mechanisms

Employment law in Belgium is largely uncodified (that is, not written down in legislative statutes or codes), with the exception of the H&S and Social Penal Codes. It is mainly laid down in separate federal acts and executive royal decrees, the most important of which is the **Act of 3 July 1978**[5] (on Employment Contracts) (Van Olmen and Wynant 2020) and to which a number of Acts have been added. Like France, Germany and the Netherlands, Belgium has a 'dual channel' approach to industrial relations, distinguishing between employee representation by **trade unions** in collective bargaining, and specially-constituted **worker representative bodies** to perform I&C functions at the workplace.

Furthermore, Belgium's private and public sectors are regulated differently, including in relation to the I&C of workers and a predominantly statutory approach to confidentiality. In the public sector, relations between the state and trade unions are governed mainly by the **Act of 19 December 1974**[6] (Organising Collective Relations between Public Authorities and Trade Unions). While this law establishes a representative committee structure like that in the private sector, their social dialogue and collective bargaining procedures can diverge considerably.

Belgium's system of workplace representation comprises three main bodies: **works councils**[7] (comprising employer and employee representatives); **committees for prevention and protection at work (CPPWs,**[8] comprising the head of the company and employee representatives), with wide coverage of well-being matters at work, health, occupational safety and hygiene, ergonomics, the environment and psychosocial stress, and the equivalent of H&S committees; and **trade union representation** (Olijslagers and De Spiegelaere 2019). **Works councils** at the level of the undertaking exercise rights of participation in its social, economic and financial policymaking. In principle, they are set up in workplaces with at least 100 employees. In Belgium, works councils are numerous and a range of laws, royal decrees and collective agreements confer social, economic and financial powers on

5. Loi relative aux contrats de travail du 3 juillet 1978.
6. Loi du 19 décembre 1974 organisant les relations entre les autorités publiques et les syndicats des agents relevant de ces autorités.
7. Comité d'entreprise or OR (Flemish).
8. Comités pour la prévention et la protection au travail.

them (for example, the **Act of 8 April 1965**[9] permits a works council to draw up and amend employment regulations).

The primary role of company-level **CPPWs** is to identify, propose and contribute to all measures taken to promote employee well-being during the performance of their work, and this includes the right to information. They are regulated by the **Act of 4 August 1996**[10] (on the well-being of employees in the performance of their work) and the principles governing their establishment and composition are similar to those for works councils in Belgium. Committees are elected and set up at the same social elections as those for the works councils, but in companies with at least 50 workers.

A third key company-level body is the **trade union delegation**, reflecting comparatively high union membership in Belgium, where nearly 50% of the country's workers are unionised. The threshold for delegations varies by sector, depending on the applicable agreement. A trade union delegation is not regulated by law but framed by **Collective Agreement No. 5 of 24 May 1971**[11] which lays down general principles relating to its status, and these are elaborated on by collective agreements concluded within joint committees. In principle, the trade union delegation represents the staff members of a trade union in dealings with the employer. However, collective agreements concluded within joint committees may provide for representation to be extended to non-organised workers.

Belgium is one of the EU Member States (along with Italy, also examined in this handbook) in which **board-level employee representation (BLER)** exists only in rare company cases (De Spiegelaere forthcoming).

Despite the country's small size, a good number of **EWCs** can be found. EWCs here have limited legal personality – only individual members and **trade unions** rather than an EWC collectively can bring a case to court (Jagodziński and Stoop 2023), although an array of national measures, including social partner (collective) agreements (Jagodziński and Lorber 2015) have implemented the EWC Recast Directive 2009/38/EC, including **Collective Agreement No. 101 (21 December 2010)**[12] and a review of **Collective Agreement No. 62 (6 February 1996)**,[13] made generally applicable by **Royal Decree (March 2011)**;[14] **transnational Collective Agreement 62 quinquies**;[15] and the **Law amending the law of 23 April 1998**.[16]

In relation to confidentiality and I&C, European companies (SEs) and European Cooperative Societies (SCEs) in Belgium are governed by both statutes (transposed from Directive 2001/86/EC supplementing the Statute for a SE with

---

9. Loi du 8 avril 1965.
10. Loi du 4 août 1996.
11. Convention collective de travail n° 5 du 24 mai 1971.
12. Convention Collective de Travail n° 101 du 21 décembre 2010.
13. Convention Collective de Travail n° 62 du 6 février 1996.
14. Arrêté royal du mars 2011.
15. Convention Collective transnationale n° 62 quinquies.
16. Loi modifiant la loi du 23 avril 1998.

regard to the involvement of employees (SE Directive) and Directive 2003/72/EC supplementing the Statute for a SCE with regard to employee involvement) and collective agreements.

The abovementioned bodies exercise I&C rights regarding a company's social, economic and financial issues, and trade unions are involved in the election or appointment procedures of the representatives for each.

2. Relevant law and regulatory provisions

2.1 National law regulating and referring to confidentiality of information and consultation and worker representation

As already indicated (see Part 2), in Belgium, confidentiality is defined largely by a legalistic model. The main focus is on the **Penal Code**,[17] with no competence on the part of the social partners or worker representatives to codetermine this framework (Rasnača and Jagodziński forthcoming).

Notwithstanding this, no specific legal provisions related to confidentiality and secrecy are applicable to the **union delegation** which receives economic and financial information only of a limited nature and solely in exceptional circumstances. **Collective Agreement No. 5 of 24 May 1971**[18] is pertinent to I&C of these workplace representative bodies.

For **works councils**, the relevant regulatory framework on I&C and confidentiality includes:

- **Law of 20 September 1948**[19] (on the organisation of the economy); and
- **Collective Agreement No. 9 of 9 March 1972**[20] on coordinating national agreements and collective agreements on works councils concluded in the National Labour Council (NLC, representatives of worker and employer organisations' interests in Belgium), declared generally binding by the Royal Decree of 12 September 1972;
- **Royal Decree of 27 November 1973**[21] (regulating the provision of economic and financial information to works councils); and
- **Law of 23 April 2008**[22] supplementing the transposition of Framework Directive on information and consultation 2002/14/EC establishing a general framework for informing and consulting employees.

---

17. Code pénal.
18. Convention collective de travail n° 5 du 24 mai 1971.
19. Loi du 20 septembre 1948 portant organisation de l'économie.
20. Convention collective n° 9 du 9 mars 1972.
21. Arrêté royal du 27 novembre 1973 portant réglementation des informations à fournir aux conseils d'entreprises.
22. Loi du 23 avril 2008.

Like works councils, **Collective Agreement No. 5 of 24 May 1971**[23] is of relevance for **CPPWs**; also pertinent is Belgium's **Code on Well-being**.[24]

For **EWCs**, provisions, in particular regulating the confidentiality of information, can be found in the following legislative instruments: the **Act of 23 April 1998**[25] and the **Royal Decree of 10 August 1998**.[26] The legislative instruments apply to (members of) EWCs and/or procedures for informing and consulting employees established following the EWC Directive 94/45/EC and EWC Recast Directive 2009/38/EC, including the **special negotiating body (SNB)** and **experts** who take part in meetings. Moreover, relevant legal sources governing EWCs that implement the EWC Directive 1994/95/EC and EWC Recast 2009/38/EC directives are found in two national collective agreements: **Collective Agreement No. 62 of 6 February 1996**[27] and **Collective Agreement No. 101 of 21 December 2010**.[28]

With **SEs**, Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees (SE Directive) was transposed via **Royal Decree of 14 May 2004**.[29] **Collective Agreement No. 84**[30] also obliges management bodies to highlight the confidentiality of any information. Similarly, with **SCEs**, Directive 2003/72/EC supplementing the Statute for a SCE with regard to employee involvement has been transposed by a combination of statutory legislation and collective bargaining: the **Law of 9 May 2008**,[31] and **Collective Agreement No. 88**,[32] which is a close twin of the SE collective agreement mentioned above.

Finally, a plethora of regulations frame confidentiality considerations for individual **employees** in Belgium. Briefly, a general provision on confidentiality can be found in Art. 17, 3° of the **Employment Contracts Act**[33] (Act of 3 July 1978) and the good faith of the third paragraph of Art. 1134 of Belgium's **Civil Code**[34] requires employees to be loyal to their employer, more specifically by keeping confidential information discreet.

With Art. 17, Belgium's labour law explicitly connects with the **Code of Economic Law**[35] for the determination of the scope of confidentiality and secrecy obligation.

---

23. Convention collective de travail n° 5 du 24 mai 1971.
24. Code du bien-être au travail.
25. Loi du 23 avril 1998.
26. Arrêté royal du 10 août 1998.
27. Convention collective n° 62 du 6 février 1996 (sur la création d'un CEE ou d'une procédure dans les entreprises et groupes d'entreprises à l'échelle communautaire aux fins d'information et de consultation des salariés).
28. Convention collective de travail n° 101 du 21 décembre 2010 concernant l'information et la consultation des travailleurs dans les entreprises de dimension communautaire et les groupes d'entreprises de dimension communautaire.
29. Arrêté Royale du 14 mai 2004.
30. Convention collective de travail n° 84 du 6 octobre 2004.
31. Loi du 9 mai 2008.
32. Convention Collective de Travail n° 88.
33. Loi relative aux contrats de travail du 3 juillet 1978.
34. Code civil.
35. Code de droit économique.

According to Art. XI.332/3, the acquisition of a business secret is regarded as lawful if it is obtained in the exercise of the right of employees or **employee representatives** to I&C in accordance with EU law, national law and national practices.

2.2 National provisions concerning whistleblowing and whistleblowers' protection

Until recently, no specific Belgian legislation governed whistleblowing. Cases were limited, although in practice there was a willingness to include whistleblowing mechanisms in companies to strike an appropriate balance between the risk of late alerts and their influence on the working atmosphere and the need for transparency within companies.' In addition, because it can involve the processing of personal data, the former Privacy Commission adopted **Recommendation No. 1/2006 of 29 November 2006**,[36] which includes the implementation of a whistleblowing policy to install an adequate mentoring programme to prevent unjustified charges, process justified reports, describe the consequences of justified and unjustified alerts, and avoid a 'whistleblowing culture.' Among other provisions, protection must be provided for the whistleblower (against dismissal, discrimination and harassment) and for the person against whom allegations have been made.

However, Belgium was among those countries that adopted the Whistleblowing Directive 2019/1937/EC belatedly. The Directive was transposed by the **Act of 28 November 2022**[37] (Belgium's Whistleblowing Act) for the private sector and entered into force on 15 February 2023. This statute sets out rules for companies in the private sector, while another, dated 8 December, does the same for the public sector.

Caproni (2023) comments that the new Act 'says what it needs to say and not much more.' It is notable – and in accordance with the Directive – however, that if reporting relates to infringements of legislation on financial services, products and markets or the prevention of money laundering, the compensation may amount to six months' salary, and the employee will even have the right to ask for reinstatement, a rarity under Belgian law. The employer will have to prove that any measure taken against an employee is not related to whistleblowing, regardless of the time that has lapsed between the reporting and alleged retaliation (despite the NLC's strong suggestion to consider a time limit for this reversal of the burden of proof, as is more common under Belgian law). Furthermore, although the Directive's material scope is extensive, Belgium has gone further by legislating that whistleblowers will be allowed to report on issues in relation to the combatting of tax and social fraud, although no definition is given of these notions (Caproni 2023; Van Olmen and Wynant 2021).

---

36. Recommandation n° 01/2006 du 29 novembre 2006.
37. Loi du 28 novembre 2022.

Under Belgium's A**ct of 28 November 2022**[38] (Whistleblowing Act), a whistleblowing channel must comply with requirements including the provision of different options (including both verbal and in writing) to blow the whistle; guidelines on how to record the report; and time limits for examining the report and responding to the whistleblower, all of which stem directly from Directive 2019/1937.

Within these parameters, companies still have considerable freedom over the design and introduction of the system. For instance, the procedural format is open (for example, it could be a collective agreement at company level, a chapter in the employee handbook, or a separate policy, though for flexibility and ease of later amendment, a separate policy is preferred). Significantly, however, it is required that the relevant employee representatives be involved: the **works council** (or in its absence, the **trade union**), **H&S committee**, or, in the absence of all of these, **employees** (Caproni 2023).

Moreover, Belgium's implementation of the Act adopts the Directive's option for companies with 50–249 employees (but not larger [group] entities) to share resources to set up and manage reporting channels for protected disclosures. Belgium has also opted to make following up on anonymous disclosures mandatory, except for legal entities with fewer than 250 employees.

2.3 Confidential information versus trade secrets

In Belgian legislation, confidentiality may be referred to by different terms, such as 'non-disclosure', 'secrecy', 'business secret', 'trade secret', or 'industrial secret.' As already mentioned, Art. 17, 3 of **Act of 3 July 1978**[39] (Employment Contracts) refers to business secrets, referencing the **Code of Economic Law**,[40] relating to personal or confidential matters of which an employee may become aware in the course of their professional work. Provisions on confidentiality and secrecy are applicable to all employees bound by an employment contract, as covered by the Act, which obligations continue to apply after the termination of an employment relationship.

Notwithstanding this and the entry into force of Belgium's **Law relating to the protection of trade secrets of 30 July 2018**,[41] generally, the understanding of confidentiality and secrecy obligations has not really changed. Business/trade secrets are defined by Art. I.17/1(1) of the **Code of Economic Law**[42] as information that meets the following cumulative conditions:

1. the information must be secret, meaning it is not generally known among or readily accessible to persons within the circles that normally deal with that kind of information:

38. Loi du 28 novembre 2022.
39. Loi relative aux contrats de travail du 3 juillet 1978.
40. Code de droit économique.
41. La loi du 30 juillet 2018 relative à la protection des secrets d'affaires.
42. Code de droit économique.

2. it has commercial value because it is secret; and
3. it has been subject to reasonable steps under the circumstances by the person lawfully in possession of the information to maintain its secrecy.

Art. 309 of the **Penal Code**[43] covers factory secrets, which are presumed to have the same meaning as that used in the **Act of 3 July 1978**.[44] This Code has wider scope than the Act in that it refers to everyone engaged in work relations (in other words, not only employees). However, the scope of Art. 309 is narrower in terms of its reference to the disclosure of information with criminal intent. Another relevant provision of this Code is Art. 458, which concerns the protection of professional secrecy. This Article is applicable to certain specific occupations (for example, medical doctors, lawyers) but may have wider scope. In addition, members of representative bodies in the enterprise, such as **works councils** or **trade union representative bodies**, may be bound, in relation to certain information of which they are aware, by professional secrecy.

Due to mandatory legislative provisions, case law needs to determine the scope of the confidentiality and secrecy obligation. Moreover, under Art. XI.332/5 of the **Code of Economic Law**[45] (implementing Art. 5 of the Whistleblowing Directive 2019/1937/EC), a judge may reject a claim for the protection of trade secrets concerning the disclosure of misconduct, errors or illegal activities, providing that the infringer acted for the protection of the general public interest (that is, whistleblowers). Disclosure by employees to their **workplace representatives** in legitimately exercising their functions in accordance with EU or national law on whistleblowing protection may also be invoked as an exception to the measures, procedures and remedies for trade secret protection, provided that such disclosure is necessary (CMS Legal 2023).

2.4 Worker representation bodies and representatives' information and consultation rights and duties

In Belgium, much I&C takes place with **works councils. Collective Agreement No. 9 of 9 March 1972**[46] provides detailed provisions on the information that is to be shared between works councils and employers, concerning the social (for example, matters concerning employees, working conditions, or employment), and the economic, business and financial situation of the company. It also details how consultation is to be undertaken.

Art. 3 of **Royal Decree of 27 November 1973**,[47] regulating the provision of economic and financial information to **works councils**, also confers far-reaching I&C rights on **worker representatives**. It provides that 'the information must enable employees to obtain a clear and accurate picture of the situation, evolution

43. Code pénal.
44. Loi relative aux contrats de travail du 3 juillet 1978.
45. Code de droit économique.
46. Convention collective n° 9 du 9 mars 1972.
47. Arrêté royal du 27 novembre 1973.

and prospects of the company or of the legal entity of which it may form part.' The information provided

> 'must make it possible to establish a link between data of an economic nature and that of a financial nature, and to understand the impact of these data on the company's policy regarding organisation, employment, and personnel. They must also make it possible to situate the company in the broader context, on the one hand, of the economic or financial group of which it may be part, and, on the other hand, of the sector and of the regional, national, and international economy.'[48]

Furthermore, in general, under Art. 30, information must be coherent and comparable over time, must be explained, and must be the subject of an exchange of views. In addition, 'the members of the works council [should] have the opportunity to take notes during the meetings, request additional information, ask questions, criticize, make proposals and express opinions.' In order '(t)o ensure the continuity of the discussion, the company head will indicate, either immediately or during the next meeting, what action he [sic] intends to give or has given to the questions, criticism, advice, proposals or concerns expressed.'[49]

Moreover, a **works council** should convene regularly to receive information on the economic situation of the company. It also has stronger powers. For example, its approval must be obtained when setting up or adapting internal work rules. In collective dismissal cases, the works council must be consulted and informed (Van Olmen and Wynant 2020).

For its part, Art. 15 of the **Law of 20 September 1948**[50] (on the organisation of the economy) provides that **works council representatives** have an obligation of confidentiality concerning the information they receive. Art. 15 also sets out the duties and functions of works councils, including the provision of advice and suggestions to the employer; the employer's obligation to provide the works council with information at certain times during the year on the enterprise's financial and economic situation; to draft and amend rules about the protection of workers; to examine the general criteria to be followed for laying off and hiring employees; and to examine all measures favourable to the development of a collaborative spirit in the enterprise.

Works councils and **CPPWs** must be informed of any events and internal decisions that may have an important effect on the enterprise. In the event of a merger, takeover, closure or other important structural change on which the company is negotiating, the council or committee or, in their absence, the **union delegation**, should be informed and consulted on the effects of these changes on employment, at the appropriate time and in any event before any announcement (Linklaters n.d.). In the absence of a works council, a **CPPW** or **trade union delegation** will assume certain competences. The former must be involved in

---

48. Art. 3 of Royal Decree of 27 November 1973 (Arrêté royal du 27 novembre 1973).
49. Art. 30 of Royal Decree of 27 November 1973 (Arrêté royal du 27 novembre 1973).
50. Loi du 20 septembre 1948 portant organisation de l'économie.

planning prevention measures to be taken by the employer. The latter has the right to defend the workers' interests and can demand to be heard by the employer (Van Olmen and Wynant 2020). Art. 23 of **Collective Agreement No. 5 of 24 May 1971**[51] provides for 'verbal or written announcements that are useful to the staff without disrupting the organisation. These communications must be of a professional or trade union nature.'

A **CPPW**, with its wide coverage of well-being matters at work, receives important and broad information. Under Art. II.7-14 of Belgium's **Code on Well-being**,[52] an employer must provide it with all the information needed to enable it to issue an opinion in full knowledge of the facts, and draw up documentation relating to questions concerning the well-being of the employees. Committee members must be informed and able to receive any information, whether or not imposed by labour or environmental regulations, reports, opinions and documents related to the well-being of workers in the performance of their work, in the internal or external environment. Under Art. II.7-15, an employer must provide the CPPW with all necessary information concerning risks to well-being at work, as well as protective and preventive measures, both for the whole organisation and at the level of each group of workstations or functions, as well as all necessary information concerning the measures taken in respect of first aid, firefighting and the evacuation of workers. Other required information concerns the evaluation of risks and protection measures within the framework of the dynamic risk management system and global prevention plan.

Relevant legal sources governing **EWCs** that implement the EWC 1994/95/EC and EWC Recast 2009/38/EC directives are found in national collective agreements:

- **Collective Agreement No. 62 of 6 February 1996**[53] (on the Establishment of an EWC or a Procedure in Community-Scale Undertakings and Groups of Undertakings for the Purposes of Informing and Consulting Employees),[54] concluded in the NLC; and
- **Collective Agreement No. 101 of 21 December 2010**[55] (on the information and consultation of employees in Community-Scale Undertakings and Groups of Undertakings for the Purposes of Informing and Consulting Employees).[56]

As noted, several pieces of legislation are pertinent to I&C for **EWCs** in Belgium. These include the **Act of 23 April 1998**[57] on 'accompanying measures' and 'various provisions' to establish an EWC or a procedure in community-scale undertakings

---

51. Convention collective de travail n° 5 du 24 mai 1971.
52. Code du bien-être au travail.
53. Convention collective de travail no 62 du 6 février 1996 concernant l'institution d'un comité d'entreprise européen ou d'une procédure dans les entreprises de dimension communautaire et les groupes d'entreprises de dimension communautaire en vue d'informer et de consulter les travails.
54. Convention collective de travail n° 62 du 6 février 1996.
55. Convention collective de travail no 101 du 21 décembre 2010 concernant l'information et la consultation des travailleurs dans les entreprises de dimension communautaire et les groupes d'entreprises de dimension communautaire.
56. Convention collective de travail n° 101 du 21 décembre 2010.
57. Loi du 23 avril 1998.

or groups of undertakings for the purposes of informing and consulting employees; and the **Royal Decree of 10 August 1998**[58] which implements Art. 8 of the Act of 23 April 1998 on 'accompanying measures' (see above).

With regard to EWC obligations, Art. 10(2) and Recital 33 of the EWC Recast Directive require that workers be informed of the outcome of I&C. While this has been transposed in nearly all EU Member States, Belgium (and Germany and Lithuania) has given more detail, and is 'more in line with the ETUC recommendations as the duty comes along with the obligation to provide the EWC members with the necessary means and time to fulfil this new task' (Cremers and Lorber 2015: 101).

In the case of **SEs, Collective Agreement No. 84**[59] obliges management bodies to stress the confidentiality of information, the dissemination of which may be prejudicial to the company, at the time it is provided. However, a regulation norm supplies an exhaustive definition of which items constitute secret information. This approach is objective because it excludes the management's assessment of the confidential nature of information. Specifically, SEs are exempt from providing, among other things, information regarding distribution margins, the evolution of unit sale prices, the share of costs per product and per undertaking, projects to establish new points of sale and scientific research.

In case of a *post factum* (occurring after the fact) contestation of confidential information, a special judiciary procedure was introduced by the **Law of 17 December 2005**.[60] The way in which the procedure has been organised contains sufficient protection against the dissemination of the information alleged to be confidential *pendente lite* (pending litigation under way). The same law provides a penal sanction in the case of a violation of the obligation of secrecy.

2.5 Challenging company decisions and accessing justice

Art. 4 of the **Law of 23 April 1998**[61] provides that the **representative workers' organisation** (within the meaning of the Works Constitution Act) may bring an action before the Labour Courts. However, Jagodziński (2023) indicates an absence of (formal) national provisions in Belgium with which to challenge management on the use of confidentiality and secrecy or withholding information.

In this context, reflecting relations between **worker representative bodies**, management and other parties, support from a **trade union** (coordinator) and local **works council**, among others, under certain conditions might enable **EWCs** to challenge an employer's imposed duty or unjust use of confidentiality (including by going to court or a similar labour council or arbitration institute) and thus improve transparency or increase management's unwillingness to

58. Arrêté royal du 10 août 1998.
59. Convention collective de travail no 84 du 6 octobre 2004.
60. Loi du 17 décembre 2005.
61. Loi du 23 avril 1998.

disclose sensitive information where third parties are present. EWCs have limited legal status or court capacity, being represented by individual **EWC members** or **trade unions**. According to Jagodziński and Stoop (2023), labour courts dealing with disputes regarding **EWC** legislation will make specific reference to dispute resolution. Some EWC agreements will contain references to confidential information but a judge will rely mainly on (interpretation of the) mandatory provisions of Belgian law.

In practice, Jagodziński and Stoop (2023: 11) note that, for **EWCs** in Belgium, '(l)itigation is commonly considered as a means of last resort.' Moreover, nuanced approaches have been observed on the part of EWCs. Recent research on Belgian EWCs highlighted situations in which an EWC sought to contest the challenge of confidentiality via different strategies at EWC, (EWC) select committee and individual levels. For instance, highlighting the temporal relevance of disclosure, and the varying approaches and interaction between the component groups of EWCs, the members of the select committee of one Belgian EWC most often opted for an 'accommodating strategy … to gain the confidence of management and guarantee that they will be informed and consulted in the future' (Meylemans and De Spiegelaere 2020: 29).

For their part, **H&S committees** are not prevented by law from having a right to address the employer in cases of conflict.

In relation to **EWCs**, the relevance of the 'bargained' aspect of I&C and confidentiality for workers is stressed by Art. 18 of **Collective Agreement No. 101 (21 December 2010)**,[62] which provides that central management in Belgium and the **SNB** must negotiate 'in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements for implementing the [I&C] of employees provided for in this agreement.' Under Art. 51, central management and the **EWC** and select committee lay down rules on points in a protocol on cooperation to help ensure effective organisation of I&C meetings.

2.6 Scope of confidentiality rules, and worker representatives' contacts with other representatives and stakeholders

In Belgium, **trade unions** have a right to receive prior information from the employer on changes that may affect contractual and customary employment and remuneration conditions in an enterprise. They can also go before the courts, including on matters of confidentiality.

For **CPPWs**, the **Code on Well-being**[63] states:

> 'Members of the Committee may not divulge both the overall and individual information at their disposal in connection with the functions or mandates

62. Convention collective de travail n° 101 du 21 décembre 2010.
63. Art. II. 7-29 du code du bien-être au travail.

> they perform, communicate or divulge to others, or make public, if this causes harm to the interests of the employer or the employees.'

This provision seems to concern harm to the interests of the employer, employees, or both. **CPPW members** can also have all necessary contact, in the context of their representation function, with all members of the hierarchical staff and with all employees under Art. II.7-17 of the **Code on Well-being**.[64] For companies with more than 50 but fewer than 100 employees, the **CPPW** is empowered with additional I&C powers beyond H&S issues, enabling them to act in practice as a works council.

In principle, no specific procedure applies in terms of keeping Committee members to their duty of discretion (see earlier) and their obligation not to disclose information that is harmful to the interests of the employer and/or employees. In practice, the employer will discuss the issue of confidentiality with **Committee members**.

As already indicated, while the **trade union delegation** and **works council** have distinct roles and competencies and usually act in parallel, as union delegates are usually also elected to the works council, they plainly act in close coordination on their specific fields of competencies. Legislation on **H&S committees** specifies that the obligation of secrecy for worker representatives does not restrict 'normal relations' between the representatives and trade unions (cf. the *Grøngaard and Bang* case); nor does it prevent them from having a right to address the employer in case of conflict.

2.7 Worker representatives' duties in relation to maintaining confidentiality

Generally, **works council** members are expected to inform the company's employees whom they represent. This means that information given in the works council is further communicated to employees by **works council members** as part of their responsibilities. However, Art. 32 of the **Royal Decree of 1973**[65] contains a duty of discretion for these members:

> **'Employees' representatives** within the **works council** must, on the basis of the information communicated to them, inform the undertaking's employees and ensure that it is handled with the necessary discretion so as not to prejudice the interests of the undertakings.' (Our emphasis)

This implies that works council members must take the interests of the undertaking into account when they pass on information obtained in the course of performing their council functions. Art. 32 provides an additional safeguard:

---

64. Code du bien-être au travail.
65. Arrêté royal du 27 novembre 1973.

> 'Any written communication made by a member of the works council in application of the preceding paragraph must first be deposited with the secretary of the works council.'[66]

This secretary is a works council representative of the employees.

CPPW members are also subject to a duty of discretion. Belgium's **Code on Well-being**[67] (II.7-31) states that the internal rules of each Committee must provide guidance about how exactly employer documents are disclosed and how contacts take place between Committee members and other staff or employees.

For **trade union delegations, Collective Agreement No. 5 of 24 May 1971**[68] does not contain similar provisions on a duty of confidentiality or discretion as provided for works councils or CPPWs. However, Art. 23 provides that the joint committees will lay down the arrangements for further implementing the rights to information. In addition to specific, negotiated arrangements about confidentiality of information, it is generally accepted that **trade union representatives** are held to respect a duty of discretion and that they can, additionally, be requested by the employer to maintain confidentiality with regard to certain information. In the case of a dispute, this will be a matter for further negotiation, an intervention of the social inspection service, or a labour court case.

With **EWCs**, under Art. 8 of Chapter 4 of the **Law of 23 April 1998**,[69] central management is authorised 'vis-à-vis the **members of the** [**SNB**], the [**EWC**] or with regard to employee representatives who receive information … as well as towards the **experts** who possibly assist them:

> '1. to indicate, when communicating, the confidential nature of certain information whose dissemination is likely to cause serious harm to the company; **delegates** are required not to disclose them;
> 2. not to communicate certain information, the list of which is established by the King, when its nature is such that, according to objective criteria, its communication would seriously hamper the functioning of the company or cause it harm.' (Our emphasis)

The relevant provisions of the **Code of Economic Law**[70] on business secrets cannot, in principle, be used to withhold information from **worker representatives**. However, business secrets will remain secrets, and the provisions do not give worker representatives the right to disclose the information to non-representatives or third parties. The duty of discretion and confidentiality of **worker representatives** thus remains in place.

---

66. Art. 32 de l'arrêté royal de 1973.
67. Code du bien-être au travail.
68. Convention collective de travail n° 5 du 24 mai 1971.
69. Loi du 23 avril 1998.
70. Code de droit économique.

2.8 Sanctions for breaching confidentiality of information and consultation and remedies for workers and worker representatives

In the **Law of 23 April 1998, Art. 13**, Art. 458 of the Penal Code is applicable to any member of the **SNB** of the **EWC**, to representatives of workers carrying out their missions within the framework of an I&C procedure which, where appropriate, acts as an EWC, as well as to designated experts who disclose confidential information likely to cause serious harm to the company or seriously hamper the functioning of the company.

In Belgium, worker representatives and employers will first seek a negotiated solution. Failing this, the main focus regarding sanctions is the **Penal Code**,[71] which may punish **works council** members who share, with adverse effects, any information conveyed to them that can damage an enterprise's interests (Rasnača and Jagodziński forthcoming). Legislation on **works councils**, and with respect to **CPPWs** on well-being, provides for penal sanctions, social inspection actions, and administrative sanctions as possible consequences of violations.

As **Collective Agreements Nos. 62 and 101**[72] have been concluded within the NLC (see above), the obligations they lay down can be enforced through penal sanctions. The social inspection services are also entitled to exercise their competences in this area.

With regard to **EWCs**, Belgium is one of 15 countries whose transposition laws provide for sanctions when **worker representatives** violate confidentiality. These include financial penalties and civil damages for potential harm inflicted on the company, and penal sanctions, including imprisonment, although no court cases are known to have been brought successfully against an EWC representative in Belgium or beyond (Rasnača and Jagodziński forthcoming). Individual EWC members can be sentenced to pay fines or other sanctions for confidentiality breaches; under Art. 8 of the **Law of 23 April 1998**,[73] sanctions for disclosing confidential information include imprisonment from eight days up to six months and a 100–500 euro fine (Art. 458 of the **Penal Code**).[74] However, EWCs cannot collectively pay fines or be subject to other sanctions as they have no collective legal capacity. Cooperation with union organisations with a statutory right to represent EWCs in court proceedings can mean that unions provide them with legal representation at their own expense (Jagodziński 2023).

However, Laulom and Dorssemont (2015: 46) note that, due to the magnitude of possible sanctions and 'the awareness of corporate access to the best lawyers, workers' representatives are often effectively discouraged from dealing with confidential information in any way that entails even the remotest chance of

71. Code pénal.
72. Convention collective de travail n° 62 du 6 février 1996, and Convention collective de travail n° 101 du 21 décembre 2010.
73. Loi du 23 avril 1998.
74. Code pénal.

exposing them to suspicions of violating confidentiality of information. It is a serious practical obstacle in their work.' Rasnača and Jagodziński (forthcoming) also observe that, with Art. 13 on (voluntary) **EWC** agreements, statutory rules on confidentiality (and its enforcement) do not seem to apply.

With regard to **SEs** and **SCEs**, the law provides for penal sanctions for the violation of the obligation of secrecy (for example, see Art. 9 of the **Law of 9 May 2008**).[75]

Beyond worker representatives, if individual **employees** violate their duty of confidentiality or secrecy as set out in Art. 17, 3°(a) of the **Act of 3 July 1978**[76] (Employment Contracts), they are seen to have committed a contractual breach. Depending on its seriousness, an employer may ask the labour court for damages or for termination of the employment contract. If the fault is so serious that it makes any professional collaboration between the employer and employee immediately and permanently impossible, an employer can also proceed to dismiss the relevant employee summarily. However, there is a debate on whether a (former) employer can ask an interlocutory court to order the cessation of acts of unfair competition.

Art. XI.332/5 of the **Code of Economic law**[77] provides that it is not possible to take measures for the 'alleged obtaining, use or disclosure of the business secret' if employees disclose it to their representatives in the context of the lawful exercise of their representative functions under EU law or national law, provided that such disclosure was necessary for this purpose. However, unlawful communication of trade secrets can incur imprisonment from three months to three years or a fine of 400 to 16,000 euros, or both (Van Olmen and Wynant 2020). A more specific provision relating to an employee's duty of confidentiality is found in the **Penal Code**,[78] with Art. 309 providing for punishment of those 'who maliciously or fraudulently disclose secrets of the factory in which he [sic] has worked or is still working to others' (although proving such intent 'may be a high bar to clear', DLA Piper 2023). Art. 458 also makes violation of professional secrets a punishable offence.

2.9 Limitations on companies' application of confidentiality rules to information and consultation and to codetermination, and criteria for their application

The **Royal Decree of 1973**[79] provides that an employer in Belgium may, for certain important economic and financial subjects, require that certain limitations apply to the information given to the **works council** when this may cause harm to the enterprise. It contains two relevant, somewhat overlapping provisions. Art. 33 provides:

---

75. Loi du 9 mai 2008.
76. Loi relative aux contrats de travail du 3 juillet 1978.
77. Code de droit économique.
78. Code pénal.
79. Arrêté royal du 27 novembre 1973.

> 'When notifying the works council, the head of the undertaking shall, where the case arises, state the confidential nature of certain information, the disclosure of which could harm the undertaking.'

This implies that, generally, the employer could raise an issue of confidentiality with regard to certain information. They would need to argue that its disclosure would harm the undertaking. Art. 27 provides:

> 'Where the provision of information in the prescribed form and within the prescribed period of time may cause harm to the enterprise, the head of the enterprise may be authorised to derogate from the principle of mandatory publication as regards the following points:
>
> 1. information concerning distribution margins;
> 2. communication of turnover in absolute value and its breakdown by component;
> 3. the level and evolution of cost prices and unit sales prices;
> 4. information on the breakdown of costs by product and by component;
> 5. with regard to the programme and general future prospects of companies in the distribution sector, the planned establishment of new sales outlets;
> 6. information related to scientific research;
> 7. the breakdown by component of data related to the profit and loss account.'[80]

This provision thus concerns specific and inherently sensitive information regarding the enterprise, allowing an employer to deviate with the form and time of information or disclosure to the works council. It is questionable whether a distinction between the Articles is, in practice, relevant as derogations would be subject to a similar, rather severe, if rarely applied, procedure. With disagreement on this matter *within* a works council, approval is required from a designated governmental official within the Ministry of Labour and Employment's (MLE) service. Reasons must be given and the application must be accompanied by all documents necessary to assess its merits. Approval of the request will be granted or refused by this service.

Art. 29 provides for what happens if the employer receives approval for deviation from the form and timing of the disclosure of information (Art. 27). In such an event, it is still required that, if the information cannot be provided in the prescribed form, other, equivalent information shall be communicated to the works council. Also, if the information cannot be provided immediately, the head of the enterprise must still give the information after a period of time, and specify and disclose it to the Ministry.

With **CPPWs**, the **Law on Well-being of 1996**[81] expressly provides that an employer may explicitly point to the confidentiality of certain information, as well as derogate from information requirements. These provisions were added to

---

80. Art. 3 de l'arrêté royal de 1973.
81. La loi du 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail.

this law with the transposition of the Framework Directive on information and consultation 2002/14/EC through the **Act of 23 April 1998**.[82]

Amendments to this Act mean that, in the absence of a works council, a CPPW takes over important economic competences. Given this, the issue of confidential information and derogations from the duty of information are further regulated. Under Art. 65 *octies* of the **Law on Well-being**,[83] when the provision of information in the prescribed form and time period can cause a disadvantage to the enterprise, its head can be authorised to deviate from the principle of mandatory publication regarding specific economic information. As with works councils, the application for the derogation must be made to the MLE service. Second, according to Art. 65 *novies*, the company head can, when providing information, point out to Committee members that certain information is confidential and its disclosure could be detrimental to the company. Where there is disagreement on this within the CPPW, the confidentiality of this information will be subject to the competent governmental officials who may approve or refuse the request in accordance with the above procedure.

Similarly, for **EWCs**, Art. 8 of **Act of 23 April 1998**[84] on 'accompanying measures' provides:

> 'The central management is authorised, towards the members of the special negotiating body, the European Works Council or the employees' representatives receiving information under an information and consultation procedure which replaces them and any experts who may assist them:
>
> 1. to state the confidential nature of certain information, at the time of its communication, the disclosure of which could cause serious harm to the undertaking; the delegates are required not to divulge it;
> 2. not to disclose certain information, the list of which is drawn up by the King, when it is of such a nature that, according to objective criteria, its disclosure could seriously impede the operation of the company or cause it harm.'

The first rule is that central management may state that certain information is confidential; delegates cannot disclose it. The second is that central management can be authorised not to disclose certain information. This possibility is further detailed by **Royal Decree of 10 August 1998**[85] which implements Art. 8 of the Act of 23 April 1998 on accompanying measures to establish an EWC or a procedure in Community-Scale undertakings and groups of undertakings for the purposes of informing and consulting employees. Art. 1 of the Decree provides:

> 'The central management of Community-Scale undertakings or Community-Scale groups of undertakings in which a European Works Council or a procedure for the information and consultation of employees has been established is, in so far as, according to objective criteria, disclosure

82. Loi du 23 avril 1998.
83. La loi du 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail.
84. Loi du 23 avril 1998.
85. Arrêté royal du 10 août 1998.

could seriously impede the operation of the undertaking or cause it harm, authorised not to communicate the following information:

1. information concerning distribution margins;
2. the turnover expressed in absolute value and the breakdown for each company belonging to the group;
3. the level and evolution of the cost and sales prices per unit;
4. information on the breakdown of costs by product and by company belonging to the group;
5. with regard to the programme and general future prospects of companies in the distribution sector: the planned establishment of new sales outlets;
6. information related to scientific research;
7. the breakdown by a company belonging to the group of data related to the profit and loss account.'

Specific legislation provides a dispute settlement procedure, involving the President of the Labour Court. Art. 3 of **Act of 23 April 1998**[86] on 'various provisions' provides that 'any dispute arising from the application of Art. 8 of the [Act] on accompanying measures (…) shall fall within the competence of the chairman [sic] of the labour court in the place where the central management has its registered office or his representative.' Debates take place in (closed) chambers and the President's judgment is not subject to further appeal.

To ensure the effective protection of trade secrets, an employer must first identify the information to be considered confidential and assess its degree of secrecy. Measures used to protect trade secrets will depend on the degree of secrecy and the level of authorisation, and include organisational, physical, digital and legal protection measures (CMS Legal 2023).

2.10 Sanctions on companies or company representatives for abusing confidentiality rules on information

Relatively little commentary pertains to sanctions against companies or their representatives for abusing confidentiality rules with regard to information. For instance, in relation to works councils, a broader study of the I&C rights of worker representatives in Belgium in public takeovers found no examples of sanctions in court cases related to non-compliance with councils' rights (Van Gyes 2016). And although sanctions exist in relation to general information duties with regard to ad hoc economic restructuring (including takeovers), in the literature, they are considered weak, especially for multinationals. Existing cases of claims are related to plant closures and not to informing or consulting in good time (cf. Renault case at the end of the 1990s) (Van Gyes 2016).

86. Loi modifiant la loi du 23 avril 1998.

With **EWCs**, few national jurisdictions appear to have EWC clauses that foresee management responsibility for confidentiality abuses; Belgium is silent in this regard (Laulom and Dorssemont 2015).[87]

However, on whistleblowing, if companies do not comply with the regulations of the transposing **Act of 28 November 2022**,[88] they face sanctions of the highest degree (level 4): administrative fines of 2,400 to 24,000 euros and even criminal sanctions (fines of 4,800 to 48,000 euros and/or imprisonment) (Van Olmen and Wynant 2021).

3. Illustrative case law

Management abuse of confidentiality obligations in **EWCs** has been known to cause conflict, with cases sometimes reaching the courts. For example, the Belgian national court ruled that management at ExxonMobil (2007 and 2008) had used confidentiality excessively in labelling information about planned redundancies confidential, despite already being in the public domain, thus prohibiting EWC representatives from communicating more widely about them (see Jagodziński and Stoop (2021) on ExxonMobil EWC, case KG 08/9/C, Belgium, 2008).

Another case concerns the takeover of the Belgian telecommunications company Telenet by a foreign firm, Liberty Global. The **trade union** representing Telenet employees, especially via its **works council**, had concerns about the takeover bid, including its impact on employment in Belgium; the absence of any guarantee with respect to local ownership; social responsibility; and the consequences for existing employees. However, its options for defending workers' interests were limited because the bidder firm already controlled a majority of the company's shares. Under Belgium's L**aw of 1 April 2007**[89] and the **Royal Decree of 27 April 2007**[90] (which both implemented the Directive on Takeover Bids 2004/25/EC, taking effect on 1 September 2007), as soon as a takeover bid has been publicly disclosed, the board of directors of the target company and the bidder shall inform **employee representatives** of the respective companies or **employees**, if there are no representatives. Employee representatives shall also be informed when the prospectus is made public. As Van Gyes (2016: 115) noted, however, legal debate exists over the proper timing of information disclosure, specifically whether it should be before or after the bid has been publicly disclosed, as the (general) Royal Decree on the economic-financial information and consultation rights of works councils states that ad hoc information on economic and financial matters

87. More generally, in Belgium, EWC Directive 94/95/EC is applied by means of a social partner (collective) agreement. Thus, the sanctions laid down for employers who violate collective agreements that are rendered generally binding are stipulated in Act of 5 December 1968 (on Collective Agreements and Joint Committees). There are administrative fines (Art. 12 of the 1998 EWC Act). Criminal sanctions (for breaches against collective agreements) include imprisonment (Jagodziński 2023).
88. Loi du 28 novembre 2022.
89. Loi relative aux offres publiques d'acquisition du 1 avril 2007.
90. Arrêté royal du 27 avril 2007.

should be communicated to works councils 'if possible before the execution of the decision.'

In this case, plans about the bid were made public informally by the media (thereby also informing the works council) prior to an official bid. The consulted body was the **national works council** as the company had no EWC. The **union** queried, among other matters, whether employee representatives of the bidder company had been informed (as required by Belgian law), and no clear view existed on the presence or absence of union and/or employee representation in the US parent company. However, in practice, the process was organised and implemented as prescribed by law. Van Gyes (2016) observed that the usual practice in the event of restructuring is to consult other trade union officials for orientation, but basic legal knowledge and expertise on this type of case was not available, even in the well-structured and well-developed structure of a Belgian union. The need for external guidance was all the more necessary, he asserted, because employees had shares (and were looking for advice), and the unions were asked by the media to give their opinion on the public bid. Furthermore, '[t]he whole process is perceived as something of a higher-level playing field of financial markets and strategies' (Van Gyes 2016: 121). The union thus learned that it needed a more proactive strategy to develop transnational representation for Telenet within the LGI multinational, and needed additional union expertise to better advise worker reps on how to act in such situations.

4. Relevant EU legislation

As with other EU Member States, Belgium has transposed relevant EU legislative rules concerning confidentiality and worker representation. The Act of 23 April 2008 supplements transposition of the **Framework Directive on information and consultation 2002/14/EC** (see Appendix tables), while also adopting 'accompanying measures' from EWC Directive 1994/95/EC and the subsequent **EWC Recast Directive 2009/38/EC**, amending the Royal Decree of 10 August 1998 and the Law on Well-being of 1996.

Most recently, Belgium transposed the **Whistleblowing Directive 2019/1937/EC**. The Act of 28 November 2022 sets out rules for companies in the private sector, while another of 8 December does the same for the public sector (see Section 2.2 of this chapter).

Others include:

- the **Trade Secrets Directive 2016/943**, transposed via the Act of 30 July 2018, thereby amending the Code of Economic Law, Judicial Code and the Act of 3 July 1978 (Employment Contracts);
- the **Directive 1994/95/EC** (see above), provisions of which are adopted by Collective Agreement No. 62 of 6 February 1996;
- the **Directive 2009/38/EC** (see above), provisions of which are adopted by Collective Agreement No. 101 of 21 December 2010;
- implementation of the **Regulation 596/2014** (on market abuse) and transposition of **Directives 2014/57/EU** (on criminal sanctions for

market abuse) and 2015/2392 (on reporting of infringements) with the Law of 2 August 2002 (on the supervision of the financial sector and financial services) and amended by the **Act of 31 July 2017**. This legislation is also relevant, within its own scope, for worker representatives; and

- elements of the **GDPR Directive 2016/679** that allow for Member State specifications or restrictions were incorporated in the Act of 30 July 2018 (on the Protection of Natural Persons with Regard to the Processing of Personal Data).

5. Sources

Relevant provisions/Acts (selected)

Act of 3 July 1978 (Employment Contracts), WIPO.
https://www.wipo.int/wipolex/en/legislation/details/18397 (French)

Act of 4 August 1996 (on the well-being of employees in the performance of their work), Federal Public Service Employment, Labour and Social Dialogue.
https://employment.belgium.be/sites/default/files/content/documents/Welzijn%20op%20het%20werk/EN/Act%20of%204%20August%201996%20on%20well-being%20of%20workers%20in%20the%20performance%20of%20their%20work.pdf (English)

Act of 23 April 2008 (supplementing the transposition of the Framework Directive on information and consultation 2002/14/EC, and accompanying measures relating to the establishment of an EWC or a procedure in Community-Scale undertakings or groups of undertakings for the purposes of informing and consulting employees.

Act of 30 July 2018 (on trade secrets), Belgian DPA.
https://www.dataprotectionauthority.be/publications/act-of-30-july-2018.pdf (French)

Act of 28 November 2022 (on the protection of reporters of breaches of EU or national law discovered within a legal entity in the private sector).
https://www.ejustice.just.fgov.be/eli/loi/2022/11/28/2022042980/justel (French)

Act of 20 September 1948 on the organisation of the business community or economy.
https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1948092001&table_name=loi (French)

Civil Code, www.droitbelge.be/codes.asp£civ (French)

Collective Agreement No. 5 of 24 May 1971.
https://cnt-nar-be/sites/default/files/documents/CCT-COORD/cct-005.pdf (French)

Collective Agreement No. 9 of 9 March 1972.
http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?DETAIL=19720 (ilo.org) (French)

Collective Agreement No. 101 of 21 December 2010.
https://ec.europa.eu/social/BlobServlet?docId=7027&langId=en (English)

Economic Law Code, WIPO.
https://www.wipo.int/wipolex/en/legislation/details/21384 (French and Dutch)

Judicial Code, WIPO.
https://www.wipo.int/wipolex/en/legislation/details/19465 (French and Dutch)

Criminal (Penal) Code, Legislationonline.
https://legislationline.org/sites/default/files/documents/6e/BELG_CC_fr.pdf (French)
Royal Decree of 27 November 1973 (regulating the provision of economic and financial information to works councils).
http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_isn=99813%27,550,350) (French)
Well-being Code, Federal Public Service Employment, Labour and Social Dialogue.
https://emploi.belgique.be/fr/themes/bien-etre-au-travail/principes-generaux/code-du-bien-etre-au-travail (French) and https://werk.belgie.be/nl/themas/welzijn-op-het-werk/algemene-beginselen/codex-over-het-welzijn-op-het-werk (Dutch)

Jurisprudence and commentaries

ExxonMobil EWC, case KG 08/9/C, Belgium, 2008.
Jagodziński R. and Stoop S. (2023) Access to justice for European Works Councils: a hands-on overview for practitioners, ETUC.
https://www.etuc.org/en/access-justice-european-works-councils
van Gyes G. (2016) Information and consultation rights of employee representatives in Belgium in public takeovers, in Cremers J. and Vitols S. (eds.) Takeovers with or without worker voice: workers' rights under the EU Takeover Bids Directive, ETUI, 107–121.
https://www.etui.org/publications/books/takeovers-with-or-without-worker-voice-workers-rights-under-the-eu-takeover-bids-directive

References

Caproni M. (2023) Belgium finally transposes the whistleblowing Directive – fashionably late, but worth the wait?, Squire Patton Boggs, 19.01.2024.
https://www.employmentlawworldview.com/belgium-finally-transposes-the-whistleblowers-directive-fashionably-late-but-worth-the-wait/
CMS Legal (2023) Trade secret laws and regulations in Belgium.
https://cms.law/en/int/expert-guides/cms-expert-guide-to-trade-secrets/belgium201
Cremers J. and Lorber P. (2015) Transposition of provisions of the Recast Directive on the functioning of the European Works Council, in Jagodziński R. (ed.) Variations on a theme? The implementation of the EWC Recast Directive, ETUI, 85–106.
https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive
De Spiegelaere S. (forthcoming) Heavens no! Board-level employee representation in Belgium, in Lafuente S. (ed.) Revisiting worker representation on boards: the forgotten EU countries in co-determination studies, ETUI, 29–49.
DLA Piper (2023) Intellectual property and technology – Trade secrets: legal framework.
https://www.dlapiperintelligence.com/goingglobal/intellectual-property/index.html?t=trade-secrets&s=legal-framework
ETUI (2024) National-level board-level employee representation.
https://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Board-level-Representation

Jagodziński R. (2023) Belgium country fiche access to courts, ETUC. https://www.etuc.org/sites/default/files/2022-12/Belgium%20Country%20fiche%20access%20to%20courts.pdf

Jagodziński R. and Lorber P. (2015) Enforcement frameworks and employees' rights of access to endorsement procedures, in Jagodziński R. (ed.) Variations on a theme? The implementation of the EWC Recast Directive, ETUI, 107–178. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

Jagodziński R. and Stoop S. (2021) How to deal with confidential information, Manual for European Workers' Representatives 04, ETUI. https://www.etui.org/publications/how-deal-confidential-information

Jagodziński R. and Stoop S. (2023) Access to justice for European Works Councils: a hands-on overview for practitioners, ETUC. https://www.etuc.org/en/access-justice-european-works-councils

Laulom S. and Dorssemont F. (2015) Fundamental principles of EWC Directive 2009/38/EC, in Jagodziński R. (ed.) Variations on a theme? The Implementation of the EWC Recast Directive, ETUI, 33–68. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

Linklaters (n.d.) European cross-border guide to employment law. https://www.linklaters.com/-/media/files/linklaters/pdf/mkt/london/global-guide-to-employment-law-in-europe.ashx?rev=ac09db80-e98f-4f0a-a2bf-6dd0b9e29e57

Meylemans L. and De Spiegelaere S. (2020) EWC confidential: confidentiality in European Works Councils and how representatives deal with it : case study and survey insights, ETUI. https://www.etui.org/publications/working-papers/ewc-confidential

Olijslagers C. and De Spiegelaere S. (2019) Why aren't there more European Works Councils? A Belgian perspective, Policy Brief 7/2019, ETUI. https://www.etui.org/publications/policy-briefs/european-economic-employment-and-social-policy/why-aren-t-there-more-european-works-councils-a-belgian-perspective#:~:text=The%20remaining%20companies%20are%20confronted,of%20transnational%20information%20and%20consultation

Rasnača Z. and Jagodziński R. (forthcoming) Confidentiality and workers' information and consultation rights: a jigsaw puzzle.

van Gyes G. (2016) Information and consultation rights of employee representatives in Belgium in public takeovers, in Cremers J. and Vitols S. (eds.) Takeovers with or without worker voice: workers' rights under the EU takeover bids Directive, ETUI, 107–121. https://www.etui.org/publications/books/takeovers-with-or-without-worker-voice-workers-rights-under-the-eu-takeover-bids-directive

Van Olmen and Wynant (2020) Q&A: Labour & employment law in Belgium, 29.05.2020. https://www.lexology.com/library/detail.aspx?g=b3c3bfe7-9358-43f1-b2ef-34d1d31d9293

Van Olmen and Wynant (2021) VOW enters partnership with WhistleB to provide reporting software in accordance with whistleblower rules. https://www.be/en/node/314

Finland

Based on a national report by Maria Jauhiainen

1. Regulatory context and information and consultation mechanisms

In Finland, tripartite, centralised (incomes) agreements have been dispensed with, and from the end of 2016, collective bargaining underwent a process of 'centralised decentralisation', moving from peak-level incomes policies to industry-level pattern bargaining. Although this change was based on the 'Competitiveness Pact'[91] signed by the peak-level union and employers' organisations (Jonker-Hoffrén 2018), many work matters are increasingly negotiated at the local level.

Notwithstanding this, the Finnish model is a comparatively stable one, attributable to a high level of union density (nearly 60%) and membership, and an almost automatic extension of collective agreements. Employee representation at the workplace is provided mainly by **union representatives**, or **elected representatives** if there are no union representatives, rather than through statutory structures. Trade unions are generally seen as competent negotiation partners, although elements of cooperation or worker participation are not as strong as they are in countries such as Sweden (Jauhiainen 2020). Legislation gives union representatives the right to be involved in 'cooperation negotiations' in companies and other organisations with 20 or more employees.

If there are no representatives, an employer can directly deal with (all) **employees** (ETUI 2024a). Unlike many EU Member States, Finland has no local or national **works councils** per se (see Table 2, Part 2); local representation takes place via **trade union sections**. In workplaces with at least 10 employees, the employees may choose one **H&S representative** and two deputies to represent them in dealings with the employer and to maintain contact with the H&S authorities. Where a workplace has at least 20 employees, a **H&S committee** should be set up. This is a joint management/employee body (ETUI 2024a).

The cornerstone statute on I&C of employees in Finland is the **Act on Cooperation within Undertakings**[92] (Act 334/2007 or the YT Act), which transposed the Framework Directive on information and consultation 2002/14/EC. It has been reformed to meet, among other matters, demands arising from Directive 1998/59/EC (on collective redundancies). Entering into force on 1 January 2022, it brings

91. Kilpailukykysopimus.
92. Yhteistoimintalaki 1333/2021.

'a new practice of continuous dialogue to workplaces and improves interaction … [and] increases employees' opportunities to exercise influence and obtain information' (YTN 2024). It now consists of three elements:

1. continuous dialogue between employer and employees;
2. negotiations in changing circumstances (change negotiations); and
3. **employee representatives in company administration** (administrative representative).

The Act generally applies to organisations employing at least 20 persons but not to central or local government agencies or public bodies.

With regard to **EWCs, Act 620/2011**[93] (on Cooperation in Finnish groups of undertakings and Community-Scale groups of undertakings) amended the earlier Act 335/2007 and transposed the Recast Directive 2009/38/EC. EWCs are not particularly prevalent, numbering around 40 – half the number recorded for Belgium (ETUI 2024b) – and involve around 600 EWC representatives (YTN 2024).

The provisions of the **Act on Cooperation within Undertakings**[94] on **administrative representation of employees (BLER)** apply to organisations with at least 150 persons, although administrative representation can be arranged through an agreement, as well as via legal procedures. The relevant legal provisions have been transposed from the Act on Personnel Representation in the Company Administration 725/1990 to this Act. Administrative representation must first be agreed by the employer and employees.[95] Failing this, employee representation takes place at the request of staff under Art. 31. Upon request, the ombudsman may grant a derogation from the arrangements for **administrative employee representation**. Administrative bodies comprise both **employee representatives** and members elected by the undertaking (Fondia 2022). In Finland, this tier, equivalent to **BLER**, cannot deal with collective bargaining issues (ETUI 2024c).

2. Relevant and regulatory provisions

2.1 National law regulating and referring to confidentiality of information and consultation and worker representation

As indicated, in Finland, statutory and bargaining approaches are important for emphasising confidentiality and **worker representation** (see Table 1, Part 2).

---

93. 620/2011 Laki yhteistyöstä suomalaisissa yritysryhmissä ja yhteisön laajuisissa yritysryhmissä.
94. Yhteistoimintalaki 1333/2021.
95. Finland's board-level codetermination law lets the employer choose whether worker representatives sit on the supervisory or executive board (Harju et al. 2021).

In law, various statutory provisions emphasise confidentiality rules in relation to different worker representation bodies, and Finnish legal texts are reportedly explanatory, detailed and generally easy to follow. The **Act on Cooperation within Undertakings**[96] provides for confidential information in relation to the I&C of workers.

Regulation of relevance for **H&S delegates** includes the **Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces 44/2006**.[97]

Furthermore, under Section 1 of the **Act of 216/2010**[98] (on the Cooperation Ombudsman) an ombudsman (sic) works with the Ministry of Economic and Employment Affairs (MEAE) to supervise compliance with statutes, including the:

- **Act on Cooperation within Undertakings 334/2007**[99] and the reformed statute;
- **Act on Cooperation within Finnish and Community-wide Groups of Undertakings 335/2007**[100] (Finland's EWC law);
- **Act on Personnel Representation in the Administration of Undertakings 725/1990**;[101]
- **Act on Employee Involvement in European Companies (SE) and European Cooperative Societies (SCE) 758/2004**;[102] and
- **Act on Personnel Funds 814/1989**.[103]

2.2 National provisions concerning whistleblowing and whistleblowers' protection

The passage of Finland's **Whistleblower Protection Act 1171/2022**,[104] effective from 1 January 2023, made it the twelfth EU Member State to implement the Whistleblowing Directive 2019/1937/EC. It applies to

> 'reporting of serious breaches that endanger the public interest in specific legal fields, such as breaching EU or national legislation related to product safety, competition rules, public procurement, environmental protection as well as privacy and personal data protection … (B)reaches of labour laws fall **outside** the scope of the new Act.' (Knaapila and Vinnari 2023; our emphasis)

---

96. Yhteistoimintalaki 1333/2021.
97. Laki työturvallisuuden ja työterveyden täytäntöönpanosta ja työterveysyhteistyöstä 44/2006.
98. Laki yhteistyöoikeusasiamiehestä (216/2010).
99. Laki yritysyhteistyöstä 334/2007.
100. Laki yhteistyöstä suomalaisten ja yhteisön laajuisten konsernien sisällä 335/2007.
101. Laki henkilöstön edustuksesta yritysten hallinnossa 725/1990.
102. Laki henkilöstön osallistumisesta eurooppayhtiöihin (SE) ja eurooppaosuuskuntiin (SCE) 758/2004.
103. Laki henkilöstörahastosta 814/1989.
104. Ilmoittajansuojelulaki 1171/2022.

This Act significantly expands the obligation to set up a whistleblowing channel as it concerns all organisations that employ at least 50 employees, regardless of their field of operation, and creates a framework for extensive whistleblower protection. It supplements rather than affects the validity of existing business field-specific whistleblower legislation.

Breaches are reported confidentially via the whistleblowing channel in writing and/or orally. Only **individuals who have been specifically designated** in advance by the employer to receive and process reports should have access to the internal whistleblowing channel, and only they process the whistleblower's personal data and data that may reveal their identity. The number of designated parties may be increased subsequently, if necessary, and an organisation may also appoint **experts** to investigate the accuracy of an individual suspected breach. The confidentiality obligation is not limited in time. It is recommended that the whistleblowing channel allow communication with the anonymous whistleblower to enable the organisation to ask further questions or request further information (Knaapila and Vinnari 2023).

Acquiring or disclosing information necessary for revealing a breach should not result in any negative consequences for a whistleblower (for example, the confidentiality obligation agreed in the employment contract does not prevent the whistleblower from submitting a breach report) (Office of the Chancellor of Justice (OCJ) 2022). Furthermore, an employee who submits a report on breaches that fall within the Act is 'in a somewhat better position compared with those submitting other breach reports, because the whistleblower protection under the new Act is more comprehensive' (Ius Laboris 2022). Indeed, a whistleblower who receives information on a suspected breach in a work-related context is entitled to whistleblower protection if three conditions are met:

1. At the time of the report, the whistleblower must have a legitimate reason to believe that their information about a breach is true.
2. The information about a breach must be included in the scope of the Whistleblower Act.
3. The whistleblower must be reporting a breach they have discovered in the course of their work. (OCJ 2022)

Many standards and principles protecting whistleblowers are already included in Finnish employment legislation; submitting a breach report in good faith is not a legitimate reason to worsen a whistleblower's terms of employment, dismiss them or lay them off (OCJ 2022).

2.3 Implications of whistleblower protections for worker representatives handling confidential information

Under Finland's new **Whistleblowers Act**,[105] organisations must handle the introduction of a whistleblowing channel with **worker representatives** in a

105. Ilmoittajansuojelulaki 1171/2022.

continuous dialogue process, and conduct an impact assessment on the processing of personal data in the whistleblowing channel (Ius Laboris 2022).

Furthermore, whistleblower protection extends to people who assist the whistleblower in their reporting or are connected to them and risk post-report retaliation because of their work or station (for example, a **trade union shop steward, trusted representative, H&S representative, other employee representative**, or the whistleblower's **contractual partner, colleague, or relative**) (OCJ 2022).

2.4 Confidential information versus trade secrets

From its transposition of the Framework Directive on information and consultation 2002/14EC, Finland is one of several EU Member States (others being France and Luxembourg) that has focused on specific information which should be kept secret (ILO 2024). Confidential information is deemed to include information related to the employer's financial situation, its security and corresponding security system; a person's state of health, financial situation or other personal details, related to the protection of privacy; and trade secrets (MEAE 2022).

Under S.11 (605/2018) of Chapter 30 of the **Criminal (Penal) Code 1889/39**,[106] defined as per Section 2, Para. 1 of the **Trade Secrets Act 595/2018**,[107]

'1. trade secret means information:

a. which is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons who normally deal with the kind of information in question;
b. which has financial value in the business activities owing to a characteristic referred to in subparagraph a); and
c. the lawful holder of which has taken reasonable steps to protect it.'

Trade secrets include technical information about methods; software; production volumes; formulas; customer registers; working methods; and financial secrets (for example, information about a company's agreements, marketing or pricing policies) (MEAE 2022).

Finland's **Trade Secrets Act 595/2018**,[108] which transposed the Trade Secrets Directive 2016/943, also shares the Directive's definition of a trade secret. Previously, the framework concerning trade secrets was fragmented as there was no separate Act on the protection and enforcement of trade and different laws used inconsistent terminology concerning its definition (Kautto 2021).

106. Rikoslaki 1889/39.
107. Liikesalaisuuslaki 595/2018.
108. Liikesalaisuuslaki 595/2018.

Also, under the **Act on the Cooperation Ombudsman**,[109] insider information (secrets) is:

'1. Unpublished or not available on the markets
2. punctual (sic)
3. essential so that it can have an (real) effect on the price of the security.' (Jauhiainen 2020: 8).

It can relate to a company's economic situation, some unusual activities or strategy (also the different options and stages of them) that the company is about to take.

Furthermore, the MEAE indicates that the acquisition, use or disclosure of a trade secret would be lawful in the context of protecting the public interest in order to detect abuses or illegal activity (under the so-called whistleblowing procedure).

2.5 Worker representation bodies and representatives' information and consultation rights and duties

Recent reform of the **Act on Cooperation within Undertakings**[110] means that an employer and employees or **worker representatives** should engage in a regular dialogue on issues including a company's financial situation, workplace rules and practices, personnel structure and competence needs, and well-being at work. The ways in which dialogue is conducted in practice is agreed at workplaces. Before an employer decides on matters that have a significant effect on employees (such as workforce reductions), they must consult with **employee representatives** or **employees**. The Act refers to this process as 'change negotiations.' The procedure remains broadly the same as before but the right of employee representatives to submit proposals and alternative solutions has been strengthened and the timing of the opening of negotiations is also specified (MEAE 2022).

In Finland, **workplace union representatives**, along with their colleagues, have the I&C rights exercised by works council members in countries such as Germany and Austria. They have a statutory right to be involved in 'cooperation negotiations' or local I&C negotiations in organisations with 20 or more employees. Under the abovementioned Act, these negotiations are intended to cover a wide range of workplace issues, although they are usually most significant in relation to matters concerning collective redundancies or lay-offs. Section 6 contains an extensive list of issues to be handled in the procedure prior to employer decision-making, the most important of which are related to business reorganisations leading to collective dismissals or a transfer of the undertaking or a part thereof. In these respects, the Act has been adjusted to meet the requirements regarding the scope and content of I&C obligations envisaged in the relevant directives.

109. Laki yhteistyöoikeusasiamiehestä (216/2010).
110. Yhteistoimintalaki 1333/2021.

Although Finland does not have works councils (see Table 2, Part 2) the **Act on Cooperation within Undertakings**[111] concerns confidentiality in relation to **local employee representative bodies** (the equivalent of works councils elsewhere in Europe). Section 57 states that an **employee**, a **representative of a personnel group**, and an **expert** (Section 55), as well as **employees** and their **representatives** (Subsection 2) must keep confidential information obtained in connection with the cooperation procedure (dialogue or change negotiations):

> '1. relating to trade secrets;
> 2. information relating to the employer's financial position, which is not public according to other legislation and dissemination of such information would probably be prejudicial to the employer or any of [their] business partners or contracting parties;
> 3. information relating to the security of the undertaking and the corresponding security system, the dissemination of such information would probably be prejudicial to the employer or any of [their] business partners or contracting parties; and
> 4. information relating to a private person's state of health, financial situation or concerning [them] personally in any other way unless the person, who the confidentiality provisions are supposed to protect, has agreed that the said information can be revealed.'[112]

Under Section 2 of the **Act on the Cooperation Ombudsman**,[113] an ombudsman (sic) works with the MEAE to undertake the following duties (for other duties, see Section 2.1 of this chapter):

> '2. to promote and improve cooperation between employers and employees, and the implementation of other personnel involvement systems, through various initiatives and instructions;
> 3. to monitor the attainment of the objectives of the Acts mentioned in section 1;
> 4. to advise on application of the Acts mentioned in section 1;
> 5. pursuant to section 8 of the **Act on the Labour Council and Derogation Permits Concerning Labour Protection 400/2004**,[114] to request an opinion on whether the Act on Cooperation within Undertakings or [Finnish EWC Act] should be applied to an undertaking or group of undertakings;
> 6. to supervise whether the activities and administration of personnel funds comply with the Act on Personnel Funds and fund bylaws; and
> 7. to maintain a personnel fund register and, for that purpose, to receive and examine notifications and other documents pertaining to funds.' (Our emphasis)

111. Yhteistoimintalaki 1333/2021.
112. Section 57 of the Act on Cooperation of Undertakings (Yhteistoimintalaki 1333/2021).
113. Laki yhteistyöoikeusasiamiehestä 216/2010.
114. Laki työneuvostosta ja poikkeusluvista Työsuojelusta 400/2004.

For **EWCs**, the Recast Directive 2009/38/EC was transposed by **Act 620/2011**[115] (on Cooperation in Finnish groups of undertakings and Community-Scale groups of undertakings) (Finnish EWC Act), amending the earlier Act 335/2007. It provides for cooperation procedures between an undertaking's management and personnel of both Finnish and Community-wide groups of undertakings to ensure the exchange of opinions and dialogue between the employee representatives and the undertaking's management (FRA 2023). Like most EU Member States, Finland's implementation of the Recast involves similar definitions of I&C. EWCs have a right of response in the absence of an agreement, and reference is made to effectiveness. However, it is among those countries (including Poland and the United Kingdom) that did not transpose the principle of Art 1.2 whereby 'the arrangements for informing and consulting employees shall be defined and implemented in such a way as to ensure their effectiveness and to enable the undertaking or group of undertakings to take decisions effectively' (Laulom and Dorssemont 2015: 42).

Provisions concerning Finland's **administrative representation (BLER)** have been transposed from the Act on Personnel Representation in the Company Administration 725/1990 to the **Act on Cooperation within Undertakings**.[116] **Employee representatives** and those members elected by the undertaking have the same rights and duties, except that the former cannot participate in the handling of matters that concern the election, dismissal and contract terms of the management, personnel terms of employment or industrial action (Fondia 2022).

Analogous provisions for **SEWCs** and **SCEWCs** are also regulated. The **Act on Employee Involvement in SE and SCE 2004/758**[117] outlines I&C in relation to **SEWC** and **SCEWC members** and **experts** who assist them.

2.6 Challenging company decisions and accessing justice

There is a lack of national provisions in Finland with which to challenge management on the use of confidentiality and secrecy or withholding of information (Jagodziński 2023). Laulom and Dorssemont (2015) reported that, among 16 countries that had modified their confidentiality regulation since the EWC Recast Directive 2009/38/EC, referring the matter to courts (or some other administrative procedure) was not available (at least directly in EWC transposition law) in Finland.

In Finland, **EWCs** have no collective legal capacity. However, **EWC** and **SNB members** or **trade union officials** can represent an EWC in law as individuals (Laulom and Dorssemont 2015) and **EWCs** can be a party in legal proceedings, emphasising the necessity of coordination with the relevant **union organisation**

115. 620/2011 Laki yhteistyöstä suomalaisissa yritysryhmissä ja yhteisön laajuisissa yritysryhmissä.
116. Yhteistoimintalaki 1333/2021.
117. Laki henkilöstön osallistumisesta eurooppayhtiöihin (SE) ja eurooppaosuuskuntiin (SCE) 758/2004.

(Jagodziński and Stoop 2023), including when EWC members want to appeal to administrative or judicial authorities when they do not agree to the imposed confidentiality.[118] Jagodziński (2023) suggests that, in practice, various types of **EWCs** might have differing capacities: signatories of EWCs established pursuant to the subsidiary requirements in view of the absence of an agreement could be recognised as having the right to approach courts collectively, whereas for EWCs established by agreement, only the signing individuals might be eligible.

This is even more vital given that Finland is among the countries that do not provide workers with the right to challenge the application of confidentiality clauses (that is, they cannot challenge management on the use of confidentiality and secrecy/withholding information – Jagodziński 2023). However, in line with Art. 8.2 of the EWC Recast Directive 2009/38/EC, provision is made for management to withhold information that 'according to objective criteria, would seriously harm the functioning of the undertakings concerned or would be prejudicial to them' (Laulom and Dorssemont 2015: 46).

More generally, however, ways to circumvent the EWC's lack of legal status in this country include criminal proceedings 'where any natural person can report an offence (usually done by the trade union actors on behalf of the EWC or SNB). Also, an individual **EWC/SNB representative** can issue the report to the police, or to the Cooperation Ombudsman [a public authority]' (Jagodziński and Stoop 2023: 23). The latter can assume a supervisory role in a conflict, and has the right to request all relevant information, including confidential or stock market–related data, and in principle can act very swiftly. Usually, no court fees apply for a judicial procedure since it is regarded as a criminal procedure (that is, a crime against the state) (Jagodziński and Stoop 2023).

With regard to whistleblowing, if an employer neglects the whistleblower protection obligation by breaching the prohibition against retaliation or attempting to prevent the submission of a report, they may be obliged to pay compensation to the whistleblower, who could be an employee representative, employee or other party. Knaapila and Vinnari (2023) indicate that the amount was yet to be regulated but, depending on the breach, is likely be between 2,000 and 15,000 euros. If an organisation 'intentionally engages in retaliatory activities, it must compensate the whistleblower for the loss caused in full.' However, prohibition against retaliation under this Act does not prevent an employer from making 'negative' decisions about a whistleblower's employment relationship, as long as they are not based on the submission of the breach report.

118. For Art. 13 EWCs, Jagodziński and Stoop (2023) suggest that it is not clear in Finland whether legally-based administrative or judicial conflict-solving procedures exist.

2.7 Scope of confidentiality rules, and worker representatives' contacts with other representatives and stakeholders

The confidentiality provisions of Finland's **Act on Cooperation within Undertakings**[119] apply only to information received in connection with continuous dialogue and change negotiations, and specifically indicated as confidential. This law provides **trade unions**, which do not have a general right to I&C and/or consultation or codetermination rights, with the right to be involved in cooperation negotiations, within which the above confidentiality provisions are addressed. Under this law, a confidentiality obligation applies equally to **worker representatives**, an **individual employee**, and an **expert** (MEAE 2022). Thus, matters subject to the cooperation procedure may be discussed with the individual workers affected, but if the matter concerns employees more generally it is negotiated with **worker representatives**, normally **shop stewards** of the worker groups in question (ETUI 2024a; ILO 2024).

Moreover, an employer must explain the confidentiality obligation and indicate what information they consider confidential, and inform **employees**, **employee representatives** or **experts** of this on a case-by-case basis. An employee representative or employee cannot be assumed to know, for example, which information is considered to be a trade secret (MEAE 2022). Parties cannot derogate from the regulations on confidentiality by means of an agreement; they remain set in law and, if an agreement worsens the situation for worker representatives, that agreement is deemed null-and-void.

Also, under the Act, a precondition for confidentiality is that:

> '1. the employer has indicated to the employee and the **representative** of the personnel group and to the **expert** referred to in Section 55, what information shall be considered to be trade secrets; (611/2018);
> 2. the employer has indicated to the employee and the **representative** of the personnel group and to the **expert** referred to in Section 55 that the information referred to in subsections 1, paragraphs 2 and 3 is confidential; and
> 3. the employee and the **representative** of the personnel group have been informed of the confidentiality to the employees or their **representatives** referred to in Subsection 22 above.' (Our emphasis)

An **employee** or **representative of a personnel group**, after having been informed of the confidential nature of the information, may disclose it to other employees or their representatives to the extent necessary for performing their cooperation role. Moreover, Section 4 (on business and trade secrets) of Finland's **Employment Contracts Act 55/2001**[120] provides that 'liability for any loss incurred by the employer is extended not only to the employee divulging confidential information but also to the recipient [conceivably, employee

119. Yhteistoimintalaki 1333/2021.
120. Työsopimuslaki 55/2001.

representatives] of this information, if the latter knew or should have known that the employee had acted unlawfully.'

For **H&S delegates**, under Section 43 (Secrecy obligation) of the **Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces 44/2006**,[121] the person referred to here, or the person chosen in accordance with S23 to take care of cooperation duties, should maintain the secrecy of all information received concerning the employer's economic position and commercial or professional secrets, as well as that concerning enterprise safety and corresponding safety arrangements, the disclosure of which could harm the employer or a business or contracting partner of the employer. They must also maintain secrecy regarding any information concerning a private person's economic position and other personal data if the person protected by the secrecy obligation has not consented to supplying the data.

For **EWCs**, under Section 43 of the **Finnish EWC Act**,[122] an employee who is a member of the **employees' negotiating body** (Section 8 or 20), the **employee representative participating in the cooperation procedure**, and an **expert** who assists employee representatives, must keep confidential information obtained in connection with the cooperation procedure. Provisions on secrecy or confidentiality also apply to situations referred to in Section 43 of the **Act on Cooperation within Undertakings**[123] (Finnish EWC Act) stipulating: 'The provisions on business transfers in this chapter shall also apply to mergers and divisions of undertakings' (Laulom and Dorssemont 2015: 49). Standard/secondary rules are established by Sections 28–38 of this law, and these can differ only when this is laid down in an EWC agreement. Importantly, deviation from confidentiality clauses is not possible as they are not included in these sections.

Under Section 43 of the **Act on Cooperation within Undertakings**[124] (Finnish EWC Act), a precondition for confidentiality is that:

'1. the management of the group of undertakings or the undertaking have indicated to the persons bound by the obligation of confidentiality what information is considered to be a business or trade secret;
2. the management of the group of undertakings or the undertaking have indicated to the persons bound by the obligation of confidentiality referred to in Subs. 1 above that the information referred to in Sub-sections 1(2) and (3) is confidential; and
3. the person bound by the obligation of confidentiality referred to in Subsection 11 above has been informed of the obligation of confidentiality

121. Laki työturvallisuuden ja työterveyden täytäntöönpanosta ja työterveysyhteistyöstä 44/2006.
122. 620/2011 Laki yhteistyöstä suomalaisissa yritysryhmissä ja yhteisön laajuisissa yritysryhmissä.
123. Yhteistoimintalaki 1333/2021.
124. 620/2011 Laki yhteistyöstä suomalaisissa yritysryhmissä ja yhteisön laajuisissa yritysryhmissä.

imposed on the employees or their **representatives** or the **experts** assisting them referred to in Subsection 2 above.'[125] (Our emphasis)

Subsection 1 does not prevent people bound by the obligation of confidentiality, after having been informed of the confidential nature of the information, from disclosing the information to other **employees**, their **representatives** or **experts** assisting them if necessary for their cooperation duties.

In the **Act on Employee Involvement in SEs and SCEs**,[126] Section 31 applies to the confidentiality obligation of the representative body (Section 9b, Subsection 1) and **experts** who assist them. Also, members of the **SNB** or **representative body** and assisting **experts** are not authorised to disclose any information about business and trade secrets given to them in confidence to employees or **employee representatives** other than those whom the information concerns. The same applies to **employee representatives** and **experts** in connection with I&C procedures.

In the **Act on Personnel Representation in the Company Administration**[127] (**BLER** equivalent), Section 12 deals with confidentiality. Unless stipulated elsewhere, **members or deputy members of the administrative bodies** must keep confidential any information that has been announced by the company to constitute trade or professional secrets and deemed potentially harmful to the company or its contracting parties if disclosed to outsiders. It may be discussed only by the workers, employees and personnel representatives who are affected by it. Even then, the information should not be disclosed to outsiders. Moreover, information that concerns an individual's financial position, state of health or other private matters must remain confidential unless that person has granted permission to disclose it.

2.8 Worker representatives' duties in relation to maintaining confidentiality

Under the **Act on Cooperation within Undertakings**,[128] **worker representatives** must maintain confidentiality about information declared to be a trade secret by their company, and can only discuss the information with employees whom they represent and who are concerned. A confidentiality obligation also applies to information concerning the financial situation, health, or other personal circumstances of an individual employee unless that person grants permission to disclose the information (Fondia 2022). Under the Act, the confidentiality obligation applies equally to **employee representatives, employees** and **experts**. For all parties, it lasts for the duration of their

125. Section 43 of the Finnish EWC Act (620/2011 Laki yhteistyöstä suomalaisissa yritysryhmissä ja yhteisön laajuisissa yritysryhmissä).
126. Laki henkilöstön osallistumisesta eurooppayhtiöihin (SE) ja eurooppaosuuskuntiin (SCE) 758/2004.
127. Laki henkilöstön edustuksesta yritysten hallinnossa 725/1990.
128. Yhteistoimintalaki 1333/2021.

employment contract, but for **representatives**, it continues after their role ends (MEAE 2022).

Moreover, unless the confidentiality obligation of the members or deputy members of the body in question are subject to separate provisions, confidentiality provisions also apply to the **employees' administrative representative** when they act in a company's administrative bodies (MEAE 2022). For instance, if employee representation in company administration takes place in a company's board of directors, the confidentiality obligation and criminal liability are determined primarily on the basis of legislation applicable to board members.

According to the **Finnish EWC Act**,[129] the confidentiality obligation continues for the duration of the contract of employment of the employee and their representative, and the expert's obligation of confidentiality continues after the termination of their task.

Under the **Act on Employee Involvement in SEs and SCEs**,[130] the obligation continues after the expiry of the term of office of **members of SNBs** or a **representative body**, and of assisting **experts**. Under the **Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces 44/2006**,[131] the person referred to here or the person chosen to take care of cooperation duties should also maintain their secrecy obligation even after they have left their duties.

For individual **employees**, the **Employment Contracts Act**[132] lays down fundamental legal provisions concerning working life in Finland (MEAE 2014). Its relevant provisions stipulate that an employee may not reveal or use confidential business and trade information during their employment. As far as information received lawfully is concerned, the prohibition no longer applies after the end of the employment relationship; the law does not include any explicit provisions concerning the possibility of extending the confidentiality obligation after employment termination (Kautto 2021). However, the employer and employee may make a post-termination confidentiality agreement (MEAE 2014), and these are common in practice (DLA Piper 2024; Havia et al. 2022). If the employee, during the course of the employment relationship, has received confidential business and trade information unlawfully, the prohibition on divulging or using it remains valid even after the employment relationship, and will continue until the information can no longer be objectively regarded as confidential business and trade information from the point-of-view of the employer (MEAE 2014).

---

129. 620/2011 Laki yhteistyöstä suomalaisissa yritysryhmissä ja yhteisön laajuisissa yritysryhmissä.
130. Laki henkilöstön osallistumisesta eurooppayhtiöihin (SE) ja eurooppaosuuskuntiin (SCE) 758/2004.
131. Laki työturvallisuuden ja työterveyden täytäntöönpanosta ja työterveysyhteistyöstä 44/2006.
132. Työsopimuslaki 55/2001.

2.9 Sanctions for breaching confidentiality of information and consultation and remedies for workers and work representatives

Under Section 57 of the **Act on Cooperation within Undertakings**,[133] Section 43 of the **Finnish EWC law**,[134] Section 12 of the **Act on Personnel Representation in the Company Administration**,[135] Art. 39 of **Act on Employee Involvement in SEs and in SCEs**,[136] Section 51(1) of the **Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces**,[137] and Section 61 of the **Act on Personnel Funds**,[138] punishment for violation of a confidentiality obligation referred to in their respective provisions is imposed pursuant to Chapter 38, Section 2(2) of Finland's **Criminal (Penal) Code 39/1889**[139] 'unless more severe punishment for the act is prescribed elsewhere than in Chapter 38, Section 2(1).'

More specifically, in relation to data and communications offences (Chapter 38 (578/1995)):

> 'Section 1 – Secrecy offence
>
> A person who in violation of a duty of secrecy provided by an Act or Decree or specifically ordered by an authority pursuant to an Act
>
> 1. discloses information which should be kept secret and which he or she has learnt by virtue of his or her position or task or in the performance of a duty, or
> 2. makes use of such a secret for the gain of himself or herself or another shall be sentenced, unless the act is punishable under Chapter 40, section 5, for a secrecy offence to a fine or imprisonment for at most one year.
>
> Section 2 – Secrecy violation
>
> 1. If the secrecy offence, in view of the significance of the act as concerns the protection of privacy or confidentiality, or other relevant circumstances, is petty when assessed as a whole, the offender shall be sentenced for a secrecy violation to a fine.
> 2. Also, a person who has violated a duty of secrecy referred to in Section 1 and it is specifically provided that such a violation is punishable as a secrecy violation, shall also be sentenced for a secrecy violation.'[140]

133. Yhteistoimintalaki 1333/2021.
134. 620/2011 Laki yhteistyöstä suomalaisissa yritysryhmissä ja yhteisön laajuisissa yritysryhmissä.
135. Laki henkilöstön edustuksesta yritysten hallinnossa 725/1990.
136. Laki henkilöstön osallistumisesta eurooppayhtiöihin (SE) ja eurooppaosuuskuntiin (SCE) 758/2004.
137. Laki työturvallisuuden ja työterveyden täytäntöönpanosta ja työterveysyhteistyöstä 44/2006.
138. Laki henkilöstörahastosta 814/1989.
139. Rikoslaki 1889/39.
140. Criminal (Penal) Code 39/1889 (Rikoslaki 1889/39).

Under Section 5 (Violation of a business secret (769/1990)) of Chapter 30 of the Code,

> '1. A person who, in order to obtain financial benefit for himself or herself or another, or to injure another, unlawfully discloses the business secret of another or unlawfully utilises such a business secret, having gained knowledge of the secret
> i) while in the service of another,
> ii) while acting as a member of the administrative board or the board of directors, the managing director, auditor or receiver of a corporation or a foundation or in comparable duties,
> iii) while performing a duty on behalf of another or otherwise in a fiduciary business relationship, or
> iv) in connection with company restructuring proceedings, shall, unless a more severe penalty has been provided elsewhere in law for the act, be sentenced for violation of a business secret to a fine or to imprisonment for at most two years.
> 2. This section does not apply to an act that a person referred to in subsection 1(1) has undertaken after two years have passed since his or her period of service ended.
> 3. An attempt is punishable.'[141]

The same section of the Code applies to breaches of the **Securities Markets Act 746/2012**[142] which deals mainly with insider secrecy issues. The **Tort Liability Act (412/1974)**[143] applies to liability for damages (Section 1 in Chapter 2 and Section 1 in Chapter 4). Under this Act, slight negligence by an employee means that they will not be liable for damages. This is the main reason employees or **employee representatives** – regarded as normal employees when it comes to tort liability – are rarely subjected to this liability in any capacity. Under Section 1 of Chapter 5, if the damage/tort liability is caused by a breach of the Criminal Code, a person can also become liable for compensation for economic loss that is not connected with the main areas of damage compensation, which are personal injury and damage to property.

For **whistleblowers** in Finland, those acting in good faith are protected in labour law in all situations, and a reversed burden-of-proof is applied in legal processes concerning retaliation. Their discharge from liability also covers criminal sanctions, except when the acquisition of information constitutes an offence. However, intentionally reporting false information is a punishable act and may result in liability for damages (OCJ 2022). Furthermore, some statutory whistleblower protection elements cannot be applied to reports of suspected breaches which do not fall within the scope of the country's **Whistleblower Protection Act 1171/2022**[144] (for example, the right to receive compensation for retaliation, penalties based on breaches of the statutory confidentiality obligation).

---

141. Criminal (Penal) Code 39/1889 (Rikoslaki 1889/39).
142. Arvopaperimarkkinalaki 756/2012.
143. Vahingonkorvausvastuulaki 412/1974.
144. Ilmoittajansuojelulaki 1171/2022.

For individual **employees**, confidentiality obligations concerning an employer's trade secrets are also specified in the **Employment Contracts Act**.[145] Under this Act, a court can now order injunctions and remedies at the trade secret holder's request. It can also order that a defendant misusing trade secrets pay reasonable compensation or damages to the trade secret holder (Havia et al. 2022). A post-termination, non-competition obligation is possible for a very weighty reason related to the employer's operations or the employment relationship.

2.10 Limitations on companies' application of confidentiality rules to information and consultation and to codetermination, and criteria for their application

In response to issues concerning insider information during I&C and other procedures, the (Finnish) Industrial Employees (Teollisuuden Palkansaajat (TP)) presented questions to the Cooperation Ombudsman and asked them to submit an advisory statement on whether the employer has the right to withhold this kind of information or to omit the I&C and participation procedure if it entailed divulging insider secrets or information. The Ombudsman was also asked whether **worker representatives** should be included in insider registers. The statement was released in May 2013 and based on the **Act of Cooperation within Undertakings**,[146] the **Act on Cooperation within Finnish and Community-wide Groups of Undertakings**[147] (Finnish EWC Act), the **Act on Personnel Representation in the Company Administration**,[148] and the **Securities Market Act**.[149]

Market abuse regulations and anything concerning the abuse of insider secrets can be found in the **Market Abuse Regulation 596/2014 (MAR)**[150] instead of in the Securities Market Act. The MAR is based on the Market Abuse Directive 2014/57/EU which is similarly implemented in all EU/EEC countries, but the advisory statement is still valid and applicable in Finland. The MAR mostly came into force in Finland on 3 July 2016. This obliges a company or the issuer to disclose relevant insider information directly and as soon as possible: management trading is made public through stock exchange releases instead of a public register and an automatic book-entry register (Castrén and Snellman 2016). The obligation to publish thus also applies in principle to decisions taken during a preparation period. Disclosure of inside information in a stock exchange release must occur so that the public has ready access to that information and can assess it thoroughly, appropriately and in a timely manner. This also applies to **worker representatives** and can help **EWC representatives** in their work because the abovementioned preparation phase may assist with the timing of

145. Työsopimuslaki 55/2001.
146. Yhteistoimintalaki 1333/2021.
147. 620/2011 Laki yhteistyöstä suomalaisissa yritysryhmissä ja yhteisön laajuisissa yritysryhmissä.
148. Laki henkilöstön edustuksesta yritysten hallinnossa 725/1990.
149. Laki henkilöstön edustuksesta yritysten hallinnossa 725/1990.
150. Markkinoiden väärinkäyttöasetus 596/2014.

information disclosure in relation to I&C procedures. A company must have an internal process for assessing and disclosing inside information, and for assessing and monitoring the conditions and duration of deferred disclosure. They must also ensure continuous monitoring in fulfilment of the conditions for deferral and be ready to disclose information immediately in the event of a leak. The Finnish Financial Supervisory Authority (FSA) must also be provided with information on postponement of disclosure of information immediately after actual disclosure of information to the public has been made.

Under the **MAR 596/2014**,[151] firms or those acting on their behalf or on their account, need to establish an insider list or register of all persons (including **employee representatives**) who have access to inside information and who work for them on an employment contract or otherwise perform other tasks through which they have access to such information. These lists include, and must continue to add, **EWC** and/or **other worker representatives** who become or may become aware of such information via their duties and are thus affected by this matter.

The **Securities Market Act**[152] governs the so-called listed companies that publicly sell their securities and deal with insider information. A key feature of the law is the price-reliability of the security: everyone needs to have the same information at the same time. Disclosure of such information before due time is thus strictly forbidden (under criminal prosecution). However, this may occur as a normal part of a person's work, profession or (work) duties, following Directive 89/592/EEC on coordinating regulations on insider dealing. This exception also applies to all **worker representatives** but only when they are conducting their work or duties. They can be told insider information and secrets while performing their duties and may also pass them on to those whom they represent but only if they are of the utmost importance and after they have been informed of the special nature of the information and a duty of strict secrecy and confidentiality. This also applies to an employer; they have the right to divulge such information to **worker representatives** when fulfilling their role as a counterpart in an I&C and/or participation procedure, and must not neglect or omit I&C and/or participation procedures involving possible disclosure of insider information/secrets. Divulgence of information is interpreted narrowly, with consideration for the risks of passing on information to workers and whether misuse and/or other harmful effects could occur. These criteria are based on the European Court of Justice (ECJ) ruling in case C-384/02 *Grøngaard and Bang* (see Section 4 of this chapter).

2.11 Sanctions on companies or company representatives for abusing confidentiality rules

Under Section 4 of the **Act on Cooperation Ombudsman**,[153] confidentiality obligations notwithstanding, in order to carry out supervision and to the extent

151. Markkinoiden väärinkäyttöasetus 596/2014.
152. Laki henkilöstön edustuksesta yritysten hallinnossa 725/1990.
153. Laki yhteistyöoikeusasiamiehestä 216/2010.

required, the Ombudsman can obtain from the employer, free of charge and within a moderate time period, the information and documents needed to supervise legal compliance. They can impose a conditional fine on an employer to encourage compliance (Subsection 1, and also provisions of the **Act on Conditional Fines 1113/1990**).[154] Under Section 5, the Ombudsman or an assigned official has the right to conduct an inspection of an enterprise to the extent necessary to execute supervisory duties and in a manner that avoids unnecessary harm or costs. As far as possible, the employer and **personnel representatives** concerned will be informed before the inspection, which may not be conducted on premises used for the purposes of permanent residence. The Ombudsman can also issue an improvement notice, conditional fine (penalty payment), or take a case to court to require it to oblige the employer to fulfil their obligations within a certain time. The Ombudsman may also present a matter for preliminary investigation to the police if sanctions are imposed for breach of any act of law under their supervision, but they have no direct injunction right.

Furthermore, under Art. 8.2 of EWC Recast Directive 2009/38/EC, central management does not have to provide information when, according to objective criteria, it would seriously harm the functioning of the undertaking or would be prejudicial. Where Member States apply Art. 8, however, they shall make provision for administrative or judicial appeal procedures that **worker representatives** may initiate when central management requires confidentiality or does not give information in accordance with that Article (Art. 11.3). In Finland, the Ombudsman's range of actions can, at least to a certain extent, be regarded as the administrative procedure required in Art. 11.3. As with Belgium, Finland is silent on sanctions for management who abuse the confidentiality clause (Laulom and Dorssemont 2015).

3. Illustrative case law

In Finland, criteria governing the disclosure of **insider information** are based on the ECJ *Grøngaard and Bang* case. In a preliminary ruling in the Danish case of *Criminal proceedings against Grøngaard and Bang*, the ECJ ruled that Art. 3(a) of the Insider Dealing Directive prohibits disclosure of inside information to third parties unless there is a close link between the disclosure and the exercise of the relevant person's employment, profession or duties, and that disclosure is strictly necessary for the exercise of that employment, profession or duties; given the applicable national rules, national courts are to give a strict interpretation of this exception to the prohibition of disclosure of inside information (see C-384/02 *Grøngaard and Bang* [2005] ECR I-9939; also Jagodziński and Stoop 2021).

In the *Liski* case (KKO 2022:16), Finland's Supreme Court held that, in addition to non-compete clauses, the parties can, in an employment contract, agree on the **condition of secrecy** and on a contractual fine related to it. Furthermore, application of the secrecy condition was not considered unreasonable. In this

154. Uhkasakkolaki Viteslag 1113/1990.

case, in addition to breaching the non-compete clauses, the employee could also be ordered to pay a contractual fine to the employer for violating trade secrecy, with the court holding that a fine equivalent to six months' salary is reasonable (for example, Amos Asianajotolmisto 2024).

4. Relevant EU legislation

As with other EU Member States, Finland has transposed relevant EU legislative rules concerning confidentiality and worker representation. The **Framework Directive on information and consultation 2002/14/EC** was transposed via changes to the Act on Cooperation within Undertakings (725/1978)[155] with Law 139/2005, effective from 23 March 2005. Subsequent reform of the Act on Cooperation within Undertakings, entering into force on 1 January 2022, fulfil demands arising from the **Directive on collective redundancies 98/59/EC**. As well as bringing a new practice of continuous dialogue to workplaces and improving interaction, this change also covers the inclusion of **employee representatives** in company administration.

The Act on Cooperation in Finnish and Community-wide Groups of Undertakings (Finnish EWC Act), in force since 15 June 2011, incorporates **EWC Recast Directive 2009/38/EC**. Most recently, Finland applied EU legislative rules by transposing the **Whistleblowing Directive 2019/1937/EC** via its Whistleblower Protection Act 1171/2022, effective from 1 January 2023. This Act significantly expands the obligation to set up a whistleblowing channel and creates a framework for extensive whistleblower protection, thus supplementing the validity of existing business field-specific whistleblower legislation.

Others include:

- the **Trade Secrets Directive 2016/943**, transposed via the Trade Secrets Act 2018. This replaced Finland's Unfair Business Practices Act and further strengthened the protection of trade secrets; created a common definition of a trade secret in line with the Directive; enabled breaches to be filed as disputes (they were formerly handled as criminal offences in Finland); and altered the situation for worker representatives;
- the **GDPR**, transposed via the Data Protection Act in 2018 (the GDPR superseded the Finnish Personal Data Act 1999/523 and the Act on the Data Protection Board and Data Protection Ombudsman 1994/389) on 25 May 2018; and
- the **Market Abuse Regulation 596/2014** (MAR), binding from 3 July 2016, replaced most regulations on the ongoing disclosure obligation, insider matters and market abuse under the Finnish Securities Markets Act 746/2012.

155. Updated by the Act of Cooperation within Undertakings (334/2007) and amendments.

5. Sources

Relevant provisions/Acts (selected)

Act on Cooperation Ombudsman 216/2010, MEAE, May, https://www.finlex.fi/en/laki/kaannokset/2010/en20100216.pdf (English)
Act on Co-operation within Undertakings 334/2007, MEAE, https://www.finlex.fi/en/laki/kaannokset/2007/en20070334.pdf (English)
Act on Cooperation within Finnish and Community-wide Groups of Undertakings 335/2007 (amendments up to 620/2011 included) (Finnish EWC law), MEAE. https://www.finlex.fi/en/laki/kaannokset/2007/en20070335_20110620.pdf (English)
Act on Employee Involvement in European Companies (SE) 758/2004, Ministry of Labour. https://www.finlex.fi/en/laki/kaannokset/2004/en20040758.pdf (English)
Act on the Labour Council and Derogation Permits Concerning Labour Protection 400/2004. https://www.finlex.fi/en/laki/kaannokset/2004/en20040400_20100223.pdf (English)
Act on Personnel Representation in the Company Administration 725/1990 (as amended by the several Acts, including No. 220/2010), MEAE. https://www.finlex.fi/en/laki/kaannokset/1990/en19900725_20100220.pdf (English)
Criminal Code 39/1889; amendments up to 433/2021 included), Ministry of Justice. https://www.finlex.fi/en/laki/kaannokset/1889/en18890039_20210433.pdf (English)
Securities Markets Act 746/2012, https://www.finlex.fi/fi/laki/kaannokset/2012/en20120746_20130258.pdf (English)
Tort Liability Law 412/1975. https://www.finlex.fi/en/laki/kaannokset/1974/en19740412_19990061.pdf (English)
Trade Secrets Act 595/2018, MEAE, https://www.finlex.fi/en/laki/kaannokset/2018/en20180595.pdf
Whistleblower Protection Act 2018. https://www.finlex.fi/fi/laki/alkup/2022/20221171 (Finnish)

Jurisprudence and commentaries

Amos Asianajotolmisto (2024) Trade secrets and employee secrecy obligation in Finland, 19.01.2024. https://amoslaki.fi/en/trade-secrets-and-employee-secrecy-obligation-in-finland/
Grøngaard and Bang (C-384/02 Grøngaard and Bang [2005] ECR I-9939. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62002CJ0384&qid=1676334315564
Grøngaard and Bang, Judgment of the Court (Grand Chamber), 22 November, C-384/02. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=ecli:ECLI%3AEU%3AC%3A2005%3A708

References

Castrén and Snellman (2016) MAR, the EU Market abuse Directive: a step back for Finland, 29.06.2016. https://www.castren.fi/blogandnews/blog-2016/mar-the-eu-market-abuse-directive-a-step-back-for-finland/

DLA Piper (2024) Guide to going global – Employment: full handbook. https://www.dlapiperintelligence.com/goingglobal/employment/index.html?t=11-data-privacy&c=FI

ETUI (2024a) Finland. https://www.worker-participation.eu/national-industrial-relations/countries/finland

ETUI (2024b) EWCDB – European Works Councils Database. https://www.ewcdb.eu

ETUI (2024c) Board-level Employee Representation. https://www.worker-participation.eu/board-level-employee-representation

Fondia (2022) Employee representation in the administration of undertakings. https://insights.fondia.com/fi/en/articles/personnel/co-operation/employee-representation-in-the-administration-of-undertakings

FRA (2023) Act on cooperation within Finnish and community-wide groups of undertakings (335/2007), European Union Agency for Fundamental Rights. https://fra.europa.eu/en/law-reference/act-co-operation-within-finnish-and-community-wide-groups-undertakings-3352007

Harju J., Jäger S. and Schoefer B. (2021) Voice at work, IZA Discussion Paper 14163, Institute of Labor Economics. https://www.iza.org/publications/dp/14163/voice-at-work

Havia S., Karanen N. and Pynttäri T. (2022) Employment and employee benefits in Finland: overview. https://ca.practicallaw.thomsonreuters.com/6-503-3587?originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)&firstPage=true

ILO (2024) National labour law profile: Republic of Finland. Constitution, https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158896/lang–en/index.htm

Ius Laboris (2022) Whistleblowing in Finland: legislation finally published, Ius Laboris, Global HR Lawyers, 23.12.2022. https://iuslaboris.com/insights/whistleblowing-in-finland-legislation-finally-published/

Jagodziński R. (ed.) (2015) Variations on a theme? The implementation of the EWC Recast Directive, ETUI. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

Jagodziński R. (2023) Finland country fiche access to courts, ETUC. https://www.etuc.org/sites/default/files/2022-12/Finland%20Country%20fiche%20access%20to%20courts.pdf

Jagodziński R. and Stoop S. (2021) How to deal with confidential information, Manual for European Workers' Representatives 04, ETUI. https://www.etui.org/publications/how-deal-confidential-information

Jagodziński R. and Stoop S. (2023) Access to justice for European Works Councils: a hands-on overview for practitioners, ETUC. https://www.etuc.org/en/access-justice-european-works-councils

Jauhiainen M. (2020) Review and update of analysis of national confidentiality framework of information and consultation in selected EU countries: Finland, Commissioned national report for ETUI.

Jonker-Hoffrén P. (2018) Finland: goodbye centralised bargaining? The emergence of a new industrial bargaining regime, in Müller T., Vandaele K. and Waddington J. (eds.) Collective bargaining in Europe: towards an endgame, ETUI, 197–216. https://www.etui.org/Publications2/Books/Collective-bargaining-in-Europe-towards-an-endgame.-Volume-I-II-III-and-IV

Kautto J. (2021) Keep confidentiality obligation and non-competition obligation separate in employment contracts, Lexology, 24.11.2121. https://www.lexology.com/commentary/employment-immigration/finland/waselius-wist/keep-confidentiality-obligation-and-non-competition-obligation-separate-in-employment-contracts

Knaapila S. and Vinnari J. (2023) Finland is poised to approve legislation to implement the Whistleblowing Directive. What does it say?, Ius Laboris, Global HR Lawyers, 23.12.2022. https://iuslaboris.com/insights/whistleblowing-in-finland-legislation-finally-published/

Laulom S. and Dorssemont F. (2015) Fundamental principles of EWC Directive 2009/38/EC, in Jagodziński R. (ed.) Variations on a theme? The Implementation of the EWC Directive, ETUI, 33–68. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

MEAE (2014) Employment contracts Act: the position of employers and employees under the Employment Contracts Act, Ministry of Economic Affairs and Employment of Finland. https://tem.fi/documents/1410877/2918935/Employment+Contracts+Act/b0fca473-f224-46b9-974c-acd153587680

MEAE (2022) Confidentiality, Ministry of Economic Affairs and Employment of Finland. https://yt-asiamies.fi/en/6.3-confidentiality

OCJ (2022) Whistleblower protection, Office of the Chancellor of Justice in Finland. https://oikeuskansleri.fi/en/about-whistleblower-protection

YTN (2024) EWC operations and practices, Ylemmät Toimihenkilöt. https://ytn.fi/en/tes-and-contract-work/ewc-operation-and-practices/

Hungary

Based on a national report by Tamás Gyulavári

1. Regulatory context and information and consultation mechanisms

In recent decades, Hungarian industrial relations have changed gradually but considerably. While the government has continued to play a significant political role in their formation, both by setting the legal framework and as a partner more or less committed to working with the social partners, Hungary has shifted from:

- strong national tripartite cooperation to only limited consultation;
- considerable collective bargaining coverage to low and uneven coverage; and
- structures such as **works councils**, sectoral dialogue committees and regional tripartite bodies, to fewer and weaker institutions (Pulai 2022).

The social partners have struggled to retain members and their role in the economy and society (Pulai 2022) in a context of 'democratic backsliding' (for example, Camisão and Luciano 2022; Parker 2023).

A decade or so ago, the Hungarian government replaced the long-standing National Interest Reconciliation Council (Országos Érdekegyeztető Tanács – OÉT) with multipartite/tripartite structures with more limited roles (Pulai 2022). While the representativeness of social partners at national level is not explicitly laid down in law, legislation on the main national civil dialogue body, the National Economic and Social Council (Nemzeti Gazdasági és Társadalmi Tanács – NGTT), established by **Act XCIII of 2011**,[156] details criteria for social partner participation in the NGTT. This forum of **union confederation** and employer organisation members consults on a wide range of socio-economic issues. However, Eurofound (2021) reports that it 'is a symbolic consultative civil dialogue body, without any negotiation function.'

The main tripartite social dialogue body, the Permanent Consultative Forum of the Private Sector and the Government (Versenyszféra és a Kormány Állandó Konzultációs Fóruma – VKF), is based on an agreement that does not refer to representativeness, and lists the social partners involved (including three union confederations, all of which are NGTT members). In Hungary, there is no national, cross-sectoral collective bargaining. However, national union confederations are involved in tripartite negotiations on the minimum wage and

156. 2011. évi XCIII. Törvény.

wage recommendations within the framework of the VKF, whose operations are not regulated by law.

Trade unions in Hungary are organised by sector, region, occupation and company sites, and workplace unions are affiliated to sectoral or regional federations, and through them (or sometimes directly) to six national union confederations. Collective bargaining takes place mainly at the company level, and sectoral-level collective agreements (governed by **Act LXXIV of 2009**[157] on dialogue committees at sectoral level and on certain issues of intermediate level social dialogue) play a limited role in regulation.[158] Notwithstanding this, collective bargaining coverage is low (around 10%) (ETUI 2024). Eurofound (2021) observes that '(t)he effect of the [2012] Labour Code, the decline of social dialogue in general, the unfavourable political climate and a long-standing need for integration [began] a merger process among some national trade union confederations [from] 2013.' Both public and private sector employees have the right to organise but public sector employees' right to collective bargaining is limited (unilateral mandatory regulations prevail) and is absent for civil servants in public administration (ETUI 2019).[159]

Both **trade unions** and **works councils** are key workplace representation mechanisms in many workplaces in Hungary. In this setting, works councils are entirely employee bodies, set up in a (or any part of a) company operating independently, with more than 50 employees. In workplaces with 15–50 employees, a works representative is elected. The early **Labour Code (Act XXII of 1992)**[160] established a special, interdependent co-existence of **works councils** for participation and trade unions for collective bargaining at workplaces. Trade unions' monitoring function passed to works councils, which also have an inspection function and the right to monitor the lawful operations of employers, and employers have I&C obligations towards works councils only (Eurofound 2021). **Central works councils** may be set up by several works councils and corporate-level works councils may be set up by different councils operating in the same group. The ILO (2020) observed: '[t]he only real difference between unionised and non-unionised workplaces is that the candidates for the works council election can also be nominated by the local trade union branch. In practice, overlaps between **trade unionists** and **works council members** are quite usual'[161] (our emphasis). In 2023, the **Labour Code** underwent its most

---

157. 2009. évi LXXIV. törvény az ágazati párbeszéd bizottságokról az ágazati párbeszéd bizottságokról és a középszintű szociális párbeszéd egyes kérdéseiről.

158. Although around 30 bipartite sectoral dialogue committees were set up when Hungary joined the EU, sectoral bargaining did not improve and the government has withdrawn from subsidising them.

159. In theory, however, sectoral dialogue forums ensure trade unions' consultative role (ETUI 2019).

160. Munka Törvénykönyve (1992. évi XXII. törvény).

161. However, under the Code, in the absence of a valid collective agreement and representative union organisation (that is, a union empowered to enter into collective bargaining) at company level, the works council can conclude a works council or plant agreement (quasi-collective agreement) to regulate terms and conditions of employment, with the exception of wages (Art. 268, Section 1).

extensive modifications since 2012, including in relation to employer information obligations.

Elected **H&S representatives** are the main channel through whom employees' interests are represented in this area. Organisations with three or more H&S representatives can form their own **employee-only H&S committee**. Larger employers (with 200 or more employees) in Hungary also have a **joint H&S committee** comprising representatives of both sides. Since 2016, all organisations with 20 or more employees (formerly, it was 50 or more) must have **H&S representatives** (ETUI 2024), following a sharp increase in the number of accidents at work (Croner-i Limited 2024).

For **EWCs, Act XXI of 2003**[162] transposed Directive 94/45/EC into Hungarian law, coming into force when Hungary joined the EU in May 2004, and was amended by **Act CV of 2011**,[163] transposing the EWC Recast Directive 2009/38/EC. For **EWCs** and **SEWCs**, European representatives from Hungary are chosen by a works council, or central works council, if there is one. Based on fallback rules, **board members to an SE** are chosen by the SE representative body. Moreover, **trade unionists** who are not employees of the companies concerned (that is, full-time officials) can be **SNB members**.

With **board-level employee representation (BLER)**, legislation passed in 2006 allowed single-tier boards (a board of directors), although employee rights are weaker here than in two-tier board structures (with a board of directors, and a supervisory board, in which employee representatives form one-third of members in companies with more than 200 employees), as there are no minimum requirements.[164] In companies with a single-tier board system, BLER must be regulated by an agreement between the works council and the company. The 2006 statute, the **Act IV on Business Associations**[165] (and **Act V of 2013 on the Civil Code**[166] that replaced it) leaves the procedures of both the supervisory and the management board to companies themselves to regulate, whereas previously there was more detailed regulation (ETUI 2024). In companies with a two-tier system, the works council can generally nominate one-third of the members of the supervisory board, though it must consult with the company unions beforehand. Under the 2013 legislation (Act V, Section 3: 119–128), they have lost their right to protection against dismissal.

162. 2003. évi XXI. Törvény az európai üzemi tanács létrehozásáról, illetve a munkavállalók tájékoztatását és a velük való konzultációt szolgáló eljárás.
163. 2011. évi CV törvény.
164. The supervisory board is responsible for the general direction of the company, while the day-to-day business is in the hands of the management board.
165. 2006. évi IV. Törvény a gazdasági társaságokról.
166. 2013. évi V. törvény a Polgári Törvénykönyvről.

2. Relevant law and regulatory provisions

2.1 National law regulating and referring to confidentiality of information and consultation and worker representation

Hungary has adopted a predominantly statutory approach to I&C, although its legal framework is comparatively detailed. For **trade union members** and **officials, works council members** and **H&S representatives**, the general and specific provisions of the **2012 Labour Code**[167] apply.

With **EWCs** and **other levels of worker representation**, in order to help ensure that communication between them is not blocked by a duty of confidentiality, as in some other EU Member States, Hungary has copied general clauses from its national legislation, the **Act XXI of 2003**[168] (Hungarian EWC Act) into the specific rules of an EWC agreement. Hungary transposed both SE Regulation 2157/2001/EC and Directive 2001/86/EC by means of the **Act XLV of 2004**[169] and 'seems to have chosen the legislative mode of transposing the Directive on employee involvement in the SE rather than via an agreement between the social partners' (ETUI 2024). Gyulavári (2020) writes that there is no specific provision in Hungary with regard to confidentiality and **SEs** and **SCEs**.

Moreover, in Hungary's public sector, many specific laws contain different rules on confidentiality, making employment regulation in this sector fragmented and complicated. In relation to **whistleblowing**, Hungary recently adopted **Act XXV of 2023**[170] (Whistleblower Protection Act), transposing Directive 2019/1937 (see Sections 2.2 and 2.3 of this chapter).

For individual **employees**, confidential information is addressed under Art. 8 of the **2012 Labour Code**.[171] The **Criminal** and **Civil Codes**[172] and the **Competition Act 1996**[173] also provide for infringements of trade secrets, and also apply to the employee.

167. Munka törvénykönyve 2012.
168. 2003. évi XXI. törvény.
169. 2004. évi XLV. törvény.
170. 2023. évi XXV. törvény.
171. Munka törvénykönyve 2012.
172. Büntető törvénykönyv 2013 and Polgári Törvénykönyv 2013.
173. 1996. törvényt a tisztességtelen piaci magatartás és a versenykorlátozás tilalmáról.

2.2 National provisions concerning whistleblowing and whistleblowers' protection

In Hungary, whistleblowing is an area of regulation with detailed provisions, particularly concerning the employment relationship and whistleblowing procedure.

Hungary first implemented legislation for whistleblowing protection with **Act CLXV of 2013**[174] (on complaints and reports of public interest), regulating the mandatory procedure for handling complaints for governmental and municipal organs, and the voluntary establishment of whistleblowing reporting systems by private entities (Oppenheim 2014; Whispli 2023). An idiosyncrasy of the Hungarian system has been the Ombudsman's role in the management of public interest reports, and they have additional powers. Under this Act, protection was limited to the workplace. Any action taken as a result of the disclosure of a public interest or disclosure made in good faith, which may cause disadvantage to the whistleblower, would be unlawful, even if it would otherwise be lawful (Art. 11) and the State provided whistleblowers with legal aid (Art. 12). Disclosure in good faith is required and the law reversed the burden of proof (TI Nederland 2019). Although this Act did not contain specific penalties for non-compliance, whistleblowing has also been subject to the GDPR via Hungary's **Act CXII of 2011**[175] (Data Protection Act). Other statutes have also concerned whistleblowing in Hungary (such as **Act CXXII of 2009**[176] on the more economical operation of publicly-owned companies).

Despite the 2013 Whistleblowing Act's shortcomings (for example, its failure to provide for a full range of disclosure channels for employees and citizens, and non-monitoring of workplace retaliation cases – Worth et al. 2018), Hungary lagged behind other EU Member States in transposing the Whistleblowing Directive 2019/1937/EC. Moreover, Abazi (2020) noted that the 'Directive is … only in the early stages towards meaningful protection, rather than a "game changer" for whistleblowers', and Hungary's 2013 Act regulated all of the important aspects of the Directive. However, the Directive is more detailed and specific than the Act. Thus, 'medium-scale amendment of the Act' was expected, particularly in terms of more widespread mandatory whistleblowing systems in the private sector (Wolff Theiss 2021).

On 25 May 2023, Hungary finally introduced **Act XXV of 2023**[177] (on complaints, disclosures in the public interest and related rules on reporting abuses), transposing the Whistleblowing Directive. Organisations had 60 days (that is, until 24 July 2023) to establish or review their whistleblower systems to comply with the Act (Lexology 2023). The Act requires that organisations establish internal reporting channels in two separate sections, distinguishing

174. 2013. évi CLXV. törvény.
175. 2013. évi CXII. Törvény adatvédelmi törvény.
176. 2009. évi CXXII. törvény a köztulajdonban álló gazdasági társaságok takarékosabb működéséről.
177. 2023. évi XXV. törvény.

between administrative bodies and public sector entities; and other employers. It thus applies to employers that manage workers under a variety of employment relationships, such as employment contracts under **Act I of the 2012 Labour Code**,[178] civil service employment, contractors, and individual entrepreneurs.

Hungary's whistleblowing law introduces a three-stage system for reporting abuse and misconduct:

1. the internal reporting channel, through which people can report within their company;
2. an external reporting channel, through which individuals can report to the relevant authorities; and
3. the individuals concerned can make a public disclosure of their report, under certain strict conditions.

The internal reporting channel can be overseen by an impartial person or organisational unit designated by the employer, and must function independently. Alternatively, a company can appoint a lawyer or another external organisation for the task (Whispli 2023). Furthermore, an organisation cannot take adverse action taken against whistleblowers that is a direct result of their lawful disclosure.

The new legislation sets out more detailed obligations on several issues than the provisions of the previous Act (for example, whistleblowers must be able to submit their reports in writing or orally; organisations must set up internal reporting channels in which these forms of communication are available). In certain cases, organisations have the discretion to decide whether to investigate a report (for example, when the identity of the whistleblower cannot be determined). Personal data revealing the identity of the whistleblower must not be disclosed to anyone other than those conducting the investigation (CMS Legal 2024).

The following laws also still apply: **Act CXII of 2009**[179] – Section 7/J makes it compulsory for certain publicly-owned companies to operate an internal control system); **Act LIII of 2017**[180] (on the Prevention and Combatting of Money Laundering and Terrorist Financing (AML) and **MNB Decree 26/2020 (VIII.25)**.[181]

2.3 Confidential information versus trade secrets

Reflecting the stance of the Framework Directive on information and consultation 2002/14/EC, Hungary's 'regulatory approach' to confidentiality leaves it to be 'regulated' by employers in cooperation with **worker representatives** (Rasnača and Jagodziński forthcoming).

---

178. Munka törvénykönyve 2012.
179. 2009. évi CXXII. törvény a köztulajdonban álló gazdasági társaságok takarékosabb működéséről.
180. 2017. évi LIII. torveny.
181. 26/2020 (VIII.25.) MNB rendelet.

However, Hungarian legislation distinguishes between confidentiality and business secrets. With confidential information, like some other EU Member States (such as Finland, Poland and Slovenia), Hungary largely reproduced the confidentiality requirement of Art. 6(1) of the above Directive in terms of a 'commercial, industrial, business or professional secret' (ILO 2020). Its **Labour Code**[182] (among other things)[183] defines confidentiality and is thus applicable to all instances of **worker representation** and **trade unions**. Art. 8 of the Code refers to

> 'any data learned in connection with their activities that, if revealed, would result in detrimental consequences for the employer or other persons. The requirement of confidentiality shall not apply to any information that is declared by specific other legislation to be treated as information of public interest or public information and as such is rendered subject to a disclosure requirement.'

Similarly, the broad definition of confidential information provided by Art. 234(1) of the Code does not go beyond facts, information, know-how or data that, if disclosed, would harm the employer's legitimate economic interest or functioning.

The **Labour Code**[184] thereby uses a wider scope for confidentiality than the concept of business secret found in Art. 1 of **Act LIV of 2018**[185] (Trade Secrets Act), in which a

> '(b)usiness secret is a confidential fact, information, other data and the compilation thereof, connected to an economic activity, partly or as a whole not known, or not easily accessible for the person pursuing the economic activity, possessing a material value, and the protection of which might normally be expected in the given circumstances from the person entitled to this information.'

This notion is also used in Art. 19 of **Act XXI of 2003**[186] (Hungarian EWC law) for protected information. **Act LIV of 2018**[187] (Trade Secrets Act) ensures protection to a trade secret and know-how that is similar to IP rights (its sanctioning regime in case of infringement is also similar). Also of note, this Act includes provisions to preserve the confidentiality of trade secrets during court proceedings (Csengery 2018). The Act also contains a definition of know-how that corresponds with the old definition provided in the **Civil Code**[188] as a sub-category of trade secrets (defined in Art. 1), covering technical, economic or organisational knowledge, solutions, experience or a combination of such, with information recorded in an identifiable manner. The definition of trade secrets (and thus know-how) stresses

---

182. Munka törvénykönyve 2012.
183. The Criminal Code, Competition Act and Public Procurement Act also contained provisions related to trade secrets, 'resulting in a somewhat fragmented situation' (Bird and Bird 2021).
184. Munka törvénykönyve 2012.
185. 2018. évi LIV. Törvény az üzleti titok védelméről.
186. 2003. évi XXI. törvény.
187. 2018. évi LIV. Törvény az üzleti titok védelméről.
188. Polgári Törvénykönyv 2013.

that trade secret protection applies only if the owner has taken 'reasonable steps under the circumstances to keep it secret.'

With **employees**, and specifically if they make use of an employer's business secret in their own business, they violate Art. 4 of **Act LVII of 1996**[189] (on the Prohibition of Unfair Trading Practices and Unfair Competition). In that Act, a 'business secret' has the meaning defined in Subsection 2 of Section 81 of the **2013 Civil Code**.[190]

2.4 Worker representation bodies and representatives' information and consultation rights and duties

As noted, in Hungary, an employer has I&C obligations to a **works council** only (see Section 2.1 of this chapter), while **trade unions** may request certain information from an employer on issues that impact employees' employment-related and social welfare interests. **Trade unions** also have a general right to articulate their opinions on any decision taken by the employer and to initiate talks (ILO 2020).

Under the **2012 Labour Code**,[191] an employer is obliged to inform the **trade union** or **works council** on what is specified in the Code concerning industrial relations or the employment relationship to enable them to acquaint themselves with, examine, formulate and defend a view on the subject matter.

More specifically, under Section 262(2), Art. 111 of Act I of the Code, to the extent needed to meet their responsibilities, **works councils** can request information and initiate negotiations, giving a reason, which the employer may not refuse.[192] An employer must provide key information to the **works council** semi-annually, and the works council in turn will inform employees about its activities semi-annually. Under Section 262(4), employers must consult the **works council** prior to taking a decision on plans for actions and adopting regulations affecting many employees (for example, restructuring, organising, privatisation, the introduction of new work organisation methods); and under Section 262(5), inform the works council about a transfer of employment in advance of a transfer of enterprise.

For **trade unions**, Section 272(2), Art 113 (Chapter XXI) of the Code provides them with the right to provide information to workers on industrial relations or employment relations matters. Under Section 272(4), like works councils, they may request information from employers on all issues related to employees' economic and social interests in connection with employment. Section 272(5) provides that trade unions can express their position and options to the employer on any employer actions (decisions or their drafting) and initiate talks in connection

189. 1996. évi LVII. törvény a tisztességtelen piaci magatartás és a versenykorlátozás tilalmáról.
190. Polgári Törvénykönyv 2013.
191. Munka törvénykönyve 2012.
192. Also, a works council may initiate consultations concerning the establishment of the system.

with these actions. However, the balance between the two forms of workplace representation has varied over time, and

> '**(w)orks councils** have information and consultation rights but in practice often find it difficult to influence company decisions … Figures from the 2015 labour force survey show that a **union** presence at work was more widespread than the existence of a works council.' (ETUI 2024; our emphasis).

Information on company decisions is often provided only at meetings, giving works councils a restricted chance to respond (ETUI 2024) although the employer and works council decide jointly on the use of welfare funds (Art. 111, Section 223 in Act I of the **2012 Labour Code**).[193] Furthermore, it may be difficult to ensure the objectives of the Framework Directive on information and consultation 2002/14/EC in workplaces where there is no works council or trade union.

The key legislation on workplace H&S in Hungary is **Act 93 of 1993 on Occupational Safety and Health**.[194] Employers must consult workers and their representatives and allow them to participate in discussions in advance and in good time on all issues concerning employer actions on H&S at work. **H&S representatives** have the following general functions:

- they represent employees in consultations on H&S;
- they consult on the implementation of measures to ensure the protection of employees' right to a safe workplace; and
- they monitor whether H&S regulations are being enforced (Croner-i 2024).

Employee-only H&S committees have the same rights as **H&S representatives** and are concerned mainly with monitoring compliance with H&S obligations. **These committees** and **H&S representatives** may also enter the workplaces they cover during working hours to obtain information from employees, and participate in the preparation of decisions by the employer that may impact on employee H&S. They can also request information from the employer on issues concerning healthy and safe working conditions, and express opinions and make proposals to the employer. They may also discuss H&S issues with the Labour Inspectorate and, subject to employer agreement, ask experts for advice. **Joint H&S committees** in workplaces with 200 or more employees should not affect the operation of H&S representatives. In terms of I&C, they must discuss the company's H&S programme and monitor its implementation, comment on internal H&S regulations, and annually review the H&S situation.[195]

With **EWCs**, Hungary's implementation of the EWC Recast Directive 2009/38/EC involves similar I&C definitions. An EWC has a right of response in the absence of agreement; reference is made to effectiveness; transposition of Art. 1.2 (on

---

193. Munka törvénykönyve 2012.
194. 1993. évi XCIII. Törvény a munkavédelemről.
195. Furthermore, a national occupational health and safety committee operates as a specialised standing body under Articles 78 and 79 of Act 93 of 1993 on Occupational Safety and Health. Occupational health and safety falls within the remit of the Ministry of Social Affairs and Labour, with the Hungarian Labour Inspectorate monitoring compliance with health and safety and employment legislation.

ensuring the effectiveness of I&C procedures and effective decision-making) and of Art. 2.1f and Recital 42 (on workers' right to I&C on possible impact); see Art. 56 of **Amendment of Act XXI of 2003**[196] (Hungary's EWC law) (Laulom and Dorssemont 2015). Hungary, like most jurisdictions, has copied verbatim the EWC Recast Directive's wording on EWC members' duty to report back to local representatives.

With **whistleblowing**, the role of key worker representative bodies (**trade unions** and **works councils**) is not clarified in Hungarian law (Kun 2021). However, if there is an active works council at an employing organisation, it must be informed of the establishment of a whistleblowing system in accordance with Section 264 of Act 1 of the **2012 Labour Code**.[197]

2.5 Challenging company decisions and accessing justice

Under Section 289(1) of Chapter XXIII (Part 4) of Art 1. of the **2012 Labour Code**,[198] an employer, **works council** or **trade union** can bring an action before the competent courts within five days of a violation of I&C provisions. Under Section 289(2), courts must hear cases within 15 days in non-contentious proceedings, and their decisions may be appealed within five days. A court of second instance delivers its decision within 15 days. Section 293 of Chapter XXIV provides for employers, works councils or trade unions to set up a conciliation committee, comprising an equal number of members delegated by each, and an independent chair, to resolve disputes.

On **EWCs**, along with several countries (including Italy and the United Kingdom), Hungary does 'not seem to provide easily identifiable regulations on the possibility of seeking adjudication in case of confidentiality disputes from state agencies, such as courts, labour inspectorates, and/or mediation or arbitration authorities' (Laulom and Dorssemont 2015: 45–46). As Laulom and Dorssemont note, this is not a violation of Art. 8 of the EWC Recast Directive 2009/38/EC but significantly limits the prerogatives and effectiveness of workers' access to information. While it is one of various countries that does not provide workers with the right to challenge the applicability of confidentiality clauses, in line with Art. 8.2 of the EWC Recast Directive, Hungary provides the right for management to withhold certain information that 'according to objective criteria, would seriously harm the functioning of the undertakings concerned or would be prejudicial to them' (Laulom and Dorssemont 2015: 46).

More broadly, however, Hungary is one of nine countries where **EWCs** have legal standing (that is, the capacity to act in courts) and can be a party in legal proceedings, including in relation to the provision of I&C (Jagodziński and Stoop 2023). **EWC members** have the means to exercise the rights provided to the EWC (including the commencement of legal disputes related to the violation of

196. Törvény módosítása 2003. évi XXI.
197. Munka törvénykönyve 2012.
198. Munka törvénykönyve 2012.

employees' I&Crights) and **trade unions** can assist with EWCs' representation. EWCs are exempted from court fees, which explicitly are to be covered by management (Jagodziński and Stoop 2023).

Moreover, for **whistleblowers**, it is unlawful for an employer to take adverse action as a direct result of their lawful disclosure under Hungary's **Act XXV of 2023**[199] (Whistleblower Protection Act).

2.6 Worker representatives' duties in maintaining confidentiality, and their contacts with other representatives and stakeholders

For **worker representatives**, Hungary's **2012 Labour Code**[200] sets strict confidentiality obligations.[201] **Works council members** are regulated by Act 1, Articles 235–269, while **trade union members** and **officials** are regulated by Act 1, Articles 270–275. In principle, collective agreements may freely deviate from the Code as a rule (Art. 277(2)) but Part I of the Code is *ius cogens* (compelling law), including Art. 8 on general provisions about an employee's confidentiality obligations. Chapter 20, including Art. 234 on specific provisions regarding confidentiality, is also *ius cogens*.

More specifically, under Section 243(2) of Chapter XIX, Part Three of Act I of the **2012 Labour Code**,[202]

> 'representatives acting in the name and on behalf of works councils or trade unions are not authorised to disclose any facts, information, know-how or data which, in the legitimate economic interest of the employer or in the protection of its functioning, has expressly been provided to them in confidence or are to be treated as business secrets, in any way or form, and are not authorized to use them in any other way in connection with any activity in which this person is involved for reasons other than the objectives specified in this Act.' (Our emphasis)

However, Section 243(3) provides that any person acting in the name or on behalf of the **works council** or **trade union** can disclose any information or data acquired during their activities solely in a manner which does not jeopardize the employer's legitimate economic interests and without violating personal rights. Moreover, Rasnača and Jagodziński (forthcoming) note that **works councils** are subject to essentially the same special rules that apply around confidentiality to EWCs in Hungary (as in France).[203] Notably, collective agreements cannot derogate

---

199. 2023. évi XXV. törvény.
200. Munka törvénykönyve 2012.
201. Furthermore, in the public sector, many specific laws contain different rules on confidentiality, making regulation of employment in this sector fragmented and complicated.
202. Munka törvénykönyve 2012.
203. In other countries, they more or less exactly transcribe the provisions of the EWC Directive (Rasnača and Jagodziński forthcoming).

from the above provisions. This rule also applies to works council agreements when they are accepted as a quasi-collective agreement (Art. 268(1)). Otherwise, these agreements may freely deviate from Art. 234.[204] Employment contracts and similarly by-laws (Art. 15(3)) must not deviate from the abovementioned Code provisions, although, unless otherwise provided for by law, the employment contract can derogate from the Provisions of Part 2 and from other laws to the benefit of employees (Art. 43(1) of the Code). **H&S representatives** are regulated by **Act XCIII of 1993**[205] on occupational H&S, Articles 70/A-77. In terms of specific provisions, under Art. 76(2), the provisions for works council members of the **2012 Labour Code**[206] are applied regarding confidentiality of information during work.

For **EWCs**, specific provisions of **Act XXI of 2003**[207] (Hungary's EWC Act) are applied on the procedure for the I&C of employees. The exception of the **Labour Code**[208] (Art. 234(3) – see above) makes the Hungarian system somewhat similar to that in Germany, certainly for **EWC members**, who are explicitly authorised to share confidential information with other parties bound by the obligation of confidentiality under Art. 19 of the **EWC Act**, and the **Act on Prohibition of Unfair Market Behaviour**[209] may also be applied in harmony with it. Art. 19 of the Code provides:

> '(1) The central management is only obliged to fulfil its obligation to provide information according to Article 7, Article 16 (5) and Article 17 (1) of the present Act if it does not jeopardise the Community-Scale undertaking's or group's reasonable interest in business or amended secrets.'[210]

According to Art. 19, even after the termination of their mandate, **EWC members** and **alternate members** cannot pass any information that they received due to their EWC membership that central management expressly designated business or shop secrets to third persons, nor publish or otherwise use them other than for activity that serves the goals described in the Act. However, Art. 19 also contains detailed exemptions around EWC members' contact with others in relation to confidentiality rules. A confidentiality obligation does not apply to EWC members and alternate members in relation to other **EWC members** and **alternate members**; employee representatives of undertakings and branches; employee representatives of managing or controlling bodies of undertakings; and interpreters and experts assisting with their tasks.

Furthermore, the confidentiality obligation applies to **SNB members and alternate members**; the **employee representative participating in the**

---

204. Somewhat controversially, although Art. 267(1) allows the employer and works council to conclude a works agreement for the implementation of the provisions of Chapter 20 and to promote their cooperation, Art. 234 is in Chapter 19. At the same time, the amended text of Art. 267(5) prohibits derogations from Art. 233 which is in Chapter 19. It is thus not prohibited to deviate from Art. 234 in Chapter 19.
205. 1993. évi XCIII. Törvény a munkavédelemről.
206. Munka törvénykönyve 2012.
207. Törvény módosítása 2003. évi XXI.
208. Munka törvénykönyve 2012.
209. 1996. évi LVII. törvény a tisztességtelen piaci magatartás és a versenykorlátozás tilalmáról.
210. Art. 19 of Act XX1 of 2003 (Törvény módosítása 2003. évi XXI).

I&C procedure described in Articles 7–8; **interpreters** and **experts**; and **employee representatives of undertakings and branches**. In terms of exceptions for these parties, however, SNB members and alternate members are not obliged to keep information confidential from **interpreters** and **experts** assisting with their tasks; and the **employee representative participating in I&C** described in Articles 7-8 is not obliged to keep confidentiality towards **interpreters**, **experts** and **employee representatives** of undertakings and branches (Art. 19(5)). Laulom and Dorssemont (2015: 47) note:

> 'All of these actors have obligations to maintain confidentiality that apply specifically to them; thus there is no risk of confidential information being released to third parties. At the same time, [in Hungary and nine other countries], application of the confidentiality clause does not obstruct or make processing information and preparation of opinions and consultation impossible.'

Employee representatives on supervisory boards are subject to Act V of the **2013 Civil Code**,[211] Art. 3:124. For them, there is no specific provision other than in this Code (Art. 3:126) which applies the 'same rights and obligations to them as to the other members of the supervisory board.' Thus, this Code's provisions on personality rights (Art. 2:51-53) apply to them. The **Act on Prohibition of Unfair Market Behaviour**[212] may also be applied in harmony with this and the **2012 Labour Code**.[213]

For **SEWCs** and **SCEWCs**, and for information relating to **companies listed on the stock market**, no specific provisions exist (Gyulavári 2020).

Under Section 13 of **Act XXV of 2023**[214] (Whistleblower Protection Act), an employer may, under the conditions of Section 9(2) of the **Labour Code**,[215] establish rules of conduct for its **employees** that protect the public interest or overriding private interests, which the employer must make public in a manner accessible to any person, together with a description of the procedure involved. Art. 8(6) of the Whistleblowing Directive 2019/1937/EC states that mid-sized entities in the private sector with 50–249 workers may share resources regarding the receipt of reports and any investigation to be carried out, but current Hungarian law does not address resource-pooling (CMS Legal 2024).

For their part, **employees** have a general confidentiality obligation towards the employer for reporting irregularities internally under Section 6(4) of the **Labour Code**,[216] and not disclosing certain information to the public under Sections 8(1) and 8(4). The obligation to keep trade secrets and other information confidential binds employees after they terminate their employment.

---

211. Büntető törvénykönyv 2013.
212. 1996. évi LVII. törvény a tisztességtelen piaci magatartás és a versenykorlátozás tilalmáról.
213. Munka törvénykönyve 2012.
214. 2023. évi XXV. törvény.
215. Munka törvénykönyve 2012.
216. Munka törvénykönyve 2012.

2.7 Sanctions for breaching confidentiality of information and consultation and remedies for workers and worker representatives

In Hungary, employees and employers may pursue claims arising from the employment relationship or the **2012 Labour Code**[217] (not confidentiality-specific). The Labour Court may state a violation of the Code by, and the liability of, an employer for damages (see Section 2.10 of this chapter). **Trade unions** and **works councils** may pursue their claims arising out of the Code, a collective agreement or a works agreement through a judicial process at a labour court (Art. 43(1) of the Code).

In addition, protection granted to (some) elected **trade union representatives** is not absolute. If an employee infringes confidentiality in this representative capacity, the union will bear the liability for the misconduct. Otherwise, it is assessed on an ad hoc basis as to whether an employee's employment can be terminated by extraordinary dismissal due to a significant breach of their material obligations (Antalóczy Law Firm 2019).

For breaches (not confidentiality-specific) of **EWC** rights, considered an administrative offence in Hungary, Jagodziński (2023) reports that there are no specific sanctions (apart from a 'fine'/financial compensation) defined in the transposing acts of the EWC directives (of 2003 and the 2011 amendment) which 'stipulate fines for breaches of EWC regulations, but set no concrete amounts. Reportedly, neither are the amounts of fines set by the Hungarian Labour Code' (Jagodziński and Lorber 2015: 3). However, sanctions may be imposed or defined by the Labour Inspectorate (Vega and Robert 2013). In relation to business or trade secrets, the **Trade Secrets Act**[218] contains detailed provisions on the civil law protection of business secrets and potential remedies (Articles 7–9). If an employee uses an employer's business secret in their own business, they violate Art. 4 of the **Act on Prohibition of Unfair Market Behaviour**,[219] and labour or civil law claims may arise. For labour law claims, an employer may initiate: (i) a disciplinary procedure (where the sanction involved relates to the employment relationship in altering its terms and conditions for a fixed period or is of a financial nature whose total does not exceed the employee's monthly base wage – Art. 56 of the **2012 Labour Code**)[220] and/or (ii) immediate termination without notice (an employer or an employee may terminate the employment relationship without notice if the other party commits a grave violation of substantive obligations

217. Munka törvénykönyve 2012.
218. 2018. évi LIV. Törvény az üzleti titok védelméről.
219. 1996. évi LVII. törvény a tisztességtelen piaci magatartás és a versenykorlátozás tilalmáról.
220. Munka törvénykönyve 2012.

arising from the employment relationship or engages in conduct that renders the employment relationship impossible – Art. 78).[221]

Violations of obligations stated in the national **Act XXV of 2023**[222] (Whistleblower Protection Act) can result in sanctions imposed by the labour supervisory authority (such as warnings, prohibitions on further employment). Also, the main obligations for businesses under the Hungarian Act include investigations of reports, which must include measures to remedy the abuse, the filing of a complaint if criminal proceedings are warranted, and employer action (CMS Legal 2024).

2.8 Sanctions on companies or company representatives for abusing confidentiality rules

Under Section 262 of the **Labour Code 2012**,[223] **employers**, **works councils** or **trade unions** can bring a court action for any violation of the provisions on I&C and the parties can set up a conciliation committee whose decision is binding. In addition, disputes arising in connection with joint-decision making (that is, appropriation of welfare funds) must be decided by an arbitrator, whose decision is binding on the parties. When agreement is not reached by the parties, the arbitrator is chosen by random selection from a list of people nominated by the parties. The ILO (2020) notes that the Code removes sanctions intended to safeguard the I&C rights of participation; the court can only declare the violation but there are no effective sanctions.[224] Under previous legislation, their violation made the decision of the employer null-and-void.

As already mentioned, only a few national **EWC** regulations foresee some form of responsibility on the management's part for confidentiality abuses. Hungary is silent on sanctions for management who abuse the clause (Laulom and Dorssemont 2015). No specific sanctions (apart from a 'fine') are defined in the transposing Acts of the EWC directives or in the **2012 Labour Code**.[225]

Under the new national **Act XXV of 2023**[226] (Hungarian Whistleblower Protection Act), with the violation of data protection rules (for example, unlawful

---

221. Specific, independent Acts exist on the legal status of, for instance, public employees, civil servants, judges, prosecutors, judicial employees, police, and military personnel (for example, see Art. 1 of Act XXXIII of 1992 (on the legal status of public employees), and Art. 1 of Act ICC of 2011 on public servants. However, the Labour Code applies to public employees, by far the largest group of employees working in the public sector, as there are no specific rules.

222. 2023. évi XXV. törvény a panaszokról, a közérdekű bejelentésekről, valamint a visszaélések bejelentésével összefüggő szabályokról.

223. Munka törvénykönyve 2012.

224. Under the extended information obligation of the new (2023) Labour Code, if an employer fails to duly fulfil their written information obligation, the Labour Authority can initiate an inspection procedure which may have adverse consequences (for example, ordering the employer to provide appropriate information or the imposition of a fine in more serious cases).

225. Munka törvénykönyve 2012.

226. 2023. évi XXV. törvény a panaszokról, a közérdekű bejelentésekről, valamint a visszaélések bejelentésével összefüggő szabályokról.

disclosure of the whistleblower's personal data), the Hungarian data protection supervisory authority has the competence to investigate. Taking adverse measures against a whistleblower as defined by the Act and the obstruction or attempted obstruction of the whistleblower's report constitutes a misdemeanour, which may be subject to a fine of approximately 800 euros.

3. Illustrative case law

No relevant case law was reported from Hungary on confidentiality rules on I&C (see Gyulavári 2020).

4. Relevant EU legislation

As with other Member States, Hungary has applied the relevant EU legislative rules concerning confidentiality and worker representation. Its Labour Code 2012 shows broad conformity with the **Framework Directive on I&C 2002/14/EC**, establishing a general framework for informing and consulting employees (see Appendix tables). Act XXI of 2003 on EWCs, which came into force when Hungary joined the EU in May 2004, transposed **Directive 1994/95/EC** while Act CV of 2011 (amending Act XXI of 2003) transposed various provisions from the **EWC Recast Directive 2009/38/EC**.

Others include:

- the **Directive 2001/86/EC** and **Regulation 2157/2001/EC**, both transposed by Act XLV of 2004 on employee involvement in the SE, which came into effect on 8 October 2004, with Hungary choosing the legislative mode of transposition rather than via an agreement between social partners;
- the **Directive 89/391/EEC** (on the introduction of measures to encourage improvements in the safety and health of workers at work) informed Act XCIII on Occupational Safety and Health of 1993;
- the **Trade Secrets Directive 2016/943** was adopted into Hungarian law via Act LIV of 2018, shortly after expiry of the 9 June 2018 implementation deadline; and
- the **Whistleblowing Directive 2019/1937/EC** was transposed by the Whistleblowers' Protection Act 2023.

5. Sources

Relevant provisions/Acts (selected)

Act XXI of 2003 (transposing Directive 94/45/EC regulating the establishment and operation of EWCs)

Act XXXIII of 1992 (on the legal status of public employees), ILO. https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=31681&cs=1S1CvleAZnAUOjXZ6a9XgV7S646_IESyv7Wckzb_WAGIlSbjC9e2o2TU-qW-rOSh3z4y6Ec4cdyr4A02rW499nw

Act LIII of 2017 on the Prevention and Combatting of Money Laundering and Terrorist Financing (AML Act). https://www.mnb.hu/letoltes/aml-cft-act-hungary2020.pdf (English)

MNB Decree 26/2020 (VIII.25) (on the implementation of Act LIII of 2017) (unofficial). https://www.mnb.hu/letoltes/26-2020-mnb-decree-unofficial.pdf (English)

Act LIV of 2018 (on protection of business secrets), Nemzeti Jogszabálytár. https://njt.hu/jogszabaly/en/2018-54-00-00 (English)

Act LVII of 1996 (on the Prohibition of Unfair Trading Practices and Unfair Competition). https://www.biicl.org/files/5900_hungary_-_act_lvii_pura_%5Beng%5D.pdf (English)

Act LXXIV of 2009 (on the operation of sectoral and mid-level social dialogue), IRLEX. https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:HUN,,2019 (Hungarian)

Act LXXX of 2003 (on Legal Aid), European Commission. https://migrant-integration.ec.europa.eu/library-document/act-lxxx-2003-legal-aid_en (English) (Hungarian)

Act XCIII of 2011 (on election of members of the National Assembly), Nemzeti Jogszabálytár. https://njt.hu/jogszabaly/en/2011-203-00-00 (English)

Act XCIII of 1993 on Health and Safety at Work (Labour Safety), ILO. http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/38155/63993/F3193186/Act.XCIII.of.1993.pdf (English)

Act CXII of 2011 (on the right to informational self-determination and on the freedom of information or the Data Protection Act), European Commission (Venice Commission). https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2012)021-e (English)

Act CIC of 2011 (on public servants)

Act CLXV of 2013 on complaints and notifications of public interest (the Complaint or Whistleblowing Act). http://corruptionprevention.gov.hu/download/7/a2/90000/KIM%20555_2013-4.pdf (English)

Civil Code 2013. https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96512/114273/F720272867/Civil_Code.pdf (English)

Act CXXII of 2009 (on the more economical operation of publicly-owned companies), Hungarian Gazette, National Legal Repository. https://njt.hu/jogszabaly/2009-122-00-00 (English)

Labour Code (Act XXII of 1992), OHCHR. https://www2.ohchr.org/english/bodies/cescr/docs/e.c.12.hun.3-annex4.pdf (English)

Labour Code (Act I of 2012), ILO. http://www.ilo.org/dyn/travail/docs/2557/Labour%20Code.pdf (English)

Amendments to Labour Code of 2012 (effective from 1 January 2023)

Jurisprudence and commentaries

European Court of Human Rights (2020) Herbai v Hungary Judgment No. 11608/15, HUDOC, ECHR, https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-197216%22]}
Kun A. (2021) Whistleblowing in Hungary, in Skupień D. (ed.) Towards a better protection of workplace whistleblowers in the Visegrad Countries, France and Slovenia, Lodz University Press, 115-140.

References

Abazi V. (2020) The European Union whistleblowing Directive: a 'game changer' for whistleblowing protection?, Industrial Law Journal, 49 (4), 640–656. https://doi.org/10.1093/indlaw/dwaa023
Antalóczy Law Firm (2019) Trade union misconducts: breach of confidentiality, 3.04.2019. https://antaloczy-legal.hu/en/employment-law/trade-union-misconducts-breach-of-confidentiality/
Bird and Bird (2021) Protecting and enforcing trade secrets in Hungary – a practitioner's experience under the new rules, 7.02.2021. https://www.twobirds.com/en/insights/2021/hungary/protecting-and-enforcing-trade-secrets-in-hungary
Camisão I. and Luciano B.T. (2022) Challenges to democracy in the EU, in Jeger E., Durán Cruz D. and Luciano B.T. (eds.) Multilateralism and regionalism in challenging times: relations between Europe and Latin America and the Caribbean, EU-LAC Foundation, 26–40. https ://eulacfoundation.org/sites/default/files/2022-04/eu-lac-Multilateralismo-regionalismo-EN-2.pdf#page=38
CMS Legal (2024) Whistleblowing protection and reporting channels in Hungary. https://cms.law/en/int/expert-guides/whistleblower-protection-and-reporting-channels/hungary
Croner-i (2024) Hungary: in-depth. https://app.croneri.co.uk/topics/hungary/indepth
Csengery L. (2018) Hungary: new act on trade secrets and know-how in Hungary, Mondaq, 28.03.2018. https://www.mondaq.com/trade-secrets/687344/new-act-on-trade-secrets-and-know-how-in-hungary
ETUI (2019) Industrial relations in Hungary: background summary (update March 2019), 8.04.2019. https://www.etui.org/covid-social-impact/hungary/industrial-relations-in-hungary-background-summary-update-march-2019
ETUI (2024) Hungary, Worker-participation.eu. https://www.worker-participation.eu/national-industrial-relations/countries/hungary
Eurofound (2021) Working life in Hungary: background, 6.08.2021. https://www.eurofound.europa.eu/country/hungary#background
Gyulavári T. (2020) National report on confidentiality and workers' participation, unpublished report for ETUI.
ILO (2020) Hungary – 2019. Ceelex, CEE labour legislation database. https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:HUN,,2019
Ius Laboris (2020) Employees can express a professional opinion, even if their employer disagrees: an important new ECHR ruling, Lexicology, 27.02.2020. https://www.lexology.com/library/detail.aspx?g=59b23e0b-b3a6-4a98-b60d-1857191710d9

Jagodziński R. (ed.) (2015) Variations on a theme? The implementation of the EWC Recast Directive. ETUI. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

Jagodziński R. and Lorber P. (2015) Enforcement frameworks and employees' rights of access to enforcement procedures, in Jagodziński R. (ed.) (2015) Variations on a theme? The implementation of the EWC Recast Directive, ETUI, 107–178. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

Jagodziński R. and Stoop S. (2023) Access to justice for European Works Councils: a hands-on overview for practitioners, ETUC. https://www.etuc.org/en/access-justice-european-works-councils

Kun A. (2021) Whistleblowing in Hungary, in Skupień D. (ed.) Towards a better protection of workplace whistleblowers in the Visegrad countries, France and Slovenia, Lodz University Press, 115–140.

Laulom S. and Dorssemont F. (2015) Fundamental principles of EWC Directive 2009/38/EC, in Jagodziński R. (ed.) Variations on a theme? The Implementation of the EWC Recast Directive, ETUI, 33–68. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

Lexology (2023) Hungary introduces new whistleblower protection act, 31.05.2023. https://www.lexology.com/library/detail.aspx?g=ad8aae04-d9b5-4b96-8d96-f6c19f5c4151

Oppenheim (2014) New Hungarian whistleblowing law entered into force on 1 January 2014. http://www.oppenheimlegal.com/media/news/11/Newsletter_Whistleblowing2.pdf

Parker J. (2023) Europe in transition and workplace democracy towards a strong Social Europe?, in Countouris N., Piasna A. and Theodoropoulou S. (eds.) Benchmarking Working Europe 2023: Europe in transition – Towards sustainable resilience, ETUI, 144–171. https://www.etui.org/publications/benchmarking-working-europe-2023

Pulai A. (2022) National-level tripartite forums reformed, Eurofound, 17.09.2022. https://www.eurofound.europa.eu/en/resources/article/2002/national-level-tripartite-forums-reformed

Rasnača Z. and Jagodziński R. (forthcoming) Confidentiality and workers' information and consultation rights: a jigsaw puzzle.

Vega M.L. and Robert R. (2013) Labour inspection sanctions: law and practice of national labour inspection systems, Working Document 26, ILO. https://www.ilo.org/publications/labour-inspection-sanctions-law-and-practice-national-labour-inspection

Whispli (2023) EU whistleblowing Directive – Hungary. https://www.whispli.com/eu-directive-whistleblowing/hungary/

Wolff Theiss (2021) Lessons learned: practical experience from Hungary's whistleblowing law, 22.07.2021. https://www.wolftheiss.com/insights/lessons-learned-practical-experience-from-hungarys-whistleblowing-law/

Worth M., Dreyfus S., Lavite C. and Hanley G. (2018) Safe or sorry: whistleblower protection laws in Europe deliver mixed results, Blueprint for Free Speech. https://fibgar.es/wp-content/uploads/2020/07/safe-or-sorry-whistleblower-protection-laws-in-europe-deliver-mixed-results-seguro-o-arrepentido-leyes-de-proteccion-de-alertadores-en-europa-resultados-diversos-.pdf

Jane Parker

Italy

Based on a national report by Antonio Loffredo

1. Regulatory context and information and consultation mechanisms

Italy's industrial relations framework has undergone considerable change, emphasising an increasingly important role for decentralised bargaining and closer links between wages and productivity. One key development has been the erosion of collectively-agreed rules and some unions. Despite a high number of unions (Eurofound 2021), union density in 2019 was just 32.5% (OECD n.d.). Pulignano et al. (2018: 654) describe the situation of '"collective autonomy" as a classical source of strength for **trade unions** and employers' organisations … [but also a] low level of legislative regulation and weak institutionalisation, accompanied by little engagement in a generalised "participative-collaborative" model' (our emphasis). Particularly since 2010, governments have sought to act independently of choices made by **trade unions** (and partially employers), leading to an 'eclipse of concertation' (in other words, traditional tripartite policymaking).

Notwithstanding this, national-level agreements remain the main source of regulation, and **union–employer joint bodies** have recently been set up to better support both workers and employers when production levels decrease and working activity is affected, and by enhancing workers' skills and long-term training. Furthermore, relationships between employers and employees are legally regulated in considerable detail and, for each sector, there is a national collective bargaining agreement (NCBA) that regulates the employment relationship (L&E Global 2021). **Trade unions** are not recognised by the state as entities with legal personality and are free to regulate their internal activities as they see fit. Legally, national collective bargaining agreements only bind individuals who are members of unions signatory to the agreement. Because collective bargaining is subject to private law, collective agreements in Italy are regulated by the laws applicable to private contracts in general (L&E Global 2021).

A key statute governing employment relations, **Act 300/1970**[227] (the **Workers' Statute**), seeks to safeguard workers' freedom and dignity through: detailed regulations and the promotion of in-shop union activities; prohibition of anti-union behaviour; and anti-discrimination clauses on hiring and dismissal practices, which protect union representatives with special provisions (Eurofound 2021), although the social partners have recently addressed, among other things,

227. Statuto dei lavoratori – Legge 300/1970.

the issue of representation and representativeness. Thus, only a few matters are settled by individual negotiations and agreements (Eurofound 2021). This Statute applies to companies with more than 15 employees.

In 2018, employer confederation, Confindustria, and several **confederal unions** reached a cross-industry agreement (Factory Pact) on the bargaining system. This was designed 'to accompany the transformation and digitalisation of manufacturing and services, with an emphasis on effectiveness and participation. The agreement introduces a set of guidelines on the content and institutions of industrial relations and provides some indications on some issues of mutual interest on which future deals shall be negotiated' (Eurofound 2021). In particular, it covers the certification of representativeness and underlines the need to extend it to employer associations. It also confirms the two-tier structure of the bargaining system, with the sector as the main pillar, and the company or territorial as secondary; and identifies future negotiation issues, including H&S as a privileged area for the development of participatory industrial relations, and participatory practices, 'especially through innovative work organisational patterns which shall be promoted by second-level agreements' (Eurofound 2021). The social partners signed a key protocol on H&S at work to ensure the resumption of production in March 2020 (amended in April 2020), establishing the reference framework for workplace agreements and monitoring.

Act No. 300/1970[228] (the **Workers' Statute**) provides for union representation at company level. Agreements between the main union confederations and employers have built on this to create a new workplace representative structure, a **unitary or single trade union representation** (rappresentanze sindacali unitarie – **RSU**), bringing all unions in the workplace together. This main form of worker representation body is basically a trade union body regulated by collective bargaining, although members have come to be elected by all employees while unions nominate the candidates (ETUI 2024a). The less common, **plant-level union representation structure** (rappresentanze sindacali aziendali – **RSA**) are formed by employee initiative by territorial trade union organisations that have signed or participated in the negotiations of the NCBA applied by the employer (L&E Global 2024). They are broadly designed to protect the rights of members, and continue in some companies. More than one RSA (a single union body) can exist in a single workplace, sometimes alongside the RSU.

Both types of 'works council' are more often found in larger companies. Under **Art. 19 of Act No. 300/1970**[229] (the **Workers Statute**), an **RSU** can be set up – on the employees' initiative – in production units with 16 or more employees. However, whether workers are represented through **RSUs** or **RSAs**, unions play the central role. An **RSU** can cover a group of small companies in a particular local area, meets as necessary, and can set up sub-committees on particular issues (for example, H&S, work organisation). The **RSU's** main task is 'to negotiate with the employers at workplace level', while '[t]he role of the RSA is not defined in detail

228. Statuto dei lavoratori – Legge 300/1970.
229. Statuto dei lavoratori – Legge 300/1970.

in the legislation, but in in broad terms it is to protect the rights of union members' (ETUI 2024a).

Safety representatives (RLS), chosen by employees in smaller organisations, and by existing union structures in those with more than 15 employees, provide employee representation on H&S. Election procedures are determined by the appropriate collective agreement. Para. 6 of Art. 50 of **Legislative Decree no. 81/2008**[230] (consolidated law on health and safety protection of employees in the workplace), in compliance with the EU directives on H&S in the workplace, concerns **RLS** rights and guarantees the same protection for them as for **trade union councils**. They are thus recognised by the Decree as having a specific 'trade union' role. There is no structure of joint employer/employee safety committees other than a meeting with the employer and H&S staff once a year or when there are major changes. However, Italy does have a structure of **area safety representatives** (rappresentante dei lavoratori per la sicurezza) who cover smaller companies without their own safety representatives, and **site safety representatives** (rappresentante dei lavoratori per la sicurezza del sito produttivo), who coordinate where several companies share a single site (ETUI 2024a).

Indeed, most workplaces have **H&S representatives**, such that Italy has one of the highest levels in the EU. Following legislative changes in 2015, the overall responsibility for monitoring compliance with H&S and safety laws and regulations lies with the National Labour Inspectorate, which coordinates its activities with the inspection services of local health agencies. **Trade unions** and employers can influence H&S policy through their membership of the Standing Advisory Committee on Health and Safety at Work (Commissione Consultiva Permanente per la Salute e Sicurezza sul Lavoro) in which central government, regional government, unions and employers are equally represented (ETUI 2024a).

Following the **2003 Company Law Reform Act No. 6**,[231] Italian companies have been able to choose from three forms of corporate governance found elsewhere in Europe:

1. single board (one tier);
2. management board; and
3. supervisory board (two-tier).

Specific to the Italian system is an arrangement with both a management and a supervisory board, but both are chosen by the shareholders and the supervisory board has an auditing rather than a monitoring function. However, the Act also specifically states that those in an employment relationship with the company cannot be elected to the supervisory board. Unlike most continental EU countries, Italy thus does not have a system of, and employees have no right to, **BLER** (L&E Global 2021) – despite a specific article in its 1948 **Constitution**[232] – although the ETUI (2024b) records 'a handful of companies which have voluntarily agreed to

230. Decreto legislativo 9 aprile 2008, n. 81.
231. 2003 Legge di riforma del diritto societario n. 6.
232. Costituzione della Repubblica Italiana.

permit it.' Furthermore, although a right to **BLER** has been proposed in the past, change currently seems unlikely (ETUI 2024a).

According to the 2018 EWC survey, 12 **EWCs** are headquartered in Italy (De Spiegelaere and Jagodziński 2019). Italy's **Legislative Decree 113 of 22 June 2012**[233] (Italy's EWC law) transposed the EWC Recast Directive 2009/38/EC. The Italian social partners signed a joint statement of April 2011 on the transposition and this did not include a reference to confidential information, while Art. 10 of the Decree includes specific provisions on confidentiality (Peder Sini 2019).

Italy transposed Directive 2001/86/EC on the involvement of employees in an **SE** with **Legislative Decree no. 188/2005**.[234] On 2 March 2005, the Italian social partners signed a Common Opinion on transposition of the SE Directive, recommending that 'this … be taken into account when transposing the directive into law' (ETUI 2024b). For **SCEs**, Directive 2003/72/EC supplementing the Statute for an SCE for the involvement of employees was transposed by **Legislative Decree no. 48/2007**.[235] **Legislative Decree no. 25/2007**[236] transposed the Framework Directive on information and consultation 2002/14/EC establishing a general framework for informing and consulting employees in the European Community.

In addition, Leonardi (2018) refers to 'soft law' designed to incentivise worker participation through firm-level collective agreements:

- **Law 148/2011**,[237] Art. 8 wherein adoption of 'forms of worker participation' (unspecified in Art. 8(1), Support for local collective bargaining) in the company justifies the possibility of derogating from the rules set by national sectoral bargaining.
- **Law 92/2012**,[238] Art. 4.62 (delayed), delegated the Government to issue one or more decrees aiming at enhancing 'forms of workers' involvement [unspecified] …, activated through the stipulation of a firm-level agreement', followed by a heterogeneous continuum of possibilities: from joint committees to ESOP, to organic participation in companies with over 300 employees.
- **Budget laws 2016** and **2017**[239] focused on productivity bonuses, with tax deductions at 10% of the productivity wage, based on company agreements, to the amount of 4,000 euros for companies that involve workers through the establishment of equal joint bodies.

For the purpose of information, in Italy individual contracts of employment and labour relationships are governed, in order of priority, by: the **Constitution**[240] (especially Art. 46: 'For the economic and social betterment of workers and

233. Decreto legislativo 113 del 22 giugno 2012. The former EWC law was Act no. 74/2002.
234. Decreto Legislativo 19 agosto 2005, n. 188/2005.
235. Decreto legislativo 6 febbraio n. 48/2007.
236. Decreto Legislativo n. 25 del 6 febbraio 2007.
237. Legge 14 settembre 2011, n. 148.
238. Legge 28 giugno 2012, n. 92.
239. Legge di Stabilità 2016 e 2017.
240. Costituzione della Repubblica Italiana.

in harmony with the needs of production, the Republic recognises the rights of workers to collaborate in the management of enterprises, in the ways and within the limits established by law'); the **Civil Code**[241] enacted in 1942, which regulates employment and labour matters under Section III (on the employment relationship), Articles 2094-2134; an extensive body of employment and labour legislation, whose objective has traditionally been to protect employees; regulations issued by authorities other than Parliament and government; NCBAs; and custom and practice (L&E Global 2021).

2. Relevant law and regulatory provisions

2.1 National law regulating and referring to confidentiality of information and consultation and worker representation

Like most Member States, Italy has adopted a predominantly statutory approach to regulating confidentiality (Rasnača and Jagodziński forthcoming), which is based on the constitutional freedom of expression, though it is subject to more specific limitations under the **Civil Code**.[242]

Thus, the national framework on the rights of I&C and the duty of confidentiality in the Italian legal system is based on Articles 21 and 46 of the **Constitution**.[243] While all other legal rules are on the same level, these constitutional principles set an interpretative limit for them. I&C rights and the connected duty of confidentiality are generally applicable in the same way to all worker representative bodies in any enterprise, including **trade unions** and **works councils** (see Section 2.5).

Art. 36 of **Legislative Decree 81/2008**[244] establishes an obligation on the employer to inform workers with regard to particular subjects (such as H&S at work), and in conjunction with the **Civil Code**[245] on I&C confidentiality provisions for **RLS**.

EWCs, SNB members and **experts** who assist them are subject to provisions on confidentiality rules in **Legislative Decree 113/2012**[246] (implementing EWC Recast Directive 2009/38/EC). For **SEs**, similar rules apply under **Legislative Decree 188/2005**.[247] For **SCE representative bodies**, such rules apply under **Legislative Decree 48/2007**[248] (transposing Directive 2003/72/EC of 22 July

241. Codice civile.
242. Codice civile.
243. Costituzione della Repubblica Italiana.
244. Decreto legislativo 9 aprile 2008, n. 81.
245. Codice civile.
246. Decreto legislative 22 giugno 2012, n. 113.
247. Decreto Legislativo 19 agosto 2005, n. 188.
248. Decreto Legislativo 6 febbraio 2007, n. 48.

2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees – the SCE Directive).

2.2 National provisions concerning whistleblowing and whistleblower protection

In the past, no direct connection existed between whistleblower protection and I&C rights in Italy. For various reasons, including legal traditions, there was little focus on protecting whistleblowers, though this situation has changed, as evidenced by published assessments on the subject.

However, commentators suggest that the absence of a general rule of protection on whistleblowing did not result in a lack of protection against workers in this situation as case law guaranteed their protection through the application of general legal principles. Among them, Art. 21 of the **Constitution**[249] outlines the existence of a right of criticism in various contexts, including the employment relationship (see Section 2.1 of this chapter). Furthermore, Art. 2105 of the **Civil Code**[250] makes particular reference to the prohibition of dismissal for retaliation, and forbids employees from disclosing information about a company's organisation and manufacturing processes. Both case law and academics commonly interpret this Article as a means of protection against competition. However, such protection does not go as far as imposing silence on an employee at work. Thus, interpretation has been decisive in determining the limits of a worker's right to criticise. In addition, in Italy, whistleblowers have been protected in their employment relationship by anti-discrimination rules, both in general against discriminatory acts and more specifically against dismissal as retaliation.

After adopting specific whistleblowing regulations, Italy was thus considered to be among the EU Member States with comprehensive whistleblower protection (Simmons and Simmons 2023).[251]

Italy missed the deadline for transposing the Whistleblowing Directive 2019/1937/EC by 17 December 2021, although a draft transposition law was approved in Italy on 9 December 2022. However, on 15 March 2023, Italy's transposition law (**Legislative Decree No. 24 of 10 March 2023**)[252] was finally published and took effect on 15 July 2023. Companies with 250 employees or more had until 15 July 2023 to comply with the Decree, while those with fewer employees had to do so by 17 December 2023 or else be sanctioned by the Autorità Nazionale AntiCorruzione (ANAC), Italy's Anti-Corruption Authority, and a whistleblower could make a report to the ANAC external reporting channel directly. On 12 July 2023, ANAC approved whistleblowing guidelines to implement external and

249. Costituzione della Repubblica Italiana.
250. Codice civile.
251. Law 179 of 30 November 2017 established that public and private sector employees must be protected if they report illegal practices at their workplace (CMS 2022).
252. Decreto Legislativo 10 marzo 2023, n. 24.

public reporting channels in addition to internal ones, entrusted to independent authorities, and covered measures to protect whistleblowers from retaliation.

Whistleblowing disclosures can be made by a range of parties, including persons with **representative** functions in the company, even if such functions are exercised on a de facto basis (OCME 2023). Companies are required to set up internal reporting channels for employees and other stakeholders to voice concerns regarding legal or regulatory compliance and/or for reporting suspected wrongdoing or unlawful or unethical conduct. Companies are supposed to consult **trade unions** on the implementation of internal reporting channels, and the whistleblowing system should be included in the company's '231 organisational model' on corporate liability (that is, its compliance programme, in which whistleblowing systems are a fundamental element). Moreover, private companies with more than 50 employees, whether or not they have adopted Model 231, have had to implement at least one reporting channel and/or adapt existing channels to the Directive's requirements.

2.3 Implications of whistleblower protection for worker representatives handling confidential information

Under the new **Legislative Decree 24/2023**,[253] companies with at least 50 employees and those within the scope of application of the regulations must now:

- consult **trade union representatives** (if present in the company) or the most representative unions at national level before adopting the internal channel for receiving and handling reports of wrong-doing;
- make clear information available, also by posting it on the company noticeboard and publishing it on the company website, about the existence of the internal reporting channel, how and when reports should be sent through that channel, and how reports will be handled;
- guarantee the confidentiality of the whistleblower's identity (who may be a **worker representative**), individuals mentioned in the report, and the report's content; and
- reassign management of the internal reporting channel either to an ad hoc individual or team within the company, or to an external entity, with specifically trained staff (Seyfarth 2023).

Confidentiality obligations are defined in Art. 12 and subsequent articles of the Decree. These aim to clarify doubts related to previous regulations, including in relation to protection of the identity of people involved in the reports and of whistleblowers who make use of public disclosure systems in the media, subject to the conditions stipulated in the Decree (International Bar Association 2023).

253. Decreto Legislativo 10 marzo 2023, n. 24.

2.4 Confidential information versus trade secrets

In Italy, there is a 'bargained' definition of confidentiality. No rules exist to ensure consistent protection of employers' confidential information that does not qualify as a trade secret except for a general employee obligation not to disclose proprietary information of the employer under Articles 1175 and 1375 of the **Civil Code**[254] regarding bona fide execution of the contract, and Art. 2105 of this Code regarding the employment relationship and the prohibition on disclosing company information by the employee.

However, employers' confidential information is granted with specific protection insofar as it qualifies as a trade secret according to **Legislative Decree 30/2005**[255] (the Industrial Property Code). This occurs only when:

- 'the information is secret as it is not widely known or easily accessible by experts who operate in the sector in which the information is relevant;
- the information has an economic value to the extent that it is secret; and
- specific measures aimed at ensuring the secrecy of the information have been adopted by the employer.' (Gramaldi Studio Legal 2020)

This does not prevent the parties from lawfully executing an agreement where an employee agrees to comply with confidentiality obligations for a certain term after their employment relationship ends (Zambelli and Partners 2024).

2.5 Worker representation bodies and representatives' information and consultation rights and duties

Comparative inattention to the subject of participation has been observed in the Italian legal system. Most scholarship concerns commentaries on the decrees that have implemented relevant directives. **Legislative Decree 25/2007**[256] (I&C) transposes the Framework Directive on information and consultation 2002/14/EC, establishing the general framework concerning workers' right to I&C.[257] More specifically, under Art. 1(2) of this Decree, collective agreements determine the method by which I&C will take place in the workplace. Collective bargaining has thus also been an important source for the development of the right to I&C. Art. 3 provides that I&C procedures apply to all businesses employing at least 50 workers. According to Art. 4(3), I&C concerns:

'a. recent and foreseeable trends in company activity and its economic situation;

b. the situation, structure and foreseeable trend of employment in the company, as well as, in case of risk to employment levels, the related countermeasures;

---

254. Codice civile.
255. Decreto Legislativo 10 febbraio 2005, n. 30 (Codice della proprietà industriale).
256. Decreto Legislativo n. 25 del 6 febbraio 2007.
257. Prior to its entry into force, legislation provided for I&C obligations only for specific events (for example, Law 223/1991 on collective dismissals; Law 428/1990 on enterprise relocation).

c. company decisions that are likely to lead to significant changes in the organization of work and employment contracts.'

Importantly, 'information shall be provided in an **appropriate** and **timely** manner in order to enable the workers' representatives to carry out an appropriate assessment and prepare workers for consultation' (ILO 2020; our emphasis). Under Art. 4(5) of the Decree, consultation shall take place:

'a. according to time and content methods appropriate to the purpose;
b. between relevant levels of management and representation, depending on the topic covered;
c. on the basis of the information referred to in Art. 2, para. 1, letter e) by the employer and the opinion that the workers' representatives are entitled to formulate;
d. in such a way as to allow the workers' representatives to meet the employer and obtain a reasoned reply to any opinion expressed;
e. in order to seek agreement on the employer's decisions.'[258]

For **RSUs**, under **Act 300/1970**[259] (the **Workers' Statute**), employers must inform and consult with **employee representatives** on H&S use of public funds for industrial restructuring; large-scale redundancies; and business transfers. More particularly, under **Law 223/1991**,[260] employers with more than 15 employees must follow a specific I&C procedure involving the trade unions on collective dismissals. The employer must notify, in writing, the competent employment office, employee staff representatives (**RSA** or **RSU**) and the respective unions of the decision to proceed with a collective dismissal. In the absence of these employee representative bodies, notice is to be given to the 'comparatively more representative' **trade union associations** (L&E Global 2021).

However, most **RSUs**' I&C rights on specific issues depend on agreements reached at industry and sometimes company level, including the I&C requirements of the Framework Directive on information and consultation 2002/14, implemented via **Legislative Decree 25/2007**[261] (ETUI 2024a). In companies with at least 50 employees, this includes information about their 'activities and economic situation', and the right to be informed and consulted about the 'situation, structure and probable development of employment' and 'decisions likely to lead to substantial changes in work organisation or in contractual relations' (ETUI 2024a). Industry and company-level agreements are thus usually slightly more detailed and demanding. Moreover,

> '[t]he consultation increasingly takes the form of **joint employer/union committees**, which are intended to prepare the groundwork for collective bargaining by providing technical support … to encourage a non-confrontational exchange between the two sides, in the process stimulating cooperation aimed at solving organisational problems. Several big companies have set up joint observatories to monitor key developments … The RSU

258. Legislative Decree 25/2007 (Decreto Legislativo n. 25 del 6 febbraio 2007).
259. Statuto dei lavoratori – Legge 300/1970.
260. Legge 23 luglio 1991, n. 233.
261. Decreto Legislativo n. 25 del 6 febbraio 2007.

> does not have a major role in general **trade union** activity in the sense of promoting the union and union policy. This is more the role of the **trade union** outside the workplace' (ETUI 2024a; our emphasis).

On **H&S**, Art. 36 of **Legislative Decree 81/2008**[262] obliges an employer to inform workers about particular subjects (such as H&S at work). Under Art. 35, periodic meetings (at least once a year) between the employer and **RLS** (worker representative for H&S) should be held in enterprises with more than 15 employees. Under Art. 35(2), at these meetings the employer must present documents concerning the evaluation of risks, hazards and illness at work, as well as criteria used in the purchase of safety equipment and the development of H&S programmes and training.

With **EWCs**, Italy's **Legislative Decree 113/2012**[263] transposed Recast EWC Directive 2009/38/EC, entering into force on 11 August 2012. It was preceded by and based on the Joint Declaration of the social partners in favour of implementing the Directive, wherein:

> 'Parties … acknowledge that the sharing of information and consultation which take place within the EWC are a good way of promptly addressing adaptation to new conditions imposed by the globalisation of the economy, because they foster a climate of reciprocal trust and respect between company and employees.' (Cremers and Lorber 2015: 89)

Italy has closely transposed the EWC Recast Directive, including **EWC members'** duty to report back to **local representatives** (for example, Laulom and Dorssemont 2015). Moreover, Italy's **EWC law** specifies that the provision of I&C to the **EWC** and **local employee representation bodies** shall begin:

> '— "simultaneously"; or
> — "as far as possible at the same time"; or
> — "within a reasonable time of each other"; or
> — "in a coordinated manner."' (Jagodziński and Stoop 2021: 12)

EWCs and management must agree on specific rules concerning the linkage between the **EWC** and **local levels of I&C** in the EWC agreement. National legislation should also provide for fallback solutions if the agreement does not include such a clause.

Like Italy's EWC Act and **Legislative Decree 25/2007**[264] (see above), **Legislative Decree 188/2005**[265] (on **SEs**) provides for confidentiality, reservation of information and sanctions in two articles. With regard to the latter, these are Art. 8 on confidentiality and reservation for information, and Art. 12 on sanctions. **Legislative Decree 48/2007**[266] (on **SCEs**) has only one article but this does not have significant consequences compared with the other Acts.

---

262. Decreto legislativo 9 aprile 2008, n. 81.
263. Decreto legislative 22 giugno 2012, n. 113.
264. Decreto Legislativo n. 25 del 6 febbraio 2007.
265. Decreto Legislativo 19 agosto 2005, n. 188.
266. Decreto legislativo 6 febbraio n. 48/2007.

Similarly, the relevant provisions for **Legislative Decree 25/2007**[267] (I&C) are Art. 5 on confidential information and Art. 7 on protection of rights.

2.6 Challenging company decisions and accessing justice

In the event of a breach of their rights, **employee representatives** can use a general procedure regulated by the **Code of Civil Procedure**,[268] and an individual worker can use a general procedure (for example, an urgency procedure regulated by Art. 700 of this Code) to defend their right to be informed and to have fair representation (Jagodziński and Lorber 2015).

As already noted, in Italy, I&C are determined according to collective agreements (see Section 2.4 of this chapter). Within the country's legislative framework, collective agreements are considered to be private law contracts and thus may be brought before a court if a dispute arises concerning their interpretation or resolution for breach of contract, and if the collective agreement does not provide for a mechanism of dispute resolution. In some cases, a breach of the duty to inform and consult with **trade unions** may constitute an 'anti-union practice' (Art. 28 of **Act 300/1970**[269] (**the Workers' Statute**). **Trade union(s)** that have been wrongly deprived of their right to be informed and consulted can seek a court injunction, ordering an employer to stop the unlawful behaviour and comply with the duty to inform and consult with them (ILO 2020).

Jagodziński and Lorber (2015) also observe that **local entities of a national trade union** can activate the abovementioned general procedure regulated by the **Code of Civil Procedure**[270] under Art. 28. Only they can sue on the basis of this Article; judges have not recognised the right to sue of **employee representatives** in the workplace (ILO 2020).

Moreover, employers must deal with assessments made by **national-level social partners** before communicating information with a confidentiality obligation because Para. 3 of Art. 5 of **Legislative Decree 25/2007**[271] (I&C) states:

> 'The national collective labour agreements provide for the establishment of a conciliation commission for disputes relating to the confidential nature of the information provided and qualified as such, as well as for the concrete determination of technical, organizational and productive needs for the identification of information likely to create significant difficulties for functioning of the **enterprise concerned** or to cause damage to it. The collective agreements also determine the composition and operating methods of the conciliation commission.' (Our emphasis)

---

267. Decreto Legislativo n. 25 del 6 febbraio 2007.
268. Codice di procedura civile.
269. Statuto dei lavoratori – Legge 300/1970.
270. Codice di procedura civile.
271. Decreto Legislativo n. 25 del 6 febbraio 2007.

Collective agreements also set a framework within which conciliation committees seek agreement on disputes regarding the confidentiality of information provided and explicitly qualified as such (Rasnača and Jagodziński forthcoming).

On **EWCs**, Jagodziński and Stoop (2021) observe that in Italy, as in many countries, they can go to court (or some similar labour council or arbitration institution) to challenge the confidentiality duty imposed on them. And as in most countries, this right to challenge the application of confidentiality status is a right of the EWC and not of individual EWC members. The capacity to act in courts is possible for individual EWC members and trade unions are eligible to represent them or participate (Jagodziński and Lorber 2015; cf. Laulom and Dorssemont 2015).

For **SEs** and **SCEs**, respectively, **Legislative Decree 188/2005**[272] and **Legislative Decree 48/2007**[273] provide sanctions applicable to **worker representatives** (see Section 2.9 of this chapter).

2.7 Scope of confidentiality rules, and worker representatives' contacts with other representatives and stakeholders

Rules regulating the confidentiality of information provided to **employees** and **trade union members** must take account of Art. 21 of the **Constitution**,[274] which has been developed by Art. 1 of the **Law No. 300/1970**[275] (the **Workers' Statute**):

> 'Workers, without any distinction as to political, **trade union** and religious opinions, shall be entitled to freely express their thoughts in the workplace, in compliance with the principles set forth by the Constitution and with the rules provided for under this law.' (Our emphasis)

This principle is the basis for reflections on the use that employees and their **representatives** can make of company information. Interestingly, when implementing the Framework Directive on information and consultation 2002/14 in 2007, a distinctive legal choice was made in Italy by entrusting **national collective bargaining** with the identification of techniques with which to overcome the limits on an employer's choice of maintaining certain information as confidential.

Another general principle of specific relevance is Art. 2105 of the **Civil Code**:[276]

> 'Employees shall in no way deal with any business, either on their own behalf or on behalf of third parties, in competition with the entrepreneur, nor shall

272. Decreto Legislativo 19 agosto 2005, n. 188.
273. Decreto legislativo 6 febbraio n. 48/2007.
274. Costituzione della Repubblica Italiana.
275. Statuto dei lavoratori – Legge 300/1970.
276. Codice civile.

> they disclose any information pertaining to the company's organisation and production methods, or use them in such a way as to be detrimental to the latter.'

Under Art. 2105, the duty of confidentiality applies to all of a company's workers. There are thus two kinds of obligations on them and **trade union representatives**, who are usually employees of the undertaking: (i) a general duty of loyalty contained in this Article, as employees, who can be sanctioned directly by the employer through their disciplinary power, and ii) an obligation under Art. 622 of the **Criminal Code**,[277] which deals with the offence of professional secrecy. Moreover, Art. 2105 of the **Civil Code**[278] seeks to protect the company and its market competitiveness. It thus refers to the same aspects of the business' organisation that often coincide with the material scope of the right of information for **trade unions**.

With **worker representatives** and **experts** who assist them, Para. 1 of Art. 5 of **Legislative Decree 25/2007**[279] (on I&C) states that they 'are not authorised to disclose, neither to workers nor to third parties, information that has been expressly provided to them in a confidential way and qualified as such by the employer or his representatives, in the legitimate interest of the firm.

With **RLSs**, Art. 50(6) of **Legislative Decree 81/2008**[280] (consolidated law on H&S protection of employees in the workplace) states that they must maintain industrial secrecy on information received directly from the employer and that contained in risk assessment documents (except for what is established in collective bargaining) (Art. 622 of the **Criminal Code**),[281] as well as keep confidential the company's work processes during the exercise of their duties (Art. 2105 of the **Civil Code**)[282] (ILO 2020). Irrespective of their recognised specific 'trade union' role, these representatives are still subordinate workers of the undertaking and subject to Art. 2105. Thus, although they are protected by specific regulatory provisions under which they are the recipients of business information and documentation sometimes labelled 'sensitive', 'confidential' and 'covered by industrial secrecy', they are subject to both obligations. Moreover, all other rules applying to an RLS also apply to others.

For **EWCs, SNB members** and **experts** who assist them, Articles 10, 17 and 18 of **Legislative Decree 113/2012**[283] (Italy's EWC law, transposing the EWC Recast Directive) provide confidentiality rules. Para. 1 of Art. 10 states:

> 'The members of the [**SNB**] and of the **EWC**, as well as the **experts** who can assist them, and the **representatives of workers** operating under a procedure for information and consultation cannot reveal to third parties

277. Codice criminale.
278. Codice civile.
279. Decreto Legislativo n. 25 del 6 febbraio 2007.
280. Decreto legislativo 9 aprile 2008, n. 81.
281. Codice criminale.
282. Codice civile.
283. Decreto legislative 22 giugno 2012, n. 113.

> information received confidentially and classified as such by the central direction.' (Our emphasis)

This Decree extends the limits on confidentiality of information, qualified as such by the entrepreneur, to **experts** who may assist **union representatives**. Unlike **Legislative Decree 25/2007**[284] (I&C), no reference is made to workers so they are among those who can receive information classified as confidential by the employer.

For SEs, under Para. 1 of Art. 8 of **Legislative Decree 188/2005**[285] (transposing the SE Directive 2001/86/EC),

> 'The members of the **special negotiation body** and of the **works councils**, as well as the **experts** assisting them and **representatives of workers**, are not authorised to disclose to third parties information received confidentially and qualified as such by the competent body of the SE and of the participating companies.' (Our emphasis)

Similarly, for **SCEs**, under Para. 1 of Art. 10 of **Decree 48/2007**,[286] **SNB members, representative body members, employee representatives** and **experts** who assist them within the I&C procedures are not authorised to reveal to third parties any confidential information. The qualification of information as confidential is given by the competent body of the SCE and of participating legal entities.

Furthermore, for **SEs**, Para. 2 of Art. 8 of **Legislative Decree 188/2005**[287] provides:

> '[t]he **supervisory or administrative body of the SE** or of the participating company located in Italy is not obliged to communicate information which, according to objective criteria, is of a nature such as to create significant difficulties for the functioning of the SE, or of the participating company, or of its affiliates and dependencies, or to cause them damages.' (Our emphasis)

With regard to **SCEs**, Para. 2 of Art. 10 in **Legislative Decree 48/2007**[288] (transposing the SCE Directive 2003/72/EC) is similar. The only difference is the substitution of 'objective criteria', which allow employers not to disclose information when it is considered of such a nature that it might 'harm the functioning of the undertaking or establishment or would be prejudicial to it', expressing 'proven technical, organisational or productive needs.' Although this reflects the complex transposition of EU law in Italy, it may be of little practical significance.

---

284. Decreto Legislativo n. 25 del 6 febbraio 2007.
285. Decreto Legislativo 19 agosto 2005, n. 188.
286. Decreto legislativo 6 febbraio n. 48/2007.
287. Decreto Legislativo 19 agosto 2005, n. 188.
288. Decreto legislative 6 febbraio n. 48/2007.

However, following the directives, Italy's decrees on **SEs, SCEs** and **EWCs** extend the limits on confidentiality of information qualified as such by the business to **experts** who, in case of need, assist worker representatives.

In the Italian regulatory framework, among all the statutes that transpose relevant directives, only **Decree 25/2007**[289] (I&C) includes workers among those who cannot receive information classified as confidential by the employer. This gives rise to concerns over a possible violation of Art. 39 of the **Constitution**[290] (on freedom of organisation) because it would create a situation where a representative receives more information than the represented, with problems for internal democracy in relations with union members. Moreover, workers, even if informed, are still obliged to have a duty of loyalty, which includes a duty of confidentiality (Art. 2105 of the **Civil Code**).[291] However, Para. 1 of Art. 5 of the Decree states that national collective bargaining may authorise **worker representatives** and their **experts** to transmit confidential information to workers or third parties, even when they are bound by a confidentiality obligation, after the procedures for exercising this exception have been laid down in a collective agreement.

2.8 Worker representatives' duties in relation to maintaining confidentiality

Under Para. 1 of Art 5 of **Legislative Decree 25/2007**[292] (on I&C), a confidentiality obligation lasts for three years after a **trade union representative** or **expert's** mandate expires.[293] As noted, among all the relevant transposing statutes, only this Decree includes workers among those who cannot receive information classified as confidential by the employer. However, national collective bargaining may authorise **worker representatives** and **experts** advising them to transmit confidential information to workers or third parties, even when they are bound by a confidentiality obligation, after the procedures for exercising this exception have been laid down in a collective agreement (see Section 2.7 of this chapter).

Under **Legislative Decree 113/2012**[294] (on EWCs), the duty of confidentiality on members of the **SNB** and of the **EWC, experts,** and **representatives of workers operating under a procedure for I&C**, as with Art. 5 of Decree 25/2007, lasts for three years after the end of their mandate, regardless of where they are located. However, under Art. 8 of **Legislative Decree 188/2005**[295] (**SE**) and Art. 10 of **Decree 48/2007**[296] (**SCE**), the confidentiality obligation on **SE, SNB** and **works councils members, experts** assisting them and **representatives of workers**, and in **SCEs, SNB members, representative**

289. Decreto Legislativo n. 25 del 6 febbraio 2007.
290. Costituzione della Repubblica Italiana.
291. Codice civile.
292. Decreto Legislativo n. 25 del 6 febbraio 2007.
293. Decree 25/2007 (I&C) and Legislative Decree 46/2007 (SCE) reference Decree 196/2003 (Personal data protection code), while Decree 188/2005 (SE) and 74/2002 (EWC) do not.
294. Decreto legislative 22 giugno 2012, n. 113.
295. Decreto Legislativo 19 agosto 2005, n. 188.
296. Decreto legislativo 6 febbraio n. 48/2007.

body members, employee representatives and **experts** who assist them, remains even after the expiry of the term established by the mandate, wherever they are (see Section 2.7 of this chapter).

There are no specific provisions on the duty of confidentiality for **worker representatives** in **companies listed on the stock market**, or with business operations such as **mergers, cross-border mergers** or **acquisition of assets**. In particular, **Legislative Decree 108/2008**,[297] which implements Directive 2005/56 (on cross-border mergers in limited liability companies (LLCs)), does not provide specific rules about the confidentiality of workers and their representatives. Nor do specific provisions on worker representatives' duty of confidentiality apply in **public administration**; regulations on private employers are fully applicable but collective bargaining can govern I&C rights under Art. 44 of **Legislative Decree 165/2001**[298] (on regulating general rules on the organisation of work in public administration).

2.9 Sanctions for breaching confidentiality of information and consultation and remedies for workers and worker representatives

In Italy, violation of the 'duty of loyalty' in Art. 2105 of the **Civil Code**[299] may lead to **employees** being disciplined by their employer. Art. 5(1) of the **Legislative Decree 25/2007**[300] (I&C) confirms this kind of sanction, without any special rules for cases in which the duty of confidentiality on the information is violated:

> '1. **Worker representatives**, and the **experts** who assist them, are not authorised to reveal either to workers or third parties information that has been expressly provided to them on a confidential basis and qualified as such by the employer or its representatives, in the legitimate interest of the company. This ban remains for … three years following the expiry of the term established by the mandate.' (Our emphasis)

However, Para. 2 of Art. 7 of the Decree provides for a specific sanction when an **expert** breaches confidentiality: an administrative sanction of between 1,033 euros and 6,198 euros as **worker representatives** will almost certainly also be workers at the company and are thus subject to the duty of loyalty of Art. 2105 of the **Civil Code**,[301] violation of which can entail a disciplinary sanction. Para. 1 of Art. 7 provides that an **employer** who violates the obligation to communicate information or conduct consultation can receive an administrative sanction of between 3,000 and 18,000 euros per violation.

---

297. Decreto Legislativo 30 maggio 2008, n. 108.
298. Decreto Legislativo 30 marzo 2001, n. 165 (ordinamento lavoro pubblico).
299. Codice civile.
300. Decreto Legislativo n. 25 del 6 febbraio 2007.
301. Codice civile.

For **EWCs**, Art. 17 of **Legislative Decree 113/2012**[302] states that 'without prejudice to any civil and disciplinary liability as provided for in collective agreements', the breach of a confidentiality obligation by **worker representatives** and their **experts** entails an administrative penalty of between 1,033 and 6,198 euros. However, Para. 2 of Art. 17 provides that, in the event of abuse of confidentiality by **managers**, without prejudice to any civil liability, a fine of between 1,033 and 6,198 euros will be applied.

For **SEs**, Para. 1 of Art. 12 of **Legislative Decree 188/2005**[303] provides for administrative sanctions on its **SNB, representative body, experts** who assist them, or **worker representatives who operate within the I&C procedure** for revealing unauthorised information (unless the violation constitutes a criminal offence) of between 1,033 and 6,198 euros. Under Para. 2 of Art. 12, if a conciliation committee fails to reach agreement within 30 days regarding the I&C obligations set out in the Agreement (Art. 4), following an order that said obligations must be complied with, an administrative fine of 5,165 to 30,988 euros can be applied to the **non-compliant party**. For **SCEs**, Paragraphs 8 and 9 of Art. 10 of **Legislative Decree 48/2007**[304] (SCE) make similar provision for sanctions. Disciplinary sanctions may be applied only to **SCE employees** or **participating legal entities**. Moreover, Art. 14 of this Decree concerns the protection of **employee representatives**.

More generally, on **trade/professional secrets**, Art. 622 of the **Criminal Code**[305] states that '(a)nyone who knows a secret, because of their status or office, or profession or art [*arte*], and reveals it without just cause, or uses it to their own or another's profit, shall be punished, if harm may result from it', either with imprisonment for up to one year or a fine of 300 euros to 5,000 euros.

2.10 Limitations on companies' application of confidentiality rules to information and consultation and to codetermination, and criteria for their application

In Italy, Para. 2 in Art. 5 of **Decree 25/2007**[306] (I&C) concerns rules on the confidentiality of information that an employer must provide to **worker representatives** (for **trade unions, works councils** and their **equivalent**): '[t]he employer is not obliged to carry out consultations or communicate information which, due to proven technical, organizational and production needs, is of such a nature as to create significant difficulties in the operation of the enterprise or cause it harm.' However, under Italian law, **national collective bargaining** identifies ways of overcoming limits on an employer's choice of

302. Decreto legislative 22 giugno 2012, n. 113.
303. Decreto Legislativo 19 agosto 2005, n. 188.
304. Decreto Legislativo 6 febbraio 2007, n. 48.
305. Code criminale.
306. Decreto Legislativo n. 25 del 6 febbraio 2007.

maintaining the confidentiality of certain information (in other words, this is a 'bargained' definition of confidentiality – see Section 2.4 of this chapter).

While similarities exist in the rules that implement the four relevant directives on workers' participation (see Section 2.1 of this chapter), one difference is found in Para. 1, Art. 5 of **Decree 25/2007**[307] (I&C) (taken directly from the Framework information and consultation directive). This concerns the 'legitimate interest of the undertaking' to qualify information as confidential, a reference that is not present in other laws or relevant directives. However, information that falls under the rights of **worker representatives** connected to a transfer of undertaking or collective dismissal procedure is explicitly excluded from the possibility of qualifying it as confidential or secret. According to **Law 223 of July 23 1991**,[308] the employer should follow a specific consultation procedure, notifying the competent employment office, **RSA** or **RSU** and the respective **trade unions** about the decision to proceed with collective dismissal (see Section 2.5 in this chapter).

As already mentioned, **national collective agreements** also provide for setting up conciliation committees to deal with both confidentiality and secrecy matters, although a legal problem may arise for unions and works councils. As a rule, collective agreements are not generally binding but rather are restricted to members of the bodies that sign them.

With **EWCs**, under Para. 2 of Art. 10 of **Decree 113/2012**,[309] management 'can refuse to communicate the requested information only when, based on objective criteria, it is of such a nature as to create significant difficulties in the operation or activity carried out by the companies concerned or to cause them damage or to disrupt the markets.' Moreover, Laulom and Dorssemont (2015: 46) noted that Italy is among those countries that do not provide workers with the right to challenge the application of confidentiality clauses, (but) in line with Art. 8.2 of the EWC Recast Directive, provides the right for management to withhold information that 'according to objective criteria, would seriously harm the functioning of the undertakings concerned or would be prejudicial to them.'

2.11 Sanctions on companies or company representatives for abusing confidentiality rules

Under Para. 1 of Art. 7 of **Legislative Decree 25/2007**,[310] if an employer violates their I&C obligation, they can incur an administrative sanction of between 3,000 and 18,000 euros for each violation. Moreover, in such cases, it is always possible for **local organisations of national trade unions** to use Art. 28 of **Act 300/1970**[311] (the **Workers' Statute**). This provides a shortened judicial

307. Decreto Legislativo n. 25 del 6 febbraio 2007.
308. Legge 23 luglio 1991, n. 223.
309. Decreto legislative 22 giugno 2012, n. 113.
310. Decreto Legislativo n. 25 del 6 febbraio 2007.
311. Statuto dei lavoratori – Legge 300/1970.

procedure whereby, after a brief meeting between the parties, a judge must decide within 48 hours whether the employer has engaged in anti-union conduct (see also Sections 1 and 2.6 in this chapter). If so, they will require immediate restoration of the *status quo ante*. In this context, this could mean the rescinding of the categorisation of certain information as confidential.

Indeed, the statutes also seem to be designed with particular regard for employers who are reluctant to meet their I&C obligations (cf. Rasnača and Jagodziński forthcoming). With respect to **SEs** and **SCEs**, under – respectively – Para. 2 of Art. 12 in **Decree 188/2005**[312] and Para. 9 of Art. 10 in **Decree 48/2007**,[313] if no agreement is reached within 30 days, a Ministry of Labour official can order compliance with obligations. If this order is not complied with in another 30 days, an administrative fine of between 5,165 and 30,988 euros will be levied (see also Section 2.9 of this chapter).

As already noted, transposing legislative decrees **25/2007**[314] (I&C), **188/2005**[315] (**SEs**), **48/2007**[316] (**SCEs**) and **113/2012**[317] (**EWCs**) provide for the establishment of conciliation committees that must regulate their composition, operating procedures and functions, as an alternative dispute resolution mechanism. And it is always possible for **local organisations of national trade unions** to use Art. 28 of **Act 300/1970**[318] (the **Workers' Statute**) for unions, which provides a shortened judicial procedure (see above).

However, few national **EWC** regulations foresee some form of responsibility on the part of management for confidentiality abuses, and Italy is silent on sanctions for management who abuse the clause (Laulom and Dorssemont 2015).

With regard to whistleblowing, under the rules of the new Whistleblowing law (**Legislative Decree No. 24**),[319] which transposes the Whistleblowing Directive 2019/1937/EC, breaches may be punished as an administrative offence with a fine of:

- 10,000 to 50,000 euros in cases of retaliation against the whistleblower, preventing reporting or the failure to set up internal reporting channels; and
- 500 euros to 2,500 euros if a company fails to adequately protect the identity of a whistleblower.

312. Decreto Legislativo 19 agosto 2005, n. 188.
313. Decreto legislativo 6 febbraio n. 48/2007.
314. Decreto Legislativo n. 25 del 6 febbraio 2007.
315. Decreto Legislativo 19 agosto 2005, n. 188.
316. Decreto legislativo 6 febbraio n. 48/2007.
317. Decreto legislative 22 giugno 2012, n. 113.
318. Statuto dei lavoratori – Legge 300/1970.
319. Decreto Legislativo 10 marzo 2023, n. 24.

3. Illustrative case law

Judgment 17744/2009 of the Italian Criminal Court of Cassation specified that 'the disclosure of the content of secret documents is a criminal offense only if damage occurs, which is considered to be a legally relevant prejudice of any kind that may arise in relation to the person entitled to secrecy with regard to the documents.' Thus, even if a revelation concerns content that is specifically classified as secret, it is still necessary to prove that it has produced real damage to the company for criminal prosecution to proceed. The obligation of Art. 2105 of the Civil Code does not constitute a specification of professional secrecy as enshrined in Art. 622 of the **Criminal Code**;[320] the criminal rule prohibits the revelation of information that they are aware of because of their profession, and thus requires a direct causal connection between the facts and the duties performed by the worker. Instead, under Art. 2105, an employee may not pursue business activities on their own or a third party's behalf in competition with the employer, and must remain silent about information about the organisation and production methods of the company, and not use it in such a way that would affect the market position of the firm.

4. Relevant EU legislation

As with other Member States, Italy has applied relevant EU legislative rules concerning confidentiality and worker representation. Legislative Decree 25/2007 transposed the **Framework Directive on information and consultation 2002/14/EC** (see Appendix tables), even though, within the confines of the law, collective bargaining in this country is central to the definition and application of confidentiality rules. Legislative Decree 113/2012 transposes **EWC Recast Directive 2009/38/EC**, Legislative Decree 188/2005 transposes **Directive 2001/86/EC (SE)**, and Legislative Decree 48/2007 is informed by **Directive 2003/72 (SCE)**. Recently, Italy's Legislative Decree 24 of 10 March 2023 (effective from 15 July 2023) transposed the **Whistleblowing Directive 2019/1937**.

Others include:

- the **Health and Safety at Work Directive 1989/391**, transposed by Legislative Decree 81/2008;
- the **Cross-border Mergers of Limited Liability Companies Directive** 2005/56/EC, transposed by Legislative Decree 108/2008;
- the **Trade Secrets Directive 2016/943**, implemented by Legislative Decree 11 May 2018 no. 63 which amended Decree 10 February 2005 no. 30 (Industrial Property Code), as well as Articles 388 and 623 of the Criminal Code; and
- the **Regulation 596/2014** (on market abuse), implemented by Legislative Decree 10 August 2018 No. 107.

---

320. Codice criminale.

5. Sources

Relevant provisions/Acts (selected)

Constitution of Italy 1947, UNHCR (Refworld).
https://www.refworld.org/docid/3ae6b59cc.html (English).
Civil Code of 16 March 1942 No. 262, WIPO.
https://www.wipo.int/wipolex/en/text/430550 (Italian).
Criminal Code 1993 (as amended 2018), Legislationline, OSCE/ODIHR database.
https://legislationline.org/taxonomy/term/23690 (English).
Workers Statute (Statuto dei lavoratori) (Law 300/1970), Normativva.
https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1970-05-20;300 (Italian) (English).
Legislative Decree 25/2007 (information and consultation), ILO.
https://wwwex.ilo.org/dyn/natlex2/natlex2/files/download/76841/ITA76841%20Itl.pdf (Italian).
Legislative Decree 113/2012 (EWC), Normattiva.
https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2012-06-22;113 (Italian) (English).
Legislative Decree 188/2005 (SE), Normattiva. https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2005-09-21&atto.codiceRedazionale=005G0212&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo1=0&qId=8138bf1b-0d14-44a7-9b6f-3a09e19da411&tabID=0.07052637291293573&title=lbl.dettaglioAtto (Italian) (English).
Legislative Decree 48/2007 (SCE), Normattiva. https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2007;048 (Italian) (English).
Legislative Decree 108/2008 (Cross-border Mergers in Limited Companies), Normattiva. https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2008-06-17&atto.codiceRedazionale=008G0130&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo1=0&qId=53b72b4a-4a77-4dd9-ba84-1333f82da6cd&tabID=0.07052637291293573&title=lbl.dettaglioAtto (Italian) (English)
General Rules on the Organization of Work in Public Administrations Legislative Decree 165/2001, Normattiva. https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2001-05-09&atto.codiceRedazionale=001G0219&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo1=0&qId=714fd726-01cf-4844-b8c3-cd4505da01e7&tabID=0.07052637291293573&title=lbl.dettaglioAtto (Italian) (English).
Legislative Decree 81/2008 (health and safety in the Workplace), Normattiva.
https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2008-04-30&atto.codiceRedazionale=008G0104&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo1=0&qId=dbf0f68c-39a6-4b0c-ba24-8c8446b31996&tabID=0.07052637291293573&title=lbl.dettaglioAtto (Italian) (English).
Legislative Decree 30/2005 (the Industrial Property Code), Normattiva.
https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-02-10;30 (Italian) (English).

Jurisprudence and commentaries

Judgment 17744/2009 of the Criminal Court of Cassation on disclosure of the content of secret documents.

Jagodziński R. and Lorber P. (2015) Enforcement frameworks and employees' rights of access to enforcement procedures, in Jagodziński R. (ed.) Variations on a theme? The implementation of the EWC Recast Directive, ETUI, 107–178. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

References

CMS (2022) Whistleblower protection and reporting channels in Italy, 17.02.2022. https://cms.law/en/int/expert-guides/whistleblower-protection-and-reporting-channels/italy

Cremers J. and Lorber P. (2015) Transposition of provisions of the Recast Directive on the functioning of the European Works Council, in Jagodziński R. (ed.) Variations on a theme? The implementation of the EWC Recast Directive, ETUI, 85–106. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

De Spiegelaere S. and Jagodziński J. (2019) Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives, ETUI. https://www.etui.org/publications/guides/can-anybody-hear-us

ETUI (2024a) Italy, Worker-participation.eu. https://www.worker-participation.eu/national-industrial-relations/countries/italy

ETUI (2024b) Italy: country overview, Worker-participation.eu. https://worker-participation.eu/legislation/european-company-se/countries-transposition/italy

European Commission (2023) The European Commission decides to refer 8 Member States to the Court of Justice of the EU over the protection of whistleblowers, Press release, 15.02.2023. https://ec.europa.eu/commission/presscorner/detail/EN/IP_23_703

Eurofound (2021) Working life in Italy: background, 9.08.2021, https://www.eurofound.europa.eu/country/italy#background

Gramaldi Studio Legal (2020) Q&A: labour and employment law in Italy, 29.05.2020. https://www.lexology.com/library/detail.aspx?g=c1696173-ac1f-4679-91bd-6d66ea8d7272

ILO (2020) Italy – 2019. https://webapps.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:ITA,,2019

International Bar Association (2023) New regulation on whistleblowing in Italy: the role of the supervisory body and coordination with internal group reporting channels, 22.08.2023. https://www.ibanet.org/new-regulation-on-whistleblowing-in-Italy-the-role-of-the-Supervisory-Body

Jagodziński R. (ed.) (2015) Variations on a theme? The implementation of the EWC Recast Directive, ETUI. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

Jagodziński R. and Lorber P. (2015) Enforcement frameworks and employees' rights of access to enforcement procedures, in Jagodziński R. (ed.) (2015) Variations on a theme? The implementation of the EWC Recast Directive, ETUI, 107–178. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

Jagodziński R. and Stoop S. (2021) How to deal with confidential information, Manual for European Workers' Representatives 04, ETUI. https://www.etui.org/publications/how-deal-confidential-information

L&E Global (2021) Employment law overview: Italy 2021-2022. https://lablaw.com/wp-content/uploads/2021/02/LEG_MEMO_Italy_04.02.21_compressed.pdf

L&E Global (2024) Trade unions and employers associations, 4.08.2023. https://leglobal.law/countries/italy/employment-law/employment-law-overview-italy/10-trade-unions-and-employers-associations/

Leonardi S. (2018) The Italian system of employee participation, Presentation, Fondazione Guiseppe Di Vittorio. https://www.sp-ps.ch/wp-content/uploads/2018/03/input_leonardi_berne_2018.pdf

OCME (2023) Whistleblowing procedure (Italian legislative decree n. 24/2023 implementing European Directive No. 1937/2019 and Italian legislative decree No. 231/01). https://www.ocme.com/modello-231/procedura-whistleblowing-ocme-rev.0.pdf

OECD (n.d.) Trade union dataset: union density - Italy. https://stats.oecd.org/Index.aspx?DataSetCode=TUD

Pulignano V., Carrieri D. and Baccaro L. (2018) Industrial relations in Italy in the twenty-first century, Employee Relations, 40, 4654–4673. https://doi.org/10.1108/ER-02-2017-0045

Rasnača Z. and Jagodziński R. (forthcoming) Confidentiality and workers' information and consultation rights: a jigsaw puzzle.

Seyfarth (2023) New rules and obligations for employers in Italy concerning whistleblowing, 8.08.2023. https://www.seyfarth.com/news-insights/new-rules-and-obligations-for-employers-in-italy-concerning-whistleblowing.html

Simmons and Simmons (2023) EU whistleblowing Directive – Italy: the implications of the EU whistleblowing Directive in Italy, 4.08.2023. https://www.simmons-simmons.com/en/publications/ckoe7mtd61an70907i1up1uot/eu-whistleblowing-directive---italy

Zambelli and Partners (2024) Italy – Employment and labour law, Legal 500 Country Comparative Guides. https://www.legal500.com/guides/chapter/italy-employment-and-labour-law/?export-pdf

Poland

Based on a national report by Barbara Surdykowska

1. Regulatory context and information and consultation mechanisms

In Poland, industrial relations has been described as 'a blend of pluralism, neo-corporatism and etatism' (Czarzasty et al. 2021), with emerging symptoms of neo-etatism (in other words, a growing arbitrariness on the part of the state) (Czarzasty and Mrozowicki 2018). The system is characterised by a high level of collective bargaining decentralisation. Most collective bargaining takes place at the company level, institutions of social dialogue are comparatively weak at the national level, and industry-level collective bargaining is underdeveloped (Czarzasty et al. 2021).

The density of both **trade union** and employers' organisations is low, while the state is central to Poland's industrial relations: as an employer; because it adopts the legislation that sets minimum wages and working conditions for most private sector employees alongside limited collective bargaining coverage; and as a party to national and regional tripartite social dialogue (Czarzasty et al. 2021). Following an initial phase of legislative 'pro-employee' changes from 2015, including the re-establishment of a tripartite social dialogue system, since 2017 there seems to have been a return to 'the former selective government approach to tripartism (marked by avoiding or disregarding tripartite consultations, whenever it was seen as an obstacle to the fulfilment of governmental policy objectives)' (Czarzasty et al. 2021). While the tripartite Social Dialogue Council continued to function during the pandemic in a context of predominantly company-level negotiations and, to a lesser extent, multi-workplace negotiations, 'in the opinion of some trade union representatives, the quality of social dialogue has recently deteriorated at all levels' (Czarzasty et al. 2021).

Labour law in Poland is regulated mainly by the **Labour Code of 1974**.[321] Within this regulatory context, apart from **trade unions**, other forms of worker representation in Poland are poorly developed, with the national approach to regulating confidentiality described as 'employer-centred' (Rasnača and Jagodziński forthcoming) (see also Table 1 in Part 2). After much discussion and with doubts expressed by unions, the Framework Directive on information and consultation 2002/14/EC was implemented in Poland by the **Act of 7 April 2006**[322] (revised in 2009 due to a Constitutional Court ruling), enabling the

321. Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy.
322. Ustawa z dnia 7 kwietnia 2006 r. o informowaniu pracowników i przeprowadzaniu z nimi konsultacji.

creation of **works councils**. However, the number in operation is low (no more than 500 by 2020 – Surdykowska 2020). In practice, works councils, whose members can be elected only by employees, usually operate in companies with active trade unions, but they have relatively little influence over the development of social dialogue at company level, which is conducted through the unions (European Commission 2012). And while **social labour inspectors** deal with H&S at work issues, they may act only in companies in which unions organise.

Surdykowska (2020) writes that, in companies without trade unions, many rights are granted to **so-called employee representatives** who are chosen in an ad hoc manner. Because of a legislative failure to define the manner of their selection or any special guarantees of their employment, it is questionable whether they can be treated as genuine employee representatives, although new regulations aimed at tackling the Covid-19 pandemic meant that their role is becoming more important. It is also debatable whether an agreement concluded by an employer with such representatives can be treated as a collective agreement within the meaning of EU law. Underdeveloped employee representation in Poland thus translates into a lack of or less access to information. This and its casual nature are the central concerns rather than, for instance, employers withholding information or classifying it as confidential in relation to employee representatives (Surdykowska 2020).

For **EWCs**, the EWC Recast Directive 2009/38/EC was implemented in Poland with the **1265 Act of 31 August 2011**,[323] amending the Law on EWCs (Jagodziński 2014). Furthermore, according to Laulom and Dorssemont (2015: 53), Poland has not introduced any new confidentiality provisions in transposition of the EWC Recast Directive 2009/38/EC.[324] This suggests a view among some that EWCs already have sufficient rights, including to represent employees' interests collectively. Jagodziński and Lorber (2015) comment that this approach is questionable in countries that have no regulations in place within the framework of the EWC Directive 94/45/EC or have introduced regulations that confer inadequate status on EWCs in the transposition of this directive.

BLER in Poland is limited (see also Table 2 in Part 2), but national legislation provides for **employee representatives** on supervisory boards in state-owned and partially privatised companies. Also, in state-owned operations that have not yet been transformed into companies, there are '**workers councils**', elected by all employees, who can object to management decisions. However, there is no right to BLER in purely private companies, and the number of companies in which the state is involved continues to decline (ETUI 2024).

For **SEs**, the Polish **Act on the European Economic Interest Grouping (EEIG) and the European Company (EEIG/SE) of 4 March 2005**[325]

---

323. Ustawa z dnia 31 sierpnia 2011 r. o zmianie ustawy o europejskich radach zakładowych.

324. The authors noted that, in Poland, the 'District Commercial Court may order access to confidential information under Section 5 of the Law on EWCs of 5 April 2002, with the Court potentially limiting access to evidence if it risks harming a company's interests.'

325. Ustawa z dnia 4 marca 2005 r. o europejskim zgrupowaniu interesów gospodarczych i spółce europejskiej.

implemented Directive 2001/86/EC,[326] supplementing the Statute for an SE on the involvement of employees. Rules for employee involvement in the SE were provided for in Articles 58–121 and the draft version was subject to social consultation in the procedure established in the provisions included in the **Act of 23 May 1991 on Trade Unions**[327] and **Employers' Organisations Act**,[328] on which unions expressed a favourable opinion. Poland is one of only several jurisdictions that have laid down additional rules on **SNB** organisation in the SE (Valdés Dal-Ré 2006).

With the **Act of 22 July 2006**[329] (on **SCEs**), Poland also transposed Directive 2003/72/EC (on SCEs). Again, the Act was the subject of social consultation in the procedure provided for in the provisions in the Trade Unions Act and the Employers' Organisations Act (Labour Asociados n.d.).

2. Relevant law and regulatory provisions

2.1 National law regulating and referring to confidentiality of information and consultation and worker representation

Poland relies on statutory and EU-based rules when it comes to confidentiality.

The Framework Directive on information and consultation 2002/14/EC and the EWC Directive 94/95/EC have been transposed verbatim into the country's **Labour Code 1974**,[330] applying to all employees, including **worker representatives**.

With regard to **EWCs**, Poland transposed the EWC Recast Directive 2009/38/EC via the **Act of 5 April 2022**[331] (on EWCs) which concerns I&C and confidentiality.

For **SEs**, the relevant provisions can be found in Poland's transposition of Art 8.1 of Directive 2001/86/EC, which has had a high level of legal correlation in the **Act on the European Economic Interest Grouping (EEIG)** and the **European Company (EEIG/SE) of 19 May 2005**.[332] With regard to **SCEs**, the **Act of 22 July 2006**[333] is pertinent.

---

326. This Act also implemented Council regulations 2137/85/EEC and 2157/2001/EC.
327. Ustawa z dnia 23 maja 1991 r. o związkach zawodowych.
328. Ustawa z dnia 23 maja 1991 r. o organizacjach pracodawców.
329. Ustawa z dnia 22 lipca 2006 r o spółdzielni europejskiej.
330. Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy. This Code provides that certain types of professional (such as civil service officers, local government officers, judges, prosecutors) cannot be subject to a collective agreement (CMS Legal 2024).
331. Ustawa z dnia 5 kwietnia 2002 r. o europejskich radach zakładowych.
332. Ustawa o europejskim ugrupowaniu interesów gospodarczych (EEIG) i spółce europejskiej (EEIG/SE) z dnia 19 maja 2005 r.
333. Ustawa z dnia 22 lipca 2006 r. o spółdzielni europejskiej.

It is notable that, for companies listed on the stock market, confidentiality rules are set out in the **Act of 29 July 2005**[334] (on Trading in Financial Instruments) which refers to Regulation 596/2014 on market abuse. Compliance applies to employees, among others (including their **representatives on supervisory boards**).

2.2 National provisions concerning whistleblowing and whistleblowers' protection

Although no comprehensive national law exists, Poland has a patchwork of whistleblower laws that allow the reporting of certain types of misconduct internally and to regulators (Johannes 2023). No specific domestic regulation covers differences between whistleblower protections in the private and public sectors; extant legislation related to whistleblowers operates mainly in the financial sector (DLA Piper 2021) and in aviation (Królikowski and Defańska-Czujko 2023). Furthermore, under existing Polish law, a whistleblower is '(a) person employed under a contract of employment or similar, as well as apprentices and applicants and former employees' (Dudkowiack 2023). An employer is not obliged to consider an anonymous report from a whistleblower.

Poland did not implement the Whistleblowing Directive 2019/1937/EC by the deadline of 17 December 2021. In mid-February 2023, along with seven other Member States, it was referred by the European Commission to the ECJ for not transposing and notifying national measures for transposing the Directive (European Commission 2023). However, various drafts of the Polish law have been published, the latest published on 10 January 2024, and a whistleblower status certificate was recently introduced, protecting a whistleblower against retaliation (Królikowski and Defańska-Czujko 2023).

In brief, with successive drafts, 'the scope of the internal notification procedure, the public authority responsible for receiving external notifications (previously the Ombudsman and now the State Labour Inspectorate), data retention periods, liability issues and many other minor issues have been changed' (Królikowski and Defańska-Czujko 2023). Early analysis suggests that the draft Bill largely reflects key principles of the Directive (EU 2023). However, the proposed approach of the draft law is to protect only reports of the same category of information on breaches, as required by the Directive, despite the European Commission's recommendation to Member States to take a 'horizontal approach' and go beyond minimum legal requirements to include breaches of national law and other wrongdoing (European Commission 2023).

According to Demred (2024), 'recent court decisions and the delayed implementation of the EU directive … highlight the pressing need for stronger whistleblower protection laws in the country. The absence of a national law creates uncertainty for workers and businesses alike.'

---

334. Ustawa z dnia 29 lipca 2005 r. o obrocie instrumentami finansowymi.

2.3 National provisions concerning whistleblowing, and implications of whistleblowers' protection for worker representatives handling confidential information

Poland's draft law on whistleblowing recognises an employer's commitment to consult on the establishment of mandatory internal whistleblowing systems with **trade unions** or **other employee representatives** before its implementation. It would bring in obligations to ensure compliance, including:

> '(i) consulting the **trade unions** or **employees' representatives** on the text of the internal procedure; (ii) defining the rules for processing personal data; (iii) the possibility of authorising an external entity to assume the obligations imposed by the proposed law, if necessary; (iv) keeping a register of internal notifications on violations of law; (v) defining the follow-up actions to reports of violations.' (Stanasiuk and Zabost 2023; our emphasis)

Most employer actions do not require the consent of **employee representatives** – consultation is usually sufficient. However, specific areas require consent and the employer must reach agreement with them. As DLA Piper (2022) observe,

> '[t]he issue of **employee representative** involvement will soon become important in the context of the implementation of the so-called Whistleblowing Directive ... (E)mployers with at least 250 employees (and from 2023, also employers with at least 50 employees) will be required to establish internal whistleblowing regulations ... (T)he procedures introduced will have to be consulted with **employee representatives** if there are no **trade unions** active in the company.' (Our emphasis)

Currently, no specific form of protection for whistleblowers exists in Poland's **Labour Code 1974**[335] but provisions on employee protection may apply. Legal protection measures for whistleblowers who are employees (and thus who could be **representatives**) include:

- appealing to the court against notice of termination received and demanding an employee's reinstatement or payment of damages;
- appealing to the court against termination without notice and a right to claim damages or reinstatement;
- seeking compensation from an employer of not less than the minimum remuneration for work, determined on the basis of separate regulations, if due to workplace bullying, the contract of employment was terminated through the fault of the employer; and
- claiming reasonable compensation from the employer for harm suffered if harassment caused a health disorder. (DLA Piper 2021)

335. Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy.

2.4 Confidential information versus trade secrets

Poland's regulatory approach to confidential information leaves it to be 'regulated' in the context of private relationships.

But while there is no definition of confidential information either in law or developed by the courts, a 'business secret' is defined in terms of whether it meets the conditions contained in Art. 11 of the **Act of 16 April 1993**[336] on Combatting Acts of Unfair Competition. Information that is not publicly available constitutes a secret of the enterprise, namely, technical, technological, organisational information or other information of economic value, the confidentiality of which the business owner took the necessary steps to preserve. Thus, in principle, in Poland, business secrets can be labelled confidential.

2.5 Worker representation bodies and representatives' information and consultation rights and duties

In Poland, an employer's obligation to provide information results from the general principles of conducting social dialogue or I&C and negotiations in good faith, as well as from detailed regulations concerning categories of employee representation.

Under Art. 13 of Poland's **Labour Code 1974**,[337] an employer is supposed to provide a **works council** with information on: the recent and probable development of their activities and economic situation; the situation, structure and probable development of employment; and any measures envisaged with a view to maintaining current staff levels, or likely to lead to substantial changes in work organisation or contractual relations. The employer will provide information if any changes are anticipated, action is planned or upon a written request from a **works council**.

For cases in which there is no union but rather **ad hoc employee representatives** in workplaces, various provisions of the **Labour Code 1974**[338] concern an employer's need to make arrangements with employees (for example, on not establishing a company social benefit fund or extending a reference period). The law does not establish a legal basis for providing these representatives with information, and no specific regulations govern situations in which they disclose information comprising business secrets.

336. Ustawa z dnia 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji.
337. Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy.
338. Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy.

For **trade union representatives**, under Art. 28 of the **Act of 23 May 1991**[339] (on trade unions), an employer should provide the information needed for union activities at the union's request, particularly when the information concerns:

- working conditions;
- remuneration rules;
- an employer's activities and economic situation related to employment and changes envisaged in this respect;
- state, structure and anticipated changes in employment, as well as activities aimed at maintaining an employment level; and
- activities that may cause significant changes in work or the basis for employment.[340]

Provision of information also occurs with regard to situations such as collective disputes, mass lay-offs or the transfer of the workplace to a new employer.

Moreover, under Art. 241(4) of the **Labour Code 1974**,[341] an employer must provide **trade union negotiators** with information about its economic situation while negotiating collective agreements if it is necessary to hold responsible negotiations (that is, broadly speaking, 'caring beyond the deal closing' – Lempereur 2022). In particular, this obligation applies to information reported to Poland's Central Statistical Office.

For both **H&S committees** with employer and employee representatives in a company with more than 250 employees under Art. 237(12) of this Code, and in companies with a **trade union** presence under the **Act of 24 June 1983**[342] (on Social Labour Inspection) where it is possible to choose a social labour inspector, their access to confidential information concerning H&S is governed by general principles.

Under Art. 28 of the **Act on EWCs of 5 April 2002**,[343] an **EWC** has the right to be informed and consulted on matters that concern the Community-Scale undertaking or group of undertakings as a whole or at least two of its establishments or undertakings situated in different Member States. I&C will concern in particular:

- the structure of the Community-Scale undertaking or group of undertakings;
- the economic and financial situation and probable development of the business, including production, sales and investments;
- its employment situation and likely development;
- the introduction of substantial changes concerning organisation;
- the introduction of new working methods and production processes;

339. Ustawa z dnia 23 maja 1991 r. o związkach zawodowych.
340. Art. 28 of the Trade Unions Act (TUA) of 23 May 1991 (Ustawa z dnia 23 maja 1991 r. o związkach zawodowych).
341. Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy.
342. Ustawa z dnia 24 czerwca 1983 r. o społecznej inspekcji pracy.
343. Ustawa z dnia 5 kwietnia 2002 r. o europejskich radach zakładowych.

- relocations of an undertaking or establishment or any substantial part thereof, and transfers of production to another establishment or undertaking;
- mergers and divestments of undertakings/establishments;
- cut-backs or closures of undertakings/establishments or any substantial part thereof; and
- collective redundancies.[344]

Also, **EWCs** in Poland have a right of response in the absence of agreement. No reference is made to effectiveness, nor to transposition of the EWC Recast Directive 2009/38/EC's Art. 1.2 (on ensuring effectiveness and effective decision-making). There is implementation of workers' right to I&C, however, so that they can become acquainted with an issue and investigate it, and conduct an in-depth assessment of its possible impact on their rights and obligations (Art 2.1f and Recital 42); see Art. 5a of the **Act of 5 April 2022**[345] (EWC Law) (also see Laulom and Dorssemont 2015).[346] Moreover, national law has transposed **EWC members'** duty to report back to **local representatives** (Cremers and Lorber 2015).

For **SEs**, Poland transposed Art 8.1 of Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees to a large extent via the **Act on the European Economic Interest Grouping and the European Company (EEIG/SE) of 4 March 2005**.[347] Under Art. 97 of this Act, the competent authority of an SE will, at least once a year, provide information about the business and its prospects to the **representative body** at a joint meeting. Similar to EWCs, information obtained and consultations conducted will particularly concern an SE's structure; subsidiaries and establishments; economic and financial situation and probable development of the business, including production, sales and investments; the situation and probable trend in its employment; introduction of substantial changes concerning the organisation; introduction of new working methods and production processes; change of location, merger, cut-backs and closures of undertakings or establishments or important parts thereof; and collective redundancies. Identical provisions apply to **SCEs** (see Art. 73 of the **Act on the SCE of 22 July 2006**).[348]

With cross-border mergers, under Art. 516(7) of the **Act of 15 September 2000**[349] (the **Commercial Companies Code**), **employee representatives** in merging companies (and in the absence of such, **employees**) have the right to particular information.

---

344. Art. 29 of the Act on EWCs of 5 April 2022 (Ustawa z dnia 5 kwietnia 2002 r. o europejskich radach zakładowych).
345. Ustawa z dnia 5 kwietnia 2002 r. o europejskich radach zakładowych.
346. Jagodziński (2014) observed that Poland has not transposed the EWC Recast Directive 2009/38/EC on the provision 'means necessary to apply rights stemming from the Directive.'
347. Ustawa z dnia 4 marca 2005 r. o europejskim zgrupowaniu interesów gospodarczych i spółce europejskiej.
348. Ustawa z dnia 22 lipca 2006 r. o spółdzielni europejskiej.
349. Ustawa z dnia 15 września 2000 r. Kodeks spółek handlowych.

2.6 Challenging company decisions and accessing justice

In Poland, an employer's obligation to provide information results from the general principles of conducting social dialogue or I&C and negotiations in good faith. However, management have event-based (for example, collective disputes, mass dismissals, transfers of undertakings) obligations as regards confidentiality that originate in EU laws. Moreover, to an extent, the right to demand from an employer the information needed for **employee representatives** to conduct their activities is limited by general regulations, in particular: **Act of 5 August 2010 on the Protection of Classified Information**;[350] **Act of 16 April 1993 on Combatting Unfair Competition**;[351] and **Act of 29 August 1997 on the Protection of Personal Data**.[352]

Under Art. 13(3) of the **Act on information and consultation of Employees of 7 April 2006**,[353] an employer must provide a works council with information under conditions regarding its timeliness, form and scope, though a specific deadline is not stated as it is for trade unions (see below). Under Articles 19(4) and 19(5), if an employer does not inform or consult the works council on matters specified in the Act or obstructs consultation, and if the employer discriminates against a member of the works council in connection with the performance of activities related to I&C, they will be subject to 'the penalty of restriction of liberty or a fine.'

In certain cases, an employer may withhold information from a **works council** 'when the nature of that information is such that, according to objective criteria, it would seriously harm the functioning of the undertaking or establishment, or would be seriously prejudicial to it' (Art. 16.2 of the **Act on information and consultation of Employees of 7 April 2006**).[354] However, a **works council** can challenge such a decision in court by requesting an exemption from the obligation to keep information confidential or order disclosure of information or consultation (Art. 16.3). The provisions of the **Act of 23 April 1964**[355] (Civil Code) apply accordingly, and the **works council** and employer have legal capacity with regard to such matters.

Under Art. 28 of the **Act of 23 May 1991 on Trade Unions**,[356] at the **trade union's** request, the employer shall be required to provide the information needed for the union to conduct its activities (see Section 2.5 of this chapter). The employer has 30 days to do so from receipt of the union's application.

---

350. Ustawa z dnia 5 sierpnia 2010 r. o ochronie informacji niejawnych.
351. Ustawa z dnia 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji.
352. Ustawa z dnia 29 sierpnia 1997 r. o ochronie danych osobowych.
353. Ustawa z dnia 7 kwietnia 2006 r. o informowaniu pracowników i przeprowadzaniu z nimi konsultacji.
354. Ustawa z dnia 7 kwietnia 2006 r. o informowaniu pracowników i przeprowadzaniu z nimi konsultacji.
355. Ustawa z dnia 23 kwietnia 1964 r. - Kodeks cywilny.
356. Ustawa z dnia 23 maja 1991 r. o związkach zawodowych.

As already noted, with respect to **H&S**, in joint **H&S committees** in larger companies under Art. 237(12) of the **Labour Code 1974**,[357] and in companies with a **trade union** presence under the **Act of 24 June 1983**[358] (on Social Labour Inspection) where it is possible to appoint a social labour inspector, their access to confidential information concerning H&S is governed by general principles.

EWCs established under Polish law can go to court (or some similar labour council or arbitration institution) to challenge the imposed duty of confidentiality. Their capacity to act in court collectively is limited to cases concerning confidentiality of I&C under Section 5.4 of the **Act of 5 April 2022**[359] (EWC law). As in most countries, this right is a right of the EWC, not an individual right of an EWC member (Jagodziński and Stoop 2021). As with works councils, in specific justifiable cases, central management may not have to transmit information to employee representatives when, according to objective criteria, to do so would seriously harm the functioning of their undertakings or be prejudicial to them (Art. 36). However, where it is determined that the confidentiality or non-disclosure of information is not in accordance with Paragraphs 1 or 2, an **SNB** and **EWC** may apply to a District Commercial Court under Section 5 of the Act to lift the confidentiality obligation or to order access to information (Art. 36.3). The Court may limit access if it risks harming a company's interests.

Provisions of the **Act of 23 April 1964**[360] (Civil Code) apply accordingly, and the **SNB, EWC** and central management have legal capacity in these matters. However, as for works councils, at the employer/central management or ex officio board member's request, the court may decide to limit, as necessary, the right of access to evidence produced by employer/central management and attached to the case file during court proceedings, where access to such materials would present a risk of disclosure of the undertaking's secrets or other secrets subject to protection under separate regulations. Moreover, there is no appeal against the court's decision.

For **SEs**, in particularly justifiable cases, the competent authority may refuse to disclose information constituting a trade secret if this could, according to objective criteria, seriously disrupt the activities of the SE, its subsidiary or establishment; or expose it to significant damage. In such cases, an **SNB** or **representative body** can apply to the District Commercial Court for an exemption from confidentiality or to order disclosure of information. The provisions of **Act of 23 April 1964**[361] (Civil Code) apply accordingly, and the **SNB, representative body** and competent authority of the SE have legal capacity in these matters (Art. 113). Again, at the request of the competent authority of an SE or ex officio board member, the court may limit the right to inspect evidence attached by that authority to the case file during court proceedings if its disclosure would risk disclosure of information constituting a trade or other secrets protected under separate provisions. There is

357. Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy.
358. Ustawa z dnia 24 czerwca 1983 r. o społecznej inspekcji pracy.
359. Ustawa z dnia 5 kwietnia 2002 r. o europejskich radach zakładowych.
360. Ustawa z dnia 23 kwietnia 1964 r. - Kodeks cywilny.
361. Ustawa z dnia 23 kwietnia 1964 r. - Kodeks cywilny.

no right of appeal against the court's decision (Art. 114). More widely, Art. 133(2) of the **Act on the European Economic Interest Grouping (EEIG) and the European Company (EEIG/SE) of 19 May 2005**[362] provides for a penalty of restriction of liberty or a fine for the prevention or hindrance of an **SNB** or **representative body's** operations. Identical confidentiality provisions apply to an **SCE** under Section 5 of the **Act on the SCE**[363] (Articles 92, 93 and 94).

In sum, regulations explicitly stating that an employer may not provide information on the ground that it comprises business secrets are explicitly contained in the law on **works councils, EWCs** and **other forms of transnational worker representation**. However, these regulations include a judicial procedure to challenge the employer's decision not to provide information. There is no such procedure in relation to **trade unions** despite union requests for it during the work on the Social Dialogue Council on the amendment to the **Act of 23 May 1991 on Trade Unions**[364] (related to the extension of freedom of association) although, more broadly, under Art. 35 of this Act, hindrance of the performance of trade union activities may incur a fine or restriction of liberty.

2.7 Scope of confidentiality rules, and worker representatives' contacts with other representatives and stakeholders

Under Art. 100 of Poland's **Labour Code 1974**,[365] **employees** must respect company interests and not disclose confidential information that could cause damage to the employer if disclosed, as well as respect confidentiality determined in separate provisions. This blanket rule applies to everyone, including **worker representatives**. Thus, 'there seem practically to be no limits on the general duty of confidentiality', although in Poland, where confidentiality is seen as an imported concept without roots in the national system, it can be difficult for such rules to function well (Rasnača and Jagodziński forthcoming).

Under Art. 241(4) of the **Labour Code 1974**,[366] an employer must provide information about its economic situation to **trade union negotiators** while negotiating collective agreements if it is necessary to hold responsible negotiations. In these situations, Section 2 of Art. 241(4) states that, during negotiations, **trade union representatives** must not disclose information from the employer that constitutes company secrets within the framework of combatting unfair competition laws.

362. Ustawa z dnia 4 marca 2005 r. o europejskim zgrupowaniu interesów gospodarczych i spółce europejskiej.
363. Ustawa z dnia 22 lipca 2006 r. o spółdzielni europejskiej.
364. Ustawa z dnia 23 maja 1991 r. o związkach zawodowych.
365. Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy.
366. Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy.

For **BLER**, supervisory board members must keep undisclosed all confidential information and company secrets, particularly those they learn of in their role within the meaning of the **Act of 16 April 1993** (on Combatting Unfair Competition).[367]

For **EWCs**, confidentiality rules in Section 5 of the **Act of 5 April 2002**[368] (EWC Law) contain similar solutions to those provided for works councils. Under Art. 36.1 of the Act, **SNB** and **EWC members, experts** and **interpreters** are not authorised to disclose any information considered to be a secret of the undertaking which has been provided to them due to the function they perform, and which the central management qualify as confidential. In practice, Plawecka (2021: 6) reports that, in terms of **EWC**–union relations in Poland:

> 'When receiving information that is classified as confidential, the **EWC representative** can only anticipate the consequences of decisions taken by central management and use the knowledge to prepare for such action as is possible at the time. However, for the information obtained to be used to safeguard the interests of employees, unionisation or close cooperation between the council representative and the trade unions is essential … (I)t was often the case that national management representatives are late in organising consultations and do not give time for the employees' side to get acquainted with the documentation or benefit from additional expertise.' (Our emphasis)

For **SEs**, confidentiality rules are set out in Section 5 of the **Act on the European Economic Interest Grouping and a SE of 4 March 2005**.[369] Under Art. 112(1), **members** of the **SNB, representative body, other employee representatives, experts** and **translators** must not disclose information obtained in connection with their role for which the SE's competent authority requires confidentiality. As in Estonia and Lithuania, national law enlarges the catalogue of recipients affected by confidentiality by extending it to the **translators** participating in the work sessions of the **SNB** and the **representative body**. Moreover, as per Para. 1 in Art 8.2 of the SE Directive, the supervisory or administrative organ of an SE 'is not obliged to transmit information where its nature is such that, according to objective criteria, to do so would seriously harm the functioning of the SE … or would be prejudicial to them' (Valdés Dal-Ré 2006: 54).

For an **SCE**, under Para. 1 of Art. 92 of the **Act of 22 July 2006**,[370] members of the **SNB**, the **representative body** and the **employees' representatives** in the context of an I&C procedure, as well as **experts** and **translators** cannot authorised to reveal any information which has been given to them in confidence. This obligation continues to apply, wherever these persons may be, even after the expiry of their terms of office, unless the competent organ of the SCE decides

---

367. Ustawa z dnia 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji.
368. Ustawa z dnia 5 kwietnia 2002 r. o europejskich radach zakładowych.
369. Ustawa z dnia 4 marca 2005 r. o europejskim zgrupowaniu interesów gospodarczych i spółce europejskiej.
370. Ustawa z dnia 22 lipca 2006 r. o spółdzielni europejskiej.

otherwise. Under the Act, the duty of confidentiality concerns **translators** too, contrary to the Directive. Art. 93(1) provides that, in specific cases, the supervisory or administrative organ of an SCE is not obliged to transmit information where its nature is such that, according to objective criteria, to do so would seriously harm its functioning or that of its subsidiaries and establishments or would be prejudicial to them (Labour Asociados n.d.).

Notably, for companies listed on the stock market, confidentiality rules are set out in the **Act of 29 July 2005**[371] (on Trading in Financial Instruments) which refers to Regulation 596/2014 on market abuse. Compliance applies to, among others, **employees** (including their **representatives in supervisory boards**). The spectrum of information that can be considered confidential is very broad and, de facto, subsequently verified by the Polish Financial Supervision Authority.

2.8 Worker representatives' duties in relation to maintaining confidentiality

Under Art. 16 of the **Labour Code 1974**,[372] **works council members** and **experts** working for the **works council** must not disclose information obtained in connection with business secrets about which the employer has reserved an obligation to maintain confidentiality. Non-disclosure of information applies after termination of service for up to three years. However, a significant proportion of the small number of works councils in Poland (see Section 1 of this chapter) have not negotiated any agreement with the employer to establish a specific method of functioning.

Section 2 of Art. 241(4) of the **Labour Code 1974**[373] states that, when negotiating a collective agreement, **trade union representatives** must not disclose information from the employer that comprises company secrets within the meaning of combatting unfair competition laws. It seems reasonable to extend this requirement to any other negotiation or discussion with an employer. Whether the information in question constitutes a business secret (see Section 2.4 of this chapter) may be subject to dispute between the parties.

With **BLER**, confidentiality rules are uniformly formulated in the regulations of supervisory boards for all members who are obliged to keep secret all confidential information and company secrets, particularly those that they learn about at the time of their role within the meaning of the **Act of 13 April 1993**[374] (on Combatting Unfair Competition).

For **EWCs**, the obligation of non-disclosure on members of an **SNB, EWC, experts** and interpreters under Art. 36.1 of the **Act of 5 April 2002**[375] (EWC

371. Ustawa z dnia 29 lipca 2005 r. o obrocie instrumentami finansowymi.
372. Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy.
373. Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy.
374. Ustawa z dnia 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji.
375. Ustawa z dnia 5 kwietnia 2002 r. o europejskich radach zakładowych.

Law) continues after their appointments expire unless central management determines a different confidentiality period. Art. 112 of Poland's **Act on the European Economic Interest Grouping (EEIG) and the European Company (EEIG/SE) of 4 May 2005**[376] provides that **members** of the **SNB, representative body, other representatives of employees, experts and interpreters** are required not to disclose 'information obtained in connection with the information function which the competent authority of the SE has reserved to maintain its confidentiality.' This obligation should continue after the termination of duties 'unless the competent authority determines the scope of the obligation to bind the mystery (sic).' Similarly, under Art. 112 of the **Act on SCEs of 22 July 2006**[377] members of an **SNB, representative body, experts** and **interpreters** must maintain their obligation of confidentiality until their appointment terminates unless the competent authority specifies otherwise regarding the scope of secrecy.

2.9 Sanctions for breaching confidentiality of information and consultation and remedies for workers and worker representatives

In Poland, in most cases, the sanction on any employee disclosing information treated by the employer as confidential is, under Art. 52 of the **Labour Code 1974**,[378] termination of their employment as a disciplinary measure due to a serious breach of their obligations (they may or may not be a **[union] employee representative**). An employer who believes that a business secret has been disclosed (that is, that an act of unfair competition has occurred) may claim damages. This sanction may apply both to an **employee** (who may or may not be an **employee representative**) and to a third party to the employment contract (for example, a **union adviser involved in negotiations**). The rule thus applies to all categories of employee representative. Surdykowska (2020) writes that, in practice, situations in which employers treat disclosure of such information as an act of unfair competition and, thus, demand compensation are relatively rare because **employee representatives** have access comparatively rarely to information that the employer treats as confidential. In such cases, an employee can appeal to the labour court which will examine whether the breach was serious, and whether the basic obligation was violated. Art. 100 of the Code is important here as it stipulates, among other things, the obligation to take the good of the workplace into account.

However, when an employer does not explicitly state that information is confidential, it is difficult to attribute intentional guilt to an **employee**. Whether an employer explicitly stipulated that the information constituted a business secret, and whether the information constitutes a business secret itself, can be

376. Ustawa z dnia 4 marca 2005 r. o europejskim zgrupowaniu interesów gospodarczych i spółce europejskiej.
377. Ustawa z dnia 22 lipca 2006 r. o spółdzielni europejskiej.
378. Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy.

subject to dispute. If an employee uses so-called special protection (for example, as a **union activist**), the specific body (here, the **union**) must agree to terminate the contract. By its very nature, this sanction may apply only to an employee (for example, it does not apply to a **union expert involved in negotiations**). The above rule applies to all types of **employee representative**.

Moreover, Poland's **Act of 16 April 1993 on Combatting Unfair Competition**[379] provides that anyone whomever, contrary to their obligation towards an entrepreneur or other, having illegally obtained information constituting a business secret, discloses it to another person or uses it in their own business activity, if it causes serious damage to the entrepreneur, will be subject to a fine, the penalty of restriction of liberty or imprisonment for up to two years. However, the Act also provides that disclosure, use or acquisition of information constituting a business secret does not constitute an act of unfair competition if it was made to:

- protect a legitimate interest protected by law;
- in the exercise of freedom of expression;
- in order to disclose irregularities, misconduct or actions in breach of the law to protect the public interest; or
- disclose to **employee representatives** in connection with the performance of their functions under the law as necessary for the proper performance of those functions.

Of note, judgements have emphasised that Art. 28 (regulating the obligation to disclose information to trade unions) of the **Act of May 23 May 1991**[380] (on trade unions) is a *lex specialis lex generali* (that is, specific legal rules are prioritised over general ones) for regulating public information; a **trade union** which has not received information from the employer cannot use the **Act of 6 September 2001**[381] (on Access to Public Information) to file an application for inaction on the part of the authority. However, other judgments indicate that Art. 28 provides different rules and procedures for such access in the Act of 6 September 2001. Only the employer is obliged to provide information based on this provision but it does not qualify as public information or have to relate to public matters. Baran (2007) suggested that Art. 28 represents a drawback in the Act (on trade unions) because it does not specify the reasons an employer may give for refusing to provide unions with information. In his view, the regulations are found in Art. 16.2 of the **Act on information and consultation of Employees of 7 April 2006**[382] while most authors assert that a union has no other way of applying pressure outside of a collective dispute.

According to Poland's draft **whistleblowing law**, those who report false information would also be at risk of financial sanctions and imprisonment. However, this provision may be inconsistent with a key principle of the

---

379. Ustawa z dnia 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji.
380. Ustawa z dnia 23 maja 1991 r. o związkach zawodowych.
381. Ustawa z dnia 6 września 2001 r. o dostępie do informacji publicznej.
382. Ustawa z dnia 7 kwietnia 2006 r. o informowaniu pracowników i przeprowadzaniu z nimi konsultacji.

Whistleblowing Directive 2019/1937/EC wherein a whistleblower should not be penalised for having made an honest mistake if they held a reasonable belief in the truth of the information (European Commission 2023).

2.10 Sanctions on companies or company representatives for abusing confidentiality rules

Art. 100 of Poland's **Labour Code 1974**[383] provides for basic employee responsibilities, including keeping information secret the disclosure of which could expose the employer to harm. Art. 101 addresses prohibition of competition after termination of employment where an employer and an employee have access to particularly important information. Under Art. 101(1), a contract 'shall also lay down the duration of the prohibition of competition and the compensation payable to the **employee**' (our emphasis) – who may or may not be a **worker representative**) – of not less than 25% of the employee's salary prior to termination of the employment relationship for the period of the prohibition of competition (Art 101(3)). In a dispute over compensation, the labour court shall have jurisdiction (a contract can also outline compensation payable to the employee from the employer).

Art. 241(2) of the **Labour Code 1974** provides that the employer must give **trade union representatives** information on their economic situation in fields covered by negotiations and necessary for the conduct of responsible negotiations. While union representatives must not disclose this information, the Act appears to be silent on the sanctioning of company or company representatives for abusing confidentiality rules. Moreover, the Act of 23 May 1991 (on trade unions) and the **Act on information and consultation of Employees of 7 April 2006**[384] make similar provision for a judge to decide, at the request of the competent organ, to limit the scope of the right to inspect evidence entrusted by that organ to the court's files if its revelation endangers a business secret and it is not admissible to lodge a complaint against such decisions.

With regard to **EWCs**, in Poland it is common for a violation classified as an administrative offence against labour law (which comes under civil law) to be sanctioned according to the **Act of 6 June 1997**[385] (the **Criminal Code**) and **Code of Criminal Procedure**[386] (Jagodziński and Lorber 2015). As in Belgium and France, financial penalties (fines) are accompanied by the possibility of applying criminal sanctions, including imprisonment. Moreover, as noted, the District Commercial Court may order access to confidential information under Section 5 of the **Act of 5 April 2002**[387] (Law on EWCs) but it can also limit access

383. Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy. This Code provides that certain types of professionals (such as civil service officers, local government officers, judges, prosecutors) cannot be subject to a collective agreement (CMS Legal 2024).
384. Ustawa z dnia 7 kwietnia 2006 r. o informowaniu pracowników i przeprowadzaniu z nimi konsultacji.
385. Ustawa z dnia 6 czerwca 1997 r. Kodeks karny.
386. Kodeks postępowania karnego.
387. Ustawa z dnia 5 kwietnia 2002 r. o europejskich radach zakładowych.

to evidence should it risk harming the interests of the company. No sanction for confidentiality abuses by management is mentioned other than a remedy in the form of the possibility to issue court orders to lift the secrecy clause, showing how national authorities 'differ in their approach to corporate violations of law and those of workers' representatives' (Laulom and Dorssemont 2015: 47).

Poland's **Act on the European Economic Interest Grouping (EEIG) and the European Company (EEIG/SE) of 4 March 2005**[388] does not contain any specific sanctions for companies that abuse confidentiality rules; the **SCE Act of 22 July 2006**[389] is similar in this regard. More broadly, however, Art. 133 of the SE Act and Art. 111 of the SCE Act function for a **SNB, representative body** or **worker representative** in the same way, where the prevention or hindrance of their activity could be liable to a penalty of restricted freedom or an unspecified fine. Under Art. 94 of the latter Act, a judge may decide, at the request of the competent organ of the SCE or *ex officio*, to limit the scope of the right to inspect evidence entrusted by that organ to the court's files if its revelation endangers a business secret and it is not admissible to lodge a complaint against such a decision.

With regard to the draft **whistleblowing** law (see Sections 2.2 and 2.3 of this chapter), most controversial are potential sanctions where an organisation's head may be penalised for not complying with the obligation to have an internal whistleblowing channel, with fines of up to three years' imprisonment (European Commission 2023), given the short timeframe for implementing new responsibilities for all public and any private entities with more than 49 employees, and the need to consult with **trade unions** (European Commission 2023).

On whistleblowing, Poland's **draft whistleblowing** law extends the prohibition of retaliation to include attempts or threats to use such actions (Dudkowiak 2023).[390] In the event of retaliation, a whistleblower could claim compensation in full while the aggravated person can seek compensation from the whistleblower of at least the average salary in the enterprise sector in force on the date of reporting or public disclosure of information (Dudkowiak 2023). In the event of taking any action described in the Act, or other actions, the employer must prove that those actions were taken for objective and duly justified reasons.[391] Notably, with regard to internal corporate investigations, Tomczak and Rutkowska (2022) take the view that '(i)nternal investigations are still a virtually unknown concept among homegrown businesses domiciled in Poland' and regulated by many – including

---

388. Ustawa z dnia 4 marca 2005 r. o europejskim zgrupowaniu interesów gospodarczych i spółce europejskiej.

389. Ustawa z dnia 22 lipca 2006 r. o spółdzielni europejskiej.

390. Furthermore, in banking and finance, according to regulations banks should ensure that employees who report breaches are protected at least against repressive action, discrimination or other forms of unfair treatment (DLA Piper 2021).

391. No direct regulation currently provides for measures necessary to prohibit any form of retaliation against whistleblowers. However, Art. 218 of the Criminal Code states that practices such as malicious or persistent violation of an employee's rights resulting from the employment relationship or social insurance, and refusal to reinstate an employee whose reinstatement was ordered by the competent authority, shall be subject to penalties (Dudkowiak 2023).

labour – laws. However, once the Whistleblowing Directive 2019/1937/EC was implemented in Poland, they represented a form of follow-up action (Tomczak and Rutkowska 2022).

3. Illustrative case law

In Poland, no known cases exist in which a trade union could go before a court if the employer did not provide certain information, or provided only part of such information, and where this would be effective. Furthermore, the LEX legal information database does not yield any judicial decisions based on Art. 16 of the **Act on information and consultation of Employees of 7 April 2006**,[392] indicating that such cases have not been heard by courts. There are also no obvious judgments or practices that can be presented in relation to Art. 36 of the **Act on EWCs**.

However, the significance of **worker representation** was emphasised when an SME manufacturing precision tools in Poland was transformed from a state-owned into a private company, with two new investors, Polish and foreign, as well as the State Treasury. Following an unsuccessful attempt to sell the company in 2005, another attempt in 2010 succeeded, and was seen as a transfer under Directive 2001/23/EC on the Transfer of Undertakings. It was already known that the company would be put up for sale, with the expectation that employees would be informed because any sale of a state-owned company is also subject to a special Act requiring that negotiations on a social package be conducted between employees and the employer. When the transaction was finalised, the new owner met with the **works council**, **trade union** and all staff to inform them that he did not intend to make any staff changes and had decided to keep the payroll rules and regulations adopted by the previous owner. Although the payroll regulations were later changed, no one was made redundant during the transfer of the company, and working conditions remained unchanged (European Commission 2012).

4. Relevant EU legislation

As an EU Member State, Poland has applied relevant EU legislative rules concerning confidentiality and worker representation. The Act of 7 April 2006 (revised in 2009) implemented the **Framework information and consultation Directive 2002/14/EC** (see Appendix tables), enabling the creation of works councils. The **Recast Directive 2009/38/EC** was implemented with the 1265 Act of 31 August 2011, amending the Act of April 2002 (Law on EWCs).

Others include:

- the **Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of**

392. Ustawa z dnia 7 kwietnia 2006 r. o informowaniu pracowników i przeprowadzaniu z nimi konsultacji.

employees (SE Directive), implemented by the Act of 4 March 2005 on the European Economic Interest Grouping and the European Company of 19 May 2005;[393]
- the **SCE Directive 2003/72/EC**, transposed by the Act on the SCE of 22 July 2006; and
- the **Market Abuse Regulation 596/2014**, referred to by the Act of 29 July 2005 on Trading in Financial Instruments.

At the time of writing, Poland is moving closer to transposing the **Whistleblowing Directive 2019/1937/EC** (see Sections 2.2 and 2.3 of this chapter). The eventual implementation of a national law should see improvements in whistleblower protection (for example, preventing retaliation, allowing for the possibility of anonymous reporting).

5. Sources

Relevant provisions/Acts (selected)

Civil Code 1964 (Act of 23 April 1964), WordPress.
https://supertrans2014.files.wordpress.com/2014/06/the-civil-code.pdf (Polish), and Global-Regulation, https://www.global-regulation.com/translation/poland/10092092/act-of-23-april-1964-civil-code.html (English).
Commercial Companies Code, WordPress.com. https://supertrans2014.files.wordpress.com/2014/06/the-commercial-companies-code.pdf (English).
Labour Code 1974, Polksa Agencja Inwestycji Handlu SA.
https://www.paih.gov.pl/wp-content/uploads/0/107301/107317.pdf (English).
Act on EWCs on 5 April 2022, Gov.pl.
https://www.gov.pl/attachment/865a6d9a-1e6e-4f75-b221-dc56a7a00403 (English).
Act of 5 August 2010 on the Protection of Classified Information.
https://www.global-regulation.com/translation/poland/2986485/the-law-of-5-august-2010-for-the-protection-of-classified-information.html (English).
Act of 7 April 2006 on the information and consultation of Employees, Gov.pl.
https://www.gov.pl/attachment/7a58acdf-c8ed-40be-8fcc-f1fe5ea72671 (English).
Act of 16 April 1993 on Combatting Unfair Competition, WIPO.
https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/pl/pl020en.pdf (English).
Act of 29 August 1997 on the Protection of Personal Data, GIODO.
https://archiwum.giodo.gov.pl/en/file/329 (English).
Act of 24 June 1983 on Social Labour Inspection.
https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=3511 (English).
Act of 4 March 2005 on the European Economic Interest Grouping and a European Company, Gov.pl.
https ://www.gov.pl/attachment/2bcf93bf-9046-434b-8a0b-ee0a0c6fa7ac (English).
Act on the SCE of 22 July 2006.
https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=109029 (English)

393. This Act also implemented Council Regulations 2137/85/EEC and 2157/2001/EC.

Act of 29 July 2005 on Trading in Financial Instruments, European Bank for Reconstruction and Development. https ://www.ebrd.com/downloads/legal/securities/polfi.pdf (English)

Commercial Companies Code of 15 September 2000. https://supertrans2014.files.wordpress.com/2014/06/the -commercial-companies-code.pdf (English).

Trade Union Act of 23 May 1991 (TUA), Polksa Agencja Inwestycji Handlu SA. https://www.paih.gov.pl/wp-content/uploads/0/100201/100243.pdf (English).

1265 Act of 31 August 2011 (amending the Law on EWCs on 5 April 2002). https://ec.europa.eu/social/ajax/BlobServlet?docId=7227&langId=en (English).

References

Baran K. (2007) A few comments on the protection of business secrets as part of the employee I&C procedure, Studia z zakresu prawa pracy polityki społecznej, red. A. Świątkowski.

CMS Legal (2023) Hungary introduces new whistleblower protection Act. https://cms-lawnow.com/en/ealerts/2023/05/hungary-introduces-new-whistleblower-protection-act

Cremers J. and Lorber P. (2015) Transposition of provisions of the Recast Directive on the functioning of the European Works Council, in Jagodziński R. (ed.) Variations on a theme? The Implementation of the EWC Recast Directive, ETUI, 85–106. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

Czarzasty J. and Mrozowicki M. (2018) Industrial relations in Poland: historical background, institutional evolution and research trends, Employee Relations, 40 (4), 674–691. https://doi.org/10.1108/ER-04-2017-0082

Czarzasty J., Mrozowicki M. and Pańków M. (2021) Working life in Poland, Eurofound, 11.08.2021. https://www.eurofound.europa.eu/country/poland#background

Demred A. (2024) Whistleblower protection: EU Directive prevails in Poland despite delayed transposition of the whistleblowing Directive, Whistlelink, 16.01.2024. https://www.whistlelink.com/blog/whistleblower-protection-eu-directive-prevails-in-poland-despite-delayed-transposition-of-the-whistleblowing-directive/

DLA Piper (2021) Poland – Whistleblowing laws in Europe: an international guide, 30.05.2021.

DLA Piper (2022) How employee representatives can influence the actions of employers, 4.02.2022. https://www.lexology.com/library/detail.aspx?g=234ea70a-e468-453d-942c-55581cbfc655

Dudkowiak M. (2023) Whistleblowing in Poland, Dudkowiak, Kopec and Putyra Law Firm. https://www.dudkowiak.com/employment-law-in-poland/whistleblowing/

ETUI (2024) EWCDB - European Works Councils Database. https://www.ewcdb.eu/

European Commission (2012) Operation and effects of information and consultation Directives in the EU/EEA countries 'fitness check': final synthesis report.

European Commission (2023) The European Commission decides to refer 8 Member States to the Court of Justice of the EU over the protection of whistleblowers, Press release, 15.02.2023. https://ec.europa.eu/commission/presscorner/detail/EN/IP_23_703

Jagodziński R. (2014) Implementation of enforcement provisions of the European Works Councils Recast Directive: are sanctions really 'effective, proportionate and

dissuasive'?, Policy Brief 7/2014, ETUI. https://www.etui.org/publications/policy-briefs/european-economic-employment-and-social-policy/implementation-of-enforcement-provisions-of-the-european-works-councils-recast-directive-are-sanctions-really-effective-proportionate-and-dissua

Jagodziński R. and Lorber P. (2015) Enforcement frameworks and employees' rights of access to enforcement procedures, in Jagodziński R. (ed.) Variations on a theme? The implementation of the EWC Recast Directive, ETUI, 107–178. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

Johannes C. (2023) EU Whistleblowing Directive update – March 2023, Navex, 24.04.2023. https://www.navex.com/en-us/blog/article/eu-whistleblowing-directive-update-march-2023/

Królikowski K. and Defańska-Czujko E. (2023) The whistleblower in Poland. An overview of legal regulations, Crido, 14.12.2023. https://crido.pl/en/blog-law/the-whistleblower-in-poland-an-overview-of-legal-regulations/

Labour Asociados (n.d.) Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees – National Implementation Report: Poland, https://ec.europa.eu/social/BlobServlet?docId=4804&langId=en

Laulom S. (2015) Procedure for the establishment and adaptation of a European Works Council or an information and consultation procedure, in Jagodziński R. (ed.) Variations on a theme? The Implementation of the EWC Recast Directive, ETUI, 69–84. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

Laulom S. and Dorssemont F. (2015) Fundamental principles of EWC Directive 2009/38/EC, in Jagodziński R. (ed.) Variations on a theme? The Implementation of the EWC Recast Directive, ETUI, 33–68. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

Lempereur A. (2022) Dear negotiation coach: responsible negotiation means caring beyond the deal closing, Daily Blog, Harvard Law School Program on Negotiation, 27.12.2022. https://www.pon.harvard.edu/daily/negotiation-skills-daily/ask-a-negotiation-expert-responsible-negotiators-care-beyond-the-deal-closing-nb/

Plawecka D. (2021) Let us participate: cross-border corporate reorganization and the future of employee involvement in corporate governance, National report, June.

Rasnača Z. and Jagodziński R. (forthcoming) Confidentiality and workers' information and consultation rights: a jigsaw puzzle.

Stanasiuk K. and Zabost M. (2023) Changes in Labour Law we can expect in 2023, TaylorWessing, 2.02.2023. https://www.taylorwessing.com/en/insights-and-events/insights/2023/02/changes-in-labour-law-we-can-expect-in-2023

Surdykowska B. (2020) National report on confidentiality and workers' participation – Poland, unpublished report for ETUI.

Tomczak J. and Rutkowska E. (2022) Internal corporate investigations in Poland: key aspects, specificity, International Bar Association, 2.09.2022. https://www.ibanet.org/internal-corporate-investigations-in-Poland

Valdés Dal-Ré F. (2006) Directive 2001/86/EC supplementing the European Company with regard to the involvement of employees, Synthesis Report, Labour Asociados.

Jane Parker

Slovenia

Based on a national report by Valentina Franca

1. Regulatory context and information and consultation mechanisms

As with several other Member States examined here, Slovenian industrial relations have undergone significant change in recent times. While the formal structure of industrial relations did not alter during the economic crisis, major shifts occurred in power relations, as well as 'in the logic and quality of the industrial relations system' (Stanojević and Kanjuo Mrčela 2016), including the curtailment of social dialogue. Some sectors are reported as virtually no longer engaging in social dialogue and breaches of collective agreements by employers have increased, as have worker unrest and strikes, and government interventions in public sector working conditions. Although the social partners signed the social agreement for 2015–2016 after much negotiation, Eurofound (2021) commented that trade unions have subsequently felt excluded from the government's response to key issues concerning the pandemic.

Within this setting, however, employees are represented mainly by their **local union structures** and, in workplaces with more than 20 employees, a **works council**. In practice, works council members are frequently union activists, although the extent of union involvement varies from industry to industry. While they are legally distinct mechanisms, management often 'does not distinguish between the two since the same persons frequently act as trade union representatives as well as employee representatives' (ETUI 2024a). Furthermore, few **group-level works council** arrangements exist in Slovenia.

Official figures on **works councils** in Slovenia do not exist and survey estimates of their prevalence in workplaces vary. However, in 2013, 39% of establishments in Slovenia with at least 10 employees had some form of official **employee representation**, either a workplace **union organisation**, a **works council** or a **works trustee**. As elsewhere in Europe, larger organisations are more likely than smaller ones to have such a structure (Eurofound 2013). Moreover, nationwide collective membership of the Slovene Association of Works Councils (SAWC), founded in 1996 as a voluntary and autonomous professional association, comprised 110 company-based **works councils** in 2019, covering around 100,000 workers. Thus, while works councils are a significant form of workplace representation in Slovenia, few exist in its private non-economic sector because of a lack of applicable legislation (SAWC 2019).

H&S representation in Slovenia usually falls within the activities of a works council. As with works councils, **H&S representatives** are elected by employees by secret ballot. Where no works council exists, a **special H&S representative** may be appointed (ETUI 2024b). In this case, all works council provisions are valid but limited to H&S matters. Research shows that only 34% of workplaces have H&S representatives and 24% have a H&S committee (ETUI 2024b). Where H&S tasks cannot be undertaken by internal safety officers, the employer may entrust them to competent **external H&S services**, which must be authorised by the Ministry of Labour, Family, Social Affairs and Equal Opportunities (ETUI 2024b).

BLER exists in larger Slovenian companies. Employees are entitled to it under Articles 78–84a of the **Act on Workers' Participation in Management**[394] in any company which is not defined as a small or micro-company in the **Companies Act**[395] (ETUI 2024a). Employee representatives at board level, on both supervisory boards and the management board, are chosen by the works council from among employees able to vote in works council elections (that is, members of senior management cannot be chosen). As well as **BLER**, in companies with more than 500 employees (or fewer than this, if the company and works council agree), employees can propose a **labour/worker director** to deal with human resources issues. However, there are estimated to be fewer than 30 such directors in Slovenia (ETUI 2024a).

Very few **EWCs** in Slovenia are listed in the ETUI's (2024c) EWC database. Slovenian **members of SNBs** are elected by employees, and candidates can be proposed by the works council, unions in the company, or a group of at least 50 workers. Arrangements are the same for Slovenian members of an **EWC** set up under the fallback procedure in the annex to the Directive (ETUI 2024a).

Similarly, Slovenian **members of the SNB** for an **SE** are elected by employees, and again, candidates can be proposed by the works council, unions in the company, or a group of at least 50 workers. As with EWCs, the law does not state whether or not they must be employees of the company. The arrangements are the same for Slovenian members of an **SE representative body**, known in Slovenian legislation as the **works council** of the SE, where it is set up under the fallback procedure in the annex to the SE Directive. **BLER** in an **SE** is set up under fallback provisions of the SE Directive and representatives are elected or nominated by the **SEWC**, in line with national practice for Slovenian company boards for choosing employee representatives (ETUI 2024a) (see Table 2).

In **SCEs**, the **Act on Workers' Participation in Management**[396] applies in terms of guaranteeing employees the right to take part in the management of a cooperative. Under Art. 79, the works council can elect and recall supervisory board members. Labour Asociados (n.d.) noted that

---

394. Zakon o sodelovanju delavcev pri upravljanju (ZSDU). The Act dates from 1993 and draws heavily on experiences in Germany and Austria.
395. Zakon o gospodarskih družbah (ZGD-1).
396. ZSDU.

> '(i)n practice and theory there has been some dispute on compatibility between the ZSDU and the Cooperatives Act [which does not contain any provision on employee participation in cooperatives] as regards **workers' participation in the supervisory board** … there is now an agreement among legal commentators that the ZSDU regulates workers' participation in management on the basis of an employment relationship and not on the basis of membership.' (Our emphasis)

Notwithstanding this, Franca (2020) reported that not one SE had been established in Slovenia and no information was available on **worker representatives'** participation in the management of an SE or SCE.

2. Relevant law and regulatory provisions

2.1 National law regulating and referring to confidentiality of information and consultation and worker representation

As with various other countries examined here, Slovenia has adopted a predominantly statutory approach to legal frameworks on confidentiality. However, the issue has recently gained attention among experts and researchers in Slovenia against the background of an excessive tendency to label documents 'confidential', hindering the role of **worker representatives** (for example, Franca 2016; see also Franca and Doherty (2020) on BLER and confidentiality).

Like the Employment Relationships Act, the **Act on Workers' Participation in Management**[397] has no specific legal provisions on confidential information but refers to trade secrets in relation to **works council members, experts** from inside or outside the company, **trade union representatives** and others.

For **BLER**, rights with regard to access to information are the same as for shareholder representatives of the supervisory board under the **Companies Act**.[398]

With **EWCs**, the relevant statute on worker representation, I&C and confidentiality is the **2011 EWC Act**.[399] The **2006 Participation of Workers in Management of the European Public Limited Liability Company Act (SE)**[400] concerns the **SE's works council**, **administrative** or **supervisory bodies**, and **worker representatives** regarding I&C processes. For **SCEs' worker representative bodies**, I&C and confidentiality are addressed in the

397. ZSDU.
398. ZGD-1.
399. Zakon o evropskih svetih delavcev (ZESD-1).
400. Zakon o sodelovanju delavcev pri upravljanju evropske delniške družbe (ZSDUEDD).

1993 Workers' Participation in Management of European Cooperative Society Act.[401]

Also notable is Slovenia's **2019 Trade Secrets Act**.[402] Based on Directive 2016/943/EC, this Act establishes rules on trade secrets. The **Financial Instruments Market Act**[403] governs the disclosure of business information in relation to listed companies in the area of securities and operations in that sector.

The **2002 Employment Relationships Act**[404] has no specific legal provisions on confidential information for **trade unions** and **works councils** but Art. 36 refers to **employees** and business secrets.

All of the listed Acts have the same authority; only Slovenia's **Constitution**[405] supersedes them. However, when studying the position of **worker representatives**, *lex specialis lex generali* (specific legislation overrules the general), although confidentiality as such has not been analysed separately in Slovenian legal theory (Franca 2020).

2.2 National provisions concerning whistleblowing and whistleblowers' protection

Until recently, no specific legislation, including labour law, existed in Slovenia governing whistleblowing or protecting whistleblowers. Indeed, even Slovenian labour law theory and judicial practice had devoted little attention to the position and protection of whistleblowers despite numerous cases in the media in which workers have publicly highlighted irregularities of company operations, including criminal offences (Franca 2020).

Because of the strong national policies on the prevention of corruption, the position of whistleblowers was regulated in anti-corruption legislation. The **Integrity and Prevention of Corruption Act 2010**[406] defined safeguard measures for them, for instance, on protection of the identity of reporting persons (for the work environment, and general protection under the **Employment Relationships Act**).[407]

However, Slovenia's **Whistleblower Protection Act**[408] entered into force on 22 February 2023, transposing Directive 2019/1937/EC but missing the formal implementation deadline. This Act provides new regulation of a whistleblower's status and rights in the private sector, and an obligation to establish and maintain an internal system of whistleblower report verification. It provides for internal

---

401. Zakon o sodelovanju delavcev pri upravljanju evropske zadruge (ZSDUEZ).
402. Zakon o poslovni skrivnosti (ZPosS).
403. Zakon o trgu finančnih instrumentov (ZTFI).
404. Zakon o delovnih razmerjih (ZDR-1).
405. Ustava Republike Slovenije (URS).
406. Zakon o integriteti in preprečevanju korupcije (ZIntPK).
407. ZDR-1.
408. Zakon o zaščiti prijaviteljev (žvižgačev) (ZZPri).

and external channels through which whistleblowers can report violations, and the former should be the primary reporting route (Wolff Theiss 2023). Companies with 50–249 employees, and others engaged in certain activities, must set up internal reporting channels. Private entities with 250 or more employees were required to set them up by 23 May 2023, while all others should have done so by 17 December 2023. The internally-submitted report is handled by an internally-appointed trustee, who must be a company employee (Wolff Theiss 2023).

Entities must annually report the number of reports received and retaliatory actions to the Slovenian Commission for the Prevention of Corruption (CPC). Companies with fewer than 250 employees can share their resources with other group companies for reporting purposes.

Whistleblowers can use the external reporting channel in cases in which the breach cannot be addressed effectively through internal reporting channels, or if they believe that there is a risk of retaliation with an internal report. Depending on the nature of the breach, 22 different state institutions are responsible for receiving and handling external reports, acting under relevant sectoral laws and within their designated powers. This could result in the initiation of supervisory, inspection, administrative and, in extreme cases, criminal proceedings (Wolff Theiss 2023). A company's policies need to contain clear rules of conduct and responsibilities and provide for action where there are irregularities or breaches.

2.3 Implications of whistleblowers' protections for worker representatives handling confidential information

Prior to the passage of the whistleblowing law in Slovenia in 2023 (see Section 2.2 of this chapter), no direct connection was made between the legal frameworks of whistleblowing and confidentiality in the I&C of workers. Hypothetically, the protection of whistleblowers, as defined above, would also apply in cases of disclosure of trade secrets by **worker representatives**, but the absence of special provision for whistleblowers in law (except for anti-corruption legislation) meant that there are no judicial cases.

In labour law, however, Slovenia's **Employment Relationships Act**[409] and **Worker Participation in Management Act**[410] protect only **workers** or **works council members**. Under the first Act, if they are employed, they are protected; if they are also works council members, they are protected under the latter Act. Under Art. 67 of the **Worker Participation in Management Act**,[411] it is not possible to lower a member's salary, institute disciplinary or indemnification proceedings against them, or place them in a less favourable or subordinate position if they act in accordance with the law, collective agreement and employment contract. However, such protection is provided to **works council members** but not worker representatives in management bodies.

409. ZDR-1.
410. ZSDU.
411. ZSDU.

The **Employment Relationships Act**[412] does not impinge upon this, but only provides special protection from termination of the employment contract. Under Art. 112, an employer cannot cancel the employment contract with a **works council member, worker representative, member of a supervisory board representing workers, workers' delegate** in the council of the organisation, or an **appointed or elected trade union representative** without the consent of the works council or workers who elected them, or without the union's consent, if this person acts in accordance with the Act, the collective agreement and the employment contract. Protection applies during, and for one year after, their term of office. It is up for question, however, whether they would be able to rely on such protection if they disclosed information obtained from materials made available or discussed by a management or supervisory body (Franca 2020).

2.4 Confidential information versus trade secrets

As noted, confidentiality is not specifically defined in Slovenian law. Nor does the law set limits for companies' application of confidentiality rules in the I&C of workers. Franca (2020) observes that, under Para. 2 of Art. 39 of the **Companies Act**,[413] a trade secret includes information whose disclosure to an unauthorised person could clearly result in considerable damage, while confidential information can also relate to other information that is intended for internal discussion, but without resulting in any damage, if it is disclosed to unauthorised persons. Thus, beyond the definition of a trade secret in the Act, companies play a significant role in giving expression and applying the concept to their business through internal acts. These usually define:

- criteria for designating information as a trade secret or the consequences of disclosing such data or information (for example, commercial damage, market sensitive information);
- authorised persons, who may define in a written decision what will be considered a trade secret on the basis of the **Companies Act**[414];
- various degrees of confidentiality (such as internal, confidential, highly confidential), with a clear definition of what an individual degree refers to and who has access to the information designated in this way; and
- a system of protection for trade secrets (Franca 2020; our emphasis).

Under this Act, a trade secret is thus considered to include information designated as such by a company's written decision. However, Para. 2 of Art. 39 provides that information which is in the public domain under the law or information regarding the violation of the law or good business practices is not considered to be a trade secret.[415]

---

412. ZDR-1.
413. ZGD-1.
414. ZGD-1.
415. A trade secret may refer to other things, such as production processes, purchase prices, specific know-how, product and service prices, public notices, marketing strategies, and as yet unpublished business results.

As already indicated, Slovenia's **2011 Act on EWCs**[416] does not use the term 'trade secret' nor determine what a secret is. It specifies that individuals are obliged to respect the confidentiality of all business information they are provided with as **EWC members** that the central management expressly terms 'confidential', and not to publish or make use of this information. The **2006 Participation of Workers in Management of the European Public Limited Liability Company Act (SE)**[417] and the **2006 Participation of Workers in Management of the European Cooperative Society Act (SCE)**[418] similarly discuss respect for the confidentiality of all information designated as a trade secret by the management.

The Slovenian legal framework, as we have seen, operates predominantly with the notion of 'trade secret' (with broad scope). Karanovic and Partners (2019), however, comment that the **2019 Trade Secrets Act**[419] introduced 'further clarity to Slovenian legislation' by redefining the concept, the basis of which was previously defined by the **Companies Act**[420] and thus often subject to interpretation in court proceedings. They write: 'The concept of a trade secret incorporates new undisclosed know-how and business information.' Art. 2 of the **2019 Trade Secrets Act**[421] defines a trade secret as undisclosed expertise, business experience and business information that:

- 'is a secret that is not widely known or easily accessible to people who typically deal with this type of information;
- has a market value;
- the trade secret holder, in the given circumstances, took reasonable steps to keep it a secret.'

The third point seems to be met if a trade secret holder has classified information as a trade secret in writing and has informed all those who come in contact with or become aware of it, particularly, company members, **workers, members of company governance bodies** and **other persons**. Thus, Art. 12 of the Act concerns amendments to the **Companies Act**[422] (its Art. 39 now reads 'Information that meets the requirements for a trade secret in accordance with the act governing trade secrets shall be considered a trade secret' – a similar amendment was made to Art. 13 of the **Employment Relationships Act**).[423]

Notably, Art. 236 of the **Criminal Code**[424] also refers to trade secrets and compliance (see Section 2.8 of this chapter), while Slovenia's **Code of Obligations**, which does not define a trade secret, contains articles governing liability for damages. Franca (2020) observes that these legal bases are considered

416. ZESD-1.
417. ZSDUEDD.
418. ZSDUEZ.
419. ZPosS.
420. ZGD-1.
421. ZPosS.
422. ZGD-1.
423. ZDR-1.
424. Kazenski zakonik (KZ-1).

in determining possible liability for damages of members of management and supervisory bodies in their work.

2.5 Worker representation bodies and representatives' information and consultation rights and duties

Under Art. 75 of Slovenia's **Constitution**,[425] workers can participate in the management of commercial organisations and institutions under conditions provided for in law, while Art. 74 guarantees free economic initiative. These Articles provide the basis for the adoption of legislation on workers' participation and the operations of companies.

In Slovenia, both **works councils** and **trade unions** have I&C rights. Under the **Worker Participation in Management Act**[426] and the **Employment Relationships Act**,[427] however, **works councils** have a wider range of specific I&C rights than local union representatives, while only the **union** can undertake collective bargaining (ETUI 2024a).

Art. 89 of the **Worker Participation in Management Act**[428] states that **works councils** must receive information on the:

- company's economic situation;
- its development goals;
- the state of production and sales;
- the general economic situation in the industry;
- changes in company activity;
- reductions in economic activity;
- changes in production organisation;
- changes in technology;
- other issues based on mutual agreement from Para. 2 of Art. 5 of the Act; and
- they must also receive a copy of the company's annual accounts.

This information must be provided in advance where it relates to changes in company activity, reduction in activity, changes in the organisation of production, changes in technology and the annual accounts (Art. 90). In practice, **works councils** must be informed on some issues; consulted on some issues; and agree some issues before employer proposals can proceed.

Under the **Employment Relationships Act**,[429] several areas in which **trade unions** have specific I&C rights include:

- 'a right to be consulted before adopting rules on the organisation of work, where the union must give a view within eight days (Art. 10);

425. URS.
426. ZSDU.
427. ZDR-1.
428. ZSDU.
429. ZDR-1.

- an annual right to be informed about the number of and reasons for using posted agency workers (Art. 59);
- a right to be informed and consulted on business transfers (Art. 76);
- the right to be informed and consulted on proposed large-scale redundancies (Art. 99);
- a right to be given details of the annual working time schedule, and, where the union requests it, the employer must inform the union annually "on the use of working time, taking into consideration the annual distribution of working time, the performance of overtime work or the temporary redistribution of working time" (Art. 148); and
- a right to be consulted in advance about the introduction of night work (Art. 153)' (ETUI 2024a).

These rights, concerning the whole workforce, can be exercised only by **representative unions**.

Furthermore, **unions** have some specific rights concerning their members (for example, an employer must inform the union, if the employee affected so wishes, about the planned dismissal of a union member, and the union has the right to express its opinion in writing). Irrespective of the union's views, the employer is still able to continue with the dismissal (Articles 85 and 86).

As already noted, in Slovenia, **H&S representation** usually falls within the activities of a **works council** or, where no works council exists, a special **H&S representative** may be present. An employer is obliged to consult on H&S issues and **works council** rights in relation to H&S are set out in both the **Health and Safety at Work Act**[430] and the **Worker Participation in Management Act**[431] (Art. 91) (on **works councils**), and legislation states that a H&S representative should be 'granted the mode of work and rights which apply to a works council' (ETUI 2024b). While, under the works council legislation, H&S is an area subject to consultation between the **works council** and the employer, it is no longer subject to joint decision-making, and H&S issues that are subject to consultation are not set out in detail.

Under the **Companies Act**,[432] no legal distinction is made between the role and duties of **BLER** and those of shareholder representatives on the supervisory board, and both have the same rights in terms of access to information. Under this Act, supervisory boards in Slovenia control company operations, finance, accounting and company assets, and are charged with providing reliable information to shareholders. They nominate the CEO and board members, and are generally responsible for the assessment of management performance and risk management oversight. Significantly, **BLER** have access to all information intended to be addressed by the supervisory board, while **works council** and **trade union** information depends on management decisions.

---

430. Zakon o varnosti in zdravju pri delu (ZVZD-1).
431. ZSDU.
432. ZGD-1.

With regard to **EWCs**, under Art. 7(4) of the **2011 EWC Act**,[433] central management must provide the **SNB** with the information and documents it needs to carry out its tasks. Art. 18 provides for the regulation of an I&C procedure for employees. A written agreement will specify the conditions under which **employee representatives** will have the right to be consulted on information received, and the procedure for considering their proposals or problems with central or other levels of management. The information largely concerns 'matters that significantly affect the interests of employees in all undertakings to which the agreement applies.'

Under Art. 28(2), management will inform an **EWC** of 'the structure of the undertaking or group of undertakings, its economic and financial situation, probable development and production and sales', and inform and consult with it on 'the situation and probable trend of employment, investments, substantial changes concerning organisation, the 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' (Art. 28(3)). **Employee representatives** can meet with the central management and obtain a response, and the reasons for that response, to any opinion they might express. Art. 29 concerns central management's annual I&C with the **EWC** on 'business success and the prospects of the undertaking or group of undertakings in the Member States', while Art. 30 deals with I&C in exceptional circumstances.

For **SEs**, under Art. 19(2) of the **2006 Participation of Workers in Management of the European Public Limited Liability Company Act (SE)**,[434] an **SEWC's** authority to inform and consult is 'limited to issues relating to the SE and any subsidiary or branch located in another member state and to issues that exceed the powers of decision-making bodies in an individual member state.' Art 24(2) provides that the **SEWC** has the right to meet with management at least once a year to jointly consider a regular report on the SE's business success and future development (and managements in individual member states are informed about this). Under Art. 24(3), annual consultation can cover a similar array of topics as for **EWCs**. Art. 25 provides for the **SEWC's** right to I&C in exceptional circumstances, and Art. 35 for cooperation between SE management and its **works council** based on mutual trust in connection with the I&C process for employees. The same applies to cooperation between **SE administrative** or **supervisory bodies** and **worker representatives** regarding procedures for the I&C of workers. Moreover, Valdés Dal-Ré (2006: 19) notes that the Act explicitly requires that 'more extensive information is to be provided to employees' representatives than required by the SE-Directive itself.'[435]

---

433. ZESD-1.
434. ZSDUEDD.
435. This refers to the organisational structure of the participating companies, concerned subsidiaries and establishments and their distribution across Member States; details of existing employees' representatives in these companies; and the number of employees entitled to participate at the board-level of the companies (Valdés Dal-Ré 2006).

Under Art. 26, the **SEWC** informs **worker representatives** or **workers** in the SE and its subsidiaries and branches about the content and outcome of I&C. With regard to the protection of **employee representatives**, the **2006 Participation of Workers in Management of the European Public Limited Liability Company Act (SE)**[436] refers to the **Worker Participation in Management Act**[437] and the **Employment Relationships Act**.[438] Members of the **SNB** or **representative body** are protected by general Slovenian provisions on the protection of worker representatives.

Similar provisions apply with regard to **works councils** in **SCEs**. Art. 24(2) of the **2006 Participation of Workers in Management of the European Cooperative Society Act (SCE)**[439] provides for annual consultation between management and the **SCEWC** to 'jointly consider a regular report on the business success and future development of [the] SCE.' Art 24(3) covers the same areas for annual consultation as for SEs (see above). Art. 39 provides that the SCE management and the **SCEWC** work together in a cooperative spirit, with due consideration to their mutual rights and obligations. The same applies to the cooperation between management and **SCE supervisory bodies** and **worker representatives in relation to I&C procedures with workers**. By 2020, however, no SEs had been set up in Slovenia and no information exists on **worker representatives'** participation in SE and SCE management, making these provisions practically non-existent in practice (Franca 2020).

2.6 Challenging company decisions and accessing justice

In Slovenia, ways of challenging management decisions on confidentiality are generally not explicitly laid down in legislation. Rasnača and Jagodziński (forthcoming) suggest that, overall, this renders the position of **worker representatives** weak and subordinate to that of employers, who are 'effectively masters of confidentiality.'

However, Franca (2020) writes that if **worker representatives** perceive that management unreasonably designates documents as confidential and/or not according to the law and internal statutes, they can file a lawsuit. Because there is no direct statutory provision that supports a demand for the disclosure of information, it is more likely that this would occur over an alleged breach of some other management obligation (such as representatives not being properly informed, consulted or included in the co-decision procedure in accordance with the **Worker Participation in Management Act**.[440] The principal request would be the implementation of such procedures in accordance with the law and other Acts or agreements, while the indirect demand would be the disclosure of information, which would represent the basis for appropriate decision-making by

436. ZSDUEDD.
437. ZSDU.
438. ZDR-1.
439. ZSDUEZ.
440. ZSDU.

the **works council**. There is no indirect legal basis for worker representatives to request disclosure of a trade secret or confidential information (Franca 2020).

Any judicial costs arising for a **works council** are to be borne by the employer because, under Slovenian law, the former is not a legal entity. Likewise, in practice, a **trade union** does not shoulder its costs. The works council usually agrees with management on a specific budget for its operations (Franca 2020).

The **EWC**, **SE** and **SCE** statutes make no explicit mention of worker representatives' capacity to challenge to management decisions (for example, in Art. 25(5) [exceptional circumstances on information and consultation] of the **2006 Participation of Workers in Management of the European Public Limited Liability Company Act – SE)**,[441] and '(t)he opinions of the [**SEWC**] or its **committee** cannot interfere with the competence of the SE management' (our emphasis).

2.7 Worker representatives' duties in maintaining confidentiality, and their contacts with other representatives and stakeholders

Like the **Employment Relationship Act**,[442] the **Act on Workers' Participation in Management**[443] has no specific legal provisions on confidential information but refers to trade secrets. Under Art. 68, **works council members** and **all those invited by the works council to their sessions** (under Art. 61, **internal or external experts**, management staff, **trade union representatives**, and representatives of employers' associations) must protect the company's business secrets and legally can communicate with workers only when the information has been made public. In addition, under Art. 99, **experts** who participate in the operation of the works council and in arbitration with the aim of settling disputes are obliged to protect trade secrets. Although the law refers to trade secrets, according to Franca (2020) 'no doubt this is valid also for confidential information under the presumption that information is earmarked as such.'

Moreover, some **collective agreements** influence **unions'** information rights (ETUI 2024a) and some **sectoral collective agreements** have provisions concerning trade secrets. For example, under Art. 59 of the **2018 Collective Agreement for Slovenia's trade sector**,[444] **union representatives** at the workplace and their hired experts must protect data obtained in the process of I&C. However, Art. 58 clearly states that employer is not obliged to give information to the unions if it is classified as a trade secret. In practice, there is considerable

441. ZSDUEDD.
442. ZDR-1.
443. ZSDU.
444. https://www.tzslo.si/uploads/karmen/kpdts_prevod_angleski_jezik.pdf

resistance to disclosing information to unions, especially about matters such as wages and remuneration.

With regard to **BLER**, Art. 63 of Slovenia's **Companies Act**[445] states: 'In performing their duties on behalf of the company, members of the management or **supervisory body** shall act with the diligence of a conscientious and honest businessperson and safeguard the trade secrets of the company.' Moreover, Art. 39 of the **Companies Act**[446] refers to company members, employees, **members of the company's governing bodies** and other persons if they are aware or should be aware of such information. The protection of trade secrets thus generally involves a wide circle of people who are obliged to safeguard trade secrets. Franca (2020) comments that, '[c]onsidering the diverse nature of the operation of corporate entities, such a circle of persons is practically indeterminable.'[447]

It may be questionable, however, whether **BLER** are allowed to communicate information discussed at the board to **workplace representatives** (in other words, mostly **works councils** as the body that nominates them). This issue was raised by the SAWC (2017) in their recommendations regarding the functioning of **worker representatives in supervisory and management boards**. They strongly favour the disclosure of information discussed by the supervisory board to the **works council** and by the **worker director**, who can be elected in companies with more than 500 workers and is a board member (see Section 1 in this chapter). Given Art. 68 of the **Worker Participation in Management Act**,[448] wherein **works councillors** must protect trade secrets (see above), they argue that the only exemption concerns 'top secret' material that must necessarily remain in the narrowest circle of persons, that is, **members of supervisory and management boards** (for example, confidential information about the negotiation process with [possible] strategic partners, or information about an intended takeover until it has been finalised and publicly announced).

Empirical research, however, finds some resistance to sharing supervisory board information with **works councils** for various reasons (for example, lack of understanding, differing responsibilities) (Franca and Doherty 2020). It is also worth mentioning that the Slovenian Directors' Association (2017) conducted research on **BLER** that included the issue of confidentiality. In 2018, it adopted the Recommendation on good practices for **BLER** (Slovenia Directors' Association 2017; 2018). In response, the SAWC published an updated version of their recommendations regarding the functioning of worker representatives in supervisory and management boards (SAWC 2018).

---

445. ZGD-1.
446. ZGD-1.
447. Art. 38 of the Employment Relationships Act (ZDR-1) establishes the duty of protection of business secrets for workers in general, who are prohibited from exploiting for private use or disclosing to a third person secrets defined as such by the employer. While not specifically mentioned, workers' representatives, as employees, are also bound by this provision. Moreover, under Art. 12 of the 2002 Public Employees Act, civil servants must protect classified information, regardless of how they access it. The duty of protection applies after termination of their employment until the discharge of their duty by the employer.
448. ZSDU.

Rasnača and Jagodziński (forthcoming: 14) note that, while the approach to confidentiality in Slovenia is statutory, '(i)n the case of **EWCs**, more leeway is authorised' (our emphasis). In the **2011 Act on EWCs**,[449] Art. 7 provides that cooperation between central management and the **SNB** shall be founded on mutual trust, while Art. 30 regulates I&C in exceptional circumstances. Confidentiality is also discussed under Art. 37 wherein central management must provide information to the **EWC** on matters agreed under Art. 16 (Agreement on the establishment and competences of an EWC) and Art. 18 (Agreement on an information and consultation Procedure) or on matters referred to in Paragraphs 1 and 2 of Art. 30. Para. 2 specifically provides that **EWC members** are obliged to respect the confidentiality of all business information that they are given as EWC members which central management expressly designates as confidential, and they are unable to publish or use that information. This also applies to **former EWC members**.

Under Para. 3 of Art. 37, however, this provision does not apply to contacts with **other members of an EWC** and **worker's representatives in affiliates or undertakings** if they are supposed to be informed of this content and the results of consultations under agreements contained in Art. 16 (above) or Art. 34 (Informing Workers' Representatives – the **works council** and the **representative trade unions** or all **employees** where there are no such representatives). This also applies to **worker representatives in the supervisory committee (BLER)**, or **translators** or **experts** assisting an EWC. Moreover, exceptions to the confidentiality obligation apply, mutatis mutandis, to an **SNB** with regard to **worker representatives within the framework of the I&C procedure** in relation to **experts** and **translators** who assist them in the framework of the agreement, and contacts with **worker's representatives in affiliates and undertakings** in Slovenia,[450] if these persons must be informed of the content of information and the results of consultation under an agreement.

The Act thus defines a circle of persons who must safeguard trade secrets slightly differently from the measures outlined in other statutes. Because involvement in **EWCs** is comparatively low in Slovenia (Franca 2020), however, such provisions do not actually 'come alive' in practice (Franca and Doherty 2020).

With **SEs**, Art. 36 of the **2006 Participation of Workers in Management of the European Public Limited Liability Company Act (SE)**[451] lays down that **SNB** and **SEWC members**[452] and assisting **experts** must observe the confidentiality of all information specifically designated by management as a trade secret. This obligation remains in force after their term ends. It shall also apply *mutatis mutandis* where an agreement is concluded on the method of

449. ZESD-1.

450. As in Germany and France, the possibility of sharing information with bodies bound by a confidentiality obligation does not extend beyond this territory. Consequently, EWC members from these countries have more extensive rights (and tools) with which to communicate back from their EWC work than their counterparts elsewhere.

451. ZSDUEDD.

452. The Act does not explicitly indicate whether SNB members may or may not be persons employed in the concerned companies.

involvement of employees in the administration of an SE (Para. 2 of Art. 9).[453] Similarly, Art. 39 of the **2006 Participation of Workers in Management of the European Cooperative Society Act (SCE)**[454] requires that members of an **SNB** and the **works council** of an SCE and **experts** who assist them must respect the confidentiality of all information specifically designated as a trade secret by management. This obligation remains after their term of office. This also applies *mutatis mutandis* where an agreement is concluded on the modalities of worker involvement in the decision-making of an SCE (Art. 40).[455]

Furthermore, Articles 4 and 5 of the **2019 Trade Secrets Act**[456] establish rules regarding the legal and unlawful acquisition, use and disclosure of trade secrets. Under Art. 7 (Exceptions), the court will reject the claim of a trade secret holder if the trade secret has been acquired, disclosed or used to:

- exercise the right to freedom of expression and information as laid down in the Act governing the media;
- reveal misconduct, wrongdoing or illegal activity, provided that the infringer acted for the purpose of protecting the public interest;
- **exercise workers' rights**, provided that a worker disclosed the trade secret to their **representative** to protect the rights and interests of workers under the regulations governing the action and protection of worker representatives, and in other cases determined by law or EU regulations. (Our emphasis)

In relation to disclosure of business information, **listed companies** must comply with the **Financial Instruments Market Act**,[457] which governs securities and the operations of the financial instruments market. Moreover, corporate law does not contain any special provision regarding confidential information and/or trade secrets in specific business operations, such as mergers, cross-border mergers or acquisition of assets. Thus, all stated general legal rules regarding confidential information and trade secrets apply.

---

453. It provides that an SNB and management of participating companies will negotiate in a spirit of cooperation, with a view to reaching an agreement (in writing) on the method of involvement of workers in the management of the SE.

454. ZSDUEZ.

455. Labour Asociados (n.d.) noted that the provisions of Paragraphs 2, 3 and 4 of Art. 10 of the SCE Directive were not transposed into this Act. It thus does not state that central management is not obliged to transmit certain information whose nature would seriously harm the functioning of the SCE or its subsidiaries and establishments or would be prejudicial to them. Art. 68 observes only that works council members and persons referred to under Art. 61 are bound to keep company business a secret. Accordingly, there is no such information that central management could keep secret. No provisions exist on the need for prior authorisation of keeping certain information secret, and for administrative or judicial appeal procedures in this regard. These rules are the same as those that apply to national representative bodies (Labour Asociados n.d.).

456. ZPosS.

457. ZTFI.

2.8 Sanctions for breaching confidentiality of information and consultation and remedies for workers and worker representatives

In Slovenia, unlike for an employer or management (see Section 2.11 of this chapter), special sanctions for **worker representatives'** disclosure of confidential information have not been defined, in relation to either **works council members** or **BLER**.

Under the **Companies Act**,[458] **BLER** and shareholder representatives both have the same responsibility and liability for damages. Furthermore, **BLER**, both in supervisory and single-tier boards, have the same protection against dismissal as **union representatives** and **works council members** under Art. 12 of the **2013 Employment Relationships Act**.[459]

Hypothetically, if a **works councillor** or **worker representative in the supervisory board (BLER)** breach confidentiality, they could be dismissed by workers, a **trade union** or a **works council**. Under Art. 48 of the **Workers' Participation in Management Act**,[460] a **works council member** may be recalled, by at least 10% of employees with the active right to vote or by a trade union in a company if the works council member was nominated by that trade union. However, Franca (2020) writes, this is unlikely in practice – a **works council**, **workers** or **trade unions** would probably consider that the act is not detrimental to them.

Concerning **SEs**, Slovenia (like Finland and Estonia) has not transposed the instrumental rule established in Art. 8.4 of the Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees (SE Directive), wherein 'Member States shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the supervisory or administrative organ of an SE or participating companies demands confidentiality or does not give information' (Valdés Dal-Ré 2006: 55). In **SCEs**, the **2006 Participation of Workers in Management of the European Cooperative Society Act (SCE)**[461] lays down provisions for breach of its rules 'referring to the cases of not communicating certain information and not performing proper consultation with workers. However, there is no general prohibition of misuse of SCE as a corporate entity' (Labour Asociados n.d.: 3).[462]

Previously, Slovenian legislation did not specifically protect **whistleblowers** from an employer's (retaliatory) actions and procedures. Workers were thus left with only general protection from wrongful acts by an employer and unfounded

458. ZGD-1.
459. ZDR-1.
460. ZSDU.
461. ZSDUEZ.
462. The SCE Act does not specifically state that the penalty provisions apply regardless of whether or not the SCE has its registered office within Slovenian territory, as foreseen in Article 14(1) of the SCE Directive.

termination of employment under the **Employment Relationships Act**.[463] Art. 6 provides for the prohibition of discrimination and retaliatory measures in relation to enforcement of the prohibition of discrimination. Art. 38 of this Act provides that a worker may not exploit for their personal use nor disclose to a third person their employer's trade secrets, defined as such by the employer, which have been entrusted to the worker or which they have learnt about in any other way. A worker shall be liable for the violation if they were familiar with or should have been familiar with the nature of such information. In practice, this provision is relevant especially in the event of an extraordinary termination of a worker's employment contract. This can also be confirmed by the case law of both the Higher Labour and Social Court and the Supreme Court (Franca 2016). Moreover, as Franca (2020) notes, in theory, whistleblowers' protection would also apply in cases of disclosure of a trade secret by **worker representatives**. Because at that time there was no special provision on whistleblowers in Slovenian legislation (with the exception of anti-corruption legislation), there were no judicial cases.

In Slovenia's new **Whistleblower Protection Act**,[464] however, a distinction is made between systemic, minor and serious offences. Systemic offences are breaches of an obligation to establish an internal reporting channel, appoint a trustee and report to the CPC. Minor and serious offences refer to disclosure of a whistleblower's identity and retaliation, respectively. Moreover, the Act criminalises attempts or threats of such acts. A whistleblower will not be in breach of any contractual or legal restriction or prohibition of disclosure of certain information (such as trade secrets) and thus not liable if they did not report false information and believed that the report was crucial for the disclosure of a violation. Moreover, they will not incur liability for acquiring or accessing reported or publicly-disclosed information, provided that its acquisition or access does not form an independent criminal offence.

With the **Trade Secrets Act**,[465] information that meets the requirements for a trade secret is deemed to be a business secret. An employee (who could be a **worker representative, employee member of a company governance body,** or **other**) is liable if they knew or ought to have known the nature of the information. A trade secret holder (for example, an enterprise or management board) may submit claims clearly provided for in the law against an infringer, as well as claim compensation for damages. Under Art. 9, protection is provided by means of a lawsuit for a breach of rights by a person who, without the consent of a trade secret holder, acquires, uses or discloses their trade secret. The law also offers other options for legal claims (for example, prohibition of further infringements, a civil fine (Art. 10), or an interim decision (Art. 11)).

In relation to the workplace, Franca (2020) comments that, in Slovenia, disclosures of trade secrets constitute violations, but the consequences may differ, depending on the degree of confidentiality involved. For example, if a **worker** shares information which is marked with the lowest degree of confidentiality,

463. ZDR-1.
464. ZZPri.
465. ZPosS.

they will probably not have their employment contract terminated. Termination may well occur, however, if they disclose a trade secret with the highest degree of confidentiality. Similarly, in terms of possible liability for damages, how strictly a company determines the scope of confidential information depends on factors such as company strategy, organisational climate, attitude to business transparency, trust in workers, state of the industry, stock exchange listing, and how a company handles information in the public domain (Franca 2020).

Art. 7 of the **Trade Secrets Act**[466] provides for exceptions, however. A court may refuse a trade secret holder's request for remedy if the trade secret was (i) acquired, disclosed or used in the exercise of workers' rights, and (ii) when a trade secret was disclosed by a **worker representative** to protect the rights and interests of workers in accordance with the regulations governing the performance and protection of workers' representatives. Likewise, the disclosure of abuse, infringement or unlawful activity is an exception, if the infringer acted to protect the public interest (Franca 2020).

Furthermore, Slovenia's anti-corruption law, the **Integrity and Prevention of Corruption Act**,[467] defines safeguard measures for whistleblowers (for example, on the protection of the identity of the reporting person). For the work environment, there has been some potential to report unethical or illegal conduct under Art. 24. Para. 1 of Art. 25 provides that, if an employer subjects the reporting person (who reports on corruption or unethical, illegal demands) to retaliatory measures and such a person suffers adverse consequences, they have the right to claim compensation from their employer for the unlawfully-caused damage. In such cases, a legal entity, as well as a responsible person in a company could be fined for a minor offence (Para. 7 of Art. 77). The Act also regulates the possibility of the CPC assisting the reporting person, while the burden of proof is on the employer. Moreover, with public officials, the reporter could demand to be transferred to an equivalent position.

Finally, Art. 236 of the **Criminal Code**[468] refers to trade secrets and compliance (see Section 2.8 of this chapter), while Slovenia's **Code of Obligations**,[469] which does not define a trade secret, contains articles governing liability for damages. Franca (2020) observes that these legal bases are considered in determining the possible liability for damages of members of management and supervisory bodies in their work.

466. ZPosS.
467. ZIntPK.
468. KZ-1.
469. Obligacijski zakonik (OZ).

2.9 Limitations on companies' application of confidentiality rules to information and consultation and to codetermination, and criteria for their application

As already indicated, the law does not set any limitations on companies to apply confidentiality rules with regard to the I&C of workers in Slovenia. Theoretically, they can use their discretion to denote documents as confidential, taking legislation and internal legal acts into consideration.

Art. 89 of the **Act on Workers' Participation in Management**,[470] however, defines the topics on which **worker representatives** have to be informed, consulted and involved in codetermination (see Section 2.5 in this chapter). Information on these topics must be disclosed to the **works council**.

For **EWCs**, as already mentioned, central management will provide information on matters agreed under Articles 16, 18 and 30(1) and (2) of the **Act on EWCs**[471] (see Section 2.7 of this chapter). There are exceptions to the obligation to respect confidentiality on the part of the **SNB** with regard to **experts** and **translators**, **employee representatives in the I&C procedure** with regard to assisting **experts** and **translators** under the agreement, and in contracts with **employee representatives in establishments and undertakings in Slovenia**, if they must be informed of the content of information and results of consultation under the agreement (Art. 37(5)). For **SEs and SCEs**, under Art. 25(1) of the **2006 Participation of Workers in Management of the European Public Limited Liability Company Act (SE)**[472] and the **2006 Participation of Workers in Management of the European Cooperative Society Act (SCE)**[473] respectively, exceptions with regard to I&C include relocations, transfers, terminations of branches or companies or large-scale dismissals for business reasons, about which the **SEWC** or **SCEWC** has the right to be informed in a timely manner.

Importantly, under the **2019 Trade Secrets Act**,[474] the obligation to keep a trade secret confidential is explicitly ensured within the framework of judicial proceedings. However, Art. 7 provides exceptions with regard to when a court may refuse the request of a trade secret holder (for example, management board). This is the case when the court determines that a trade secret was:

i) acquired, disclosed or used in the exercise of workers' rights; and
ii) disclosed by a **worker representative** to protect the rights and interests of workers in accordance with the regulations governing the performance and protection of worker representatives. Another exception concerns the disclosure of abuse, infringements or

470. ZSDU.
471. ZESD-1.
472. ZSDUEDD.
473. ZSDUEZ.
474. ZPosS.

> unlawful activity if the infringer acted to protect the public interest (whistleblowing). (Our emphasis)

The Act provides for cases in which legal protection may be denied to a trade secret holder to protect a third person's legitimate interest. This regulates the activities of those who disclose the disputed practices of companies and other organisations (such as whistleblowers) (Karanovic and Partners 2019). Companies need to adopt appropriate internal acts or to amend existing ones to ensure the widest protection of their trade secrets. However, '(i)t will only become clear over time, and through the use of this Act in judicial proceedings, whether the legislator succeeded in achieving the desired simplification of the protection of trade secrets' (Karanovic and Partners 2019).

2.10 Sanctions on companies or company representatives for abusing confidentiality rules

There is little legal discussion in Slovenia on confidentiality in relation to **worker representatives**. Rather, the issue is mentioned in the context of responsibility and liability for damages of management board members and members of supervisory boards. **BLER** have the same legal status as shareholder representatives; thus all rules apply to them as well. The matter was raised at the Labour Law and Social Security Law National Congress with regard to the strong tendency to label documents confidential, which can hinder the role of **worker representatives**; and by the SAWC (2017) in their updated recommendations regarding the functioning of **worker representatives in supervisory and management boards**, including on the issue of confidentiality and advice on dealing with non-communicable information.

The **Act on Workers' Participation in Management**[475] provides sanctions for management if they fail to observe the provisions of the Act on I&C and the co-decision process. In certain cases, the **works council** has the right to suspend a decision and instigate an arbitration procedure within a company or to litigate if no arbitration mechanism exists in the organisation. In such cases, worker representatives can also report the employer to the Labour Inspectorate, which may impose a fine on a legal entity (of 4,000 to 20,000 euros), as well as upon a responsible person (of 1,000 to 2000 euros) (Art. 107). In such procedures, however, the issue of confidentiality plays a secondary role or is related to the original request of inappropriate enforcement of the Act. Slovenia's **Criminal Code**[476] also defines certain breaches of workers' I&C right as a criminal activity.

When trade secrets are impinged upon or when provisions of the **Companies Act**[477] on trade secrets are violated, no sanctions are foreseen. This is a key shortcoming of the regulatory process regarding trade secrets in this Act. Thus,

---

475. ZSDU.
476. KZ-1.
477. ZGD-1.

a trade secret is protected by penal and labour law (**Criminal Code**[478] and the **Employment Relations Act**) and the possibility to demand the cessation of any misconduct and reimbursement according to civil law provisions (**Obligations Code**).

Moreover, Slovenia is one of several jurisdictions (others are Cyprus, Finland and Germany) in which certain behaviours designed to withhold or hinder the right to involvement by employees rendering services to an **SE** qualify as offences under the **2006 Participation of Workers in Management of the European Public Limited Liability Company Act (SE)**.[479] A fine of at least SIT 5 million (around 20,000 euros) can be imposed on a participating company or an **SE** for a violation if management:

i) 'does not communicate information regarding plans to establish an SE, communicates incorrect or incomplete information, or does not communicate information in due time;
ii) does not communicate information about a change in the number of employees, communicates incorrect or incomplete information or does not communicate information in due time;
iii) in violation of standard rules on I&C, does not inform and consult annually or communicates incorrect or incomplete information or does not communicate information in due time; and
iv) in violation of standard rules on I&C in exceptional cases, does not inform and consult in exceptional circumstances or communicates incorrect or incomplete information or does not communicate information in due time.'[480]

Similar provisions exist in Art. 43 of the **2006 Participation of Workers in Management of the European Cooperative Society Act (SCE)**[481] although it is not specifically stated in the Act that this applies regardless of whether or not the SCE has its registered office within Slovenian territory. Moreover, the maximum penalties for breaching the obligations determined by the **Act on Workers' Participation in Management**[482] are the minimum penalties for breaching the **SCE Act**.[483]

Under Slovenia's **Whistleblower Protection Act**,[484] the CPC is responsible for conducting offence proceedings and imposing penalties. For serious offences, fines range from 5,000 to 20,000 euros; 10,000 to 60,000 euros for companies (depending on their size) and, additionally, 300 to 2,500 euros for their responsible persons (Wolff Theiss 2023). Moreover, where retaliation occurs, a whistleblower can seek judicial protection before a competent court. Furthermore, damage incurred by a whistleblower will be deemed to have resulted from the retaliation

478. KZ-1.
479. ZSDUEDD.
480. Art. 39 of ZSDUEDD.
481. ZSDUEZ.
482. ZSDU.
483. ZSDUEZ.
484. ZZPri.

and therefore, for instance, the employer must prove that their actions were legal, appropriate and not related to the report (Wolff Theiss 2023).

Finally, the **Financial Instruments Market Act**[485] determines sanctions for a violation of provisions contained in Chapter 3 (severe violations (Art. 558) and minor violations (Art. 559)). Fines for individual violations range from 200 to 10,000,000 euros or more, connecting individual fines to the total annual turnover or profit of an undertaking. Fines can be imposed on a responsible person and the undertaking.

3. Illustrative case law

No relevant case law was reported from Slovenia on confidentiality rules on the I&C of workers (see Franca 2020). However, there is case law on the interpretation of trade secrets (that is, what they are or mean in practice) between companies. Furthermore, in labour law, there is some case law at the Higher Labour and Social Court, and the Supreme Court on when a worker has contested unlawful (extraordinary) termination by an employer because of their perception of unlawful disclosure of a trade secret or the provision of certain confidential information to third persons (Franca 2016).

4. Relevant EU legislation

In common with other Member States, Slovenia has applied relevant EU legislative rules concerning confidentiality and worker representation. The Employment Relationship Act and the Worker Participation in Management Act transpose the **Framework Directive on information and consultation 2002/14/EC** (see Appendix tables). The EWC Act (ZESD-1) implements the **EWC Recast Directive 2009/38/EC**. Very recently, Slovenia transposed **the Whistleblowing Directive 2019/1937/EC** with its Whistleblower Protection Act 2023.

Others include:

- the **Trade Secrets Directive 2016/943**, transposed by the Trade Secrets Act 2019;
- the **Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees (SE Directive)**, transposed by the 2006 Participation of Workers in Management of the European Public Limited Liability Company Act (SE); and
- the **SCE Directive 2003/72/EC**, transposed by the Participation of Workers in Management of the SCE Act.

485. ZTFI-1.

5. Sources

Relevant provisions/Acts (selected)

Act Regulating Worker Participation in Decision-Making in Cross-Border Mergers of LLCs. Official Gazette of the Republic of Slovenia, No. 56/08.

Collective Agreement for Slovenia's Trade Sector 2018. Trgovinska zbornica Slovenije. https://www.tzslo.si/uploads/karmen/kpdts_prevod_angleski_jezik.pdf (English)

Companies Act. CorregioNET. https://www.correggionet.eu/wp-content/uploads/2020/08/Slovenian-Companies-Act-in-Slovenian-and-English.pdf (Slovenian and English).

Constitution of the Republic of Slovenia. Venice Commission. https://www.venice.coe.int/webforms/documents/?pdf=CDL(2000)059-e (English).

Criminal Code (KZ-1). Verification Research, Training and Information Centre. https://www.vertic.org/media/National%20Legislation/Slovenia/SI_Criminal_Code.pdf (English).

Employment Relationship Act 2013. Official Gazette of the Republic of Slovenia, Nos. 21/13-49/20. https://www.icj.org/wp-content/uploads/2013/05/Slovenia-Employment-Relationships-Act-2003-eng.pdf (English).

EWC Act 2011 (ZESD-1). Official Gazette of the Republic of Slovenia. https://ec.europa.eu/social/BlobServlet?docId=7051&langId=en (English).

Financial Instruments Market Act. Official Gazette of the Republic of Slovenia, Nos. 67/07-66/19. https://www.a-tvp.si/storage/app/media/Documents/ENG/ZTFI-UPB6_2.pdf (English).

Integrity and Prevention of Corruption Act 2010. Official Gazette of the Republic of Slovenia, Nos. 45/10-43/11.

Karanovic and Partners (2019) Trade Secrets in Slovenia. 19 April. https://www.lexology.com/library/detail.aspx?g=721d6d25-c963-4641-a89d-055c2d4d8fcf (English).

Participation of Workers in Management of the European Public Limited Liability Company Act 2006 (SE). Official Gazette of the Republic of Slovenia, No. 28/06.

Public Employees Act 2002. Official Gazette of Republic of Slovenia, Nos. 63/07-40/12. https://www.ilo.org/dyn/natlex/docs/SERIAL/61189/72459/F567621981/SVN61189.pdf (English).

Stock Exchange Rules. Official Gazette of the Republic of Slovenia, Nos 88/10-76/17.

Trade Secrets Act 2019. WIPO. https://www.wipo.int/wipolex/en/text/587498 (English).

Worker Participation in Management Act (ZSDU). Portal GOV.SI. http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO282 (Slovenian and English).

Workers Participation in Management of European Cooperative Society Act 1993. EURLEX. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012IP0071&rid=9 (English).

References

ETUI (2024a) Slovenia, Worker-participation.eu. https://www.worker-participation.eu/national-industrial-relations/countries/slovenia

ETUI (2024b) Health and Safety, Worker-participation.eu. https://worker-participation.eu/National-Industrial-Relations/Across-Europe/Health-and-Safety2

ETUI (2024c) EWCDB - European Works Councils Database. https://www.ewcdb.eu/
Eurofound (2013) Impact of the crisis on industrial relations. https://www.eurofound.europa.eu/sites/default/files/ef_files/docs/eiro/tn1301019s/tn1301019s.pdf
Eurofound (2021) Working Life in Slovenia. https://www.eurofound.europa.eu/country/slovenia#background
Franca V. (2016) Pravni izzivi vloge delavskih predstavnikov v organih upravljanja gospodarskih družb, Delavci in delodajalci, 16 (2/3), 361–377.
Franca V. (2020) Mapping confidentiality in national law concerning workers' representation, Report commissioned by the ETUI.
Franca V. and Doherty M. (2020) Careless whispers: confidentiality and board–level worker representatives, Employee Relations, 42 (3), 681–697. https://doi.org/10.1108/ER-03-2019-0146
Labour Asociados (n.d.) Studies on the implementation of labour law Directives in the enlarged EU Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees – National implementation report: Slovenia. https://ec.europa.eu/social/BlobServlet?docId=4807&langId=en
Rasnača Z. and Jagodziński R. (forthcoming) Confidentiality and workers' information and consultation rights: a jigsaw puzzle.
Slovenian Directors' Association (2017) Anketa o korporativnem upravljanju in soupravljanju zaposlenih.
Slovenia Directors' Association (2018) Recommendation on good practices for BLER.
SAWC (2017) Priporočila ZSDS glede delovanja predstavnikov delavcev v nadzornih svetih oziroma upravnih odborih družb, Ekonomska Demokracija, 21 (6), 14–20. https://www.delavska–participacija.com/priloge/2827–1.doc
SAWC (2018) Pripombe in predlogi ZSDS k osnutku Priporočil dobre prakse sodelovanja delavcev pri upravljanju družb Združenja nadzornikov Slovenije, Slovene Association of Works Council. https://www.delavska–participacija.com/priloge/2846–1.docx
SAWC (2019) About the Association of Workers Councils of Slovenia, Slovene Association of Works Councils. https://www.delavska-participacija.com/en/
Stanojević M. and Kanjuo Mrčela A. (2016) Social dialogue during the economic crisis: the impact of industrial relations reforms on collective bargaining in the manufacturing sector in Slovenia, in Koukiadaki A., Távora I. and Martínez Lucio M. (eds.) Joint regulation and labour market policy in Europe during the crisis, ETUI, 441–497. https://www.etui.org/publications/books/joint-regulation-and-labour-market-policy-in-europe-during-the-crisis
Valdés Dal-Ré F. (2006) Directive 2001/86/EC supplementing the European Company with regard to the involvement of employees, Synthesis Report, Labour Asociados.
Wolff Theiss (2023) Whistleblower protection in Slovenia, 15.02.2023. https://www.wolftheiss.com/insights/whistleblower-protection-in-slovenia/

Jane Parker

Sweden

Based on a national report by Sabrina D'Andrea

1. Regulatory context and information and consultation mechanisms

In Sweden, **trade unions**, employers' organisations and public institutions are central to a multi-level system of governance of the employment relationship, working conditions, and industrial relations structures (Eurofound 2022). Swedish labour law contains strong elements of cooperation, trust and mutual understanding between employers and employees, offering opportunities to cooperate and negotiate, mainly through so-called 'joint regulation.' One condition for such regulation is that employees should be adequately informed about the employer's business.

While public authorities facilitate dispute resolution and compliance with the law, 'social partners bargain free from government influence in both industrial relations and social dialogue', and collective agreements constitute 'a cornerstone of the Swedish labour market' (Eurofound 2022). The law provides the framework within which the social partners can negotiate terms that depart from the law, often in favour of employees. The primary negotiation style is cooperative, with compromises to help move negotiations forward (Katz 2017). Until the 1980s, bargaining was largely centralised but then shifted to the sectoral level following financial market deregulation and other factors, with local-level bargaining also increasingly common. The sectoral agreement – the Industrial Cooperation and Negotiation Agreement – provides a benchmark for wage development in other sectors' collective agreements (Eurofound 2022). Within the industry-level framework, nearly all employees have part of their pay determined by local-level negotiations, and a significant minority have all of their pay determined locally. Overall the coverage of collective agreements (ETUI 2024) is high and over 70% of workers are union members (Swedish National Mediation Office 2019).

As **trade unions** represent employees at work, there is no system of statutory works councils or equivalent bodies in Sweden's regulatory approach. Workplace representation for employees is thus through the **local union** at the workplace. In practice, workplaces are likely to have **representatives from several unions**. Because employee representation takes place entirely through the unions, they can set up their own structures for groups of companies, with **union clubs** at group level (*koncernklubb*). By law, **union representatives** must be given access to workplaces other than their own if this is necessary for the performance of their duties (ETUI 2024). The role of **trade unions** and their codetermination rights

are set out in the **Act on Codetermination at the Workplace (1976:580)**[486] (Act on Employee Consultation and Participation in Working Life). Under this Act, rights to I&C and paid time off for union work apply only to workplaces covered by collective agreements (Berg 2004), although they are the vast majority in Sweden.

Thus, concerning confidentiality in relation to workers' I&C rights, Sweden has adopted a cooperative or bargaining-based approach, in contrast to statutory approaches. The abovementioned 'joint regulation' approach predominates, a condition for which is that employees should be adequately informed about the employer's business (Rasnača and Jagodziński forthcoming). Rules on confidentiality can compromise or limit employee influence in a company but also help to ensure that an employer will be willing to share information with employees and their **representatives** (Sjödin 2015). Also, different approaches to confidentiality are taken in Sweden's private and public sectors.

With regard to **H&S**, a **local union representative** is frequently the local **H&S/ work environment representative** (ETUI 2024). **Safety representatives**, normally appointed by the union, should be present in all workplaces with at least five employees. A **joint safety committee** should be set up in larger workplaces and there is provision for a **network of regional safety representatives**, usually union officials, who can intervene in the absence of a safety committee (ETUI 2024).

There is **BLER** on the boards of companies with more than 25 employees. Two or three employee members, who typically account for a quarter to one-third of board members, are chosen by the **trade union** and are key figures in employer–union relations. **BLER** is widespread in Sweden, which has a single-tier board system, although research indicates that having employee representatives on company boards 'is not used as widely as it could be' (ETUI 2024). A difference exists in legislative approaches to board representatives and involvement according to the **Act on Codetermination at the Workplace (1976:580)**[487] (ETUI 2024; Berg 1999). Furthermore, Lafuente (2023: 22) notes that, in Sweden, 'local trade unions [can] reach arrangements with management and foreign unions, but BLER transnationalisation is only an exception … When it has occurred, it responded more precisely to a BLER "Scandinavisation" rather than to a Europeanisation.'

In **EWCs**, Swedish **members of the SNB** are appointed by local union bodies with whom the company has collective agreements. If unions cannot agree who should be appointed, then those with the largest number of members makes the appointment. If there are several Swedish members, the procedure is similar to that for board representation. The **Law on EWC (2011:427)**[488] (Swedish EWC Act) does not specify whether or not the relevant persons should be company employees. The procedure is the same for Swedish members of an **EWC** set up under the fallback procedure in the annex to the EWC Recast Directive 2009/38/

486. Lag om medbestämmande i arbetslivet (MBL).
487. MBL.
488. Lagen (2011:427) om europeiska företagsråd.

EC, except that the legislation states specifically that individuals appointed from Sweden must be company employees.[489]

The same holds for Swedish members of the **SE representative body** (that is, a Swedish **employee council**) set up under the fallback procedure in the annex to the Directive, except that the legislation again specifies that the individuals appointed from Sweden must be company employees. Under Section 16 of the **Act (2004:559) on employee influence in European Companies (SEs)**,[490] **members of the SNB** and **representative body** are appointed by the local employee organisations that are bound by collective agreements to the participating companies, concerned subsidiaries and establishments. If several local employee organisations are bound by collective agreements and they cannot agree, priority is given to the organisation representing the most employees (Valdés Dal-Ré 2006). Swedish legislation states that, in SCEs[491] set up under the fallback procedure, **employee representatives** should not participate in discussions related to collective agreements or industrial action (ETUI 2024).

2. Relevant law and regulatory provisions

2.1 National law regulating and referring to confidentiality of information and consultation and worker representation

Rasnača and Jagodziński (forthcoming) comment on the 'vagueness and open-endedness' of confidentiality in EU-level provisions, and the dominant approach, at least on confidentiality related to workers' I&C rights, of transposing them 'practically verbatim' into national legal systems, which may not be appropriate. Countries like Sweden with a long tradition of efficient collective bargaining could provide an exception, however. Thus, they suggest, Sweden's well-developed system of workers' I&C rights and representation make EU rules seem restrictive in comparison with rules on confidentiality in areas covered only by national law.

In Sweden, approaches to confidentiality depend on the type of worker representative or representation, sector or issue involved. The **Act on Codetermination at the Workplace (1976:580)**[492] (Act on Employee Consultation and Participation in Working Life) regulates confidentiality of information concerning local and centralised instances of **worker representation** or **trade unions** in the

489. According to Jagodziński and Lorber (2015), Sweden has not introduced any new provisions of the EWC Recast Directive 2009/38/EC that modified the existing framework for EWCs.
490. Lag (2004:559) om arbetstagarinflytande i europabolag.
491. Labour Asociados (no date: 4) noted that the most common legal form of cooperative in Sweden is an economic association 'since it is the form best suited for democratic co-determination.'
492. MBL.

private sector.[493] In the public sector, the relevant statute is the **Public Access to Information and Privacy Act (2009:400)**.[494]

The statutory basis for workplace **H&S** in Sweden is the **Work Environment Act (1977:1160)**,[495] which stresses a cooperative approach to work environment management, provides for **safety representatives'** access to information and participation in the planning of work environment measures.

With **BLER**, Section 14 of the **Companies Act (2005:551)**[496] conveys the breadth of issues in which board-level employee representatives can be involved. Moreover, the **Board Representation (Private Sector Employees) Act (1987:1245)**[497] places an explicit statutory obligation of confidentiality on **BLER**.

Swedish laws transposing Directives on **EWCs**, **SEs** and **SCEs** have largely restrictive formulations on confidentiality, providing that it should be laid down unilaterally by an employer 'if necessary, with regard to the company's best interests.' These Acts are the **Law on EWCs (2011:427)**,[498] **Act (2004:559) on employee influence in European Companies (SEs)**,[499] and **Act (2006:477) on the involvement of employees in SCEs**.[500]

Moreover, the **Trade Secrets Act (2018:558)**[501] implements the Directive on the Protection of Trade Secrets 2016/943/EC and contains provisions that limit employees and others' ability to disclose company-specific information that constitutes a trade secret. Moreover, several EU regulations and national sector-specific regulations provide for the reporting of serious irregularities (for example, in financial markets and money laundering).

In the private sector, there is no written general rule in law to regulate confidentiality between an **employer** and **workers**. However, all workers are legally bound by a 'duty of loyalty' towards their employer, including a duty of confidentiality under the **Stable Employment Law for a Changing Working Life (Ds 2002:56)**.[502] Since 2017, **Law 2017:151 (Swedish Informant Protection in Certain Sectors of Economic Activity Act)**[503] has widened protection for informants to employees and contractors in privately-run activities which are to some extent publicly funded within education, care and health

---

493. Eurofound (2022) indicates that this Act applies to both the private and public sectors, although the scope for concluding agreements and, to some extent, negotiation, is more limited in the public sector.
494. Offentlighets- och sekretesslagen (2009:400) (OSL).
495. Arbetsmiljölag (1977:1160) (AML).
496. Aktiebolagslag (2005:551).
497. Lag (1987:1245) om styrelserepresentation för de privatanställda.
498. Lagen (2011:427) om europeiska företagsråd.
499. Lag (2004:559) om arbetstagarinflytande i europabolag.
500. Lag (2006:477) om arbetstagarinflytande i europakooperativ.
501. Lagen om företagshemligheter (2018:558).
502. Hållfast arbetsrätt för ett föränderligt arbetsliv Ds 2002:56.
503. Lag (2017:151) om meddelarskydd i vissa enskilda verksamheter.

care. In the public sector, the **Public Access to Information and Privacy Act (2009:400)**[504] applies.

2.2 National provisions concerning whistleblowing and whistleblowers' protection

Sweden was the second Member State to transpose the Whistleblowing Directive 2019/1937/EC). Prior to its adoption, in May 2019, the government launched an inquiry commission to gauge how it should be transposed into national law (Tønnesen 2022).

Furthermore, in May 2016, the government had adopted the **Law on special protection against reprisals for workers who report serious wrongdoings (2016:749)**,[505] (a dedicated whistleblower law), which protected both private and public employees, in part to remedy the poor level of protection afforded to private employees compared with civil servants. This Act enabled employees to report suspected wrongdoing while remaining protected from retaliation. Workers subjected to the latter by their employer in violation of the law were entitled to both financial and general damages. However, the law was criticised as whistleblowers could be exposed through a system of internal reporting and subsequent reporting to regulators. This flaw contributed to early interest in the Whistleblowing Directive (Tønnesen 2022).

In September 2021, Sweden transposed the Whistleblowing Directive by passing the **Act on the Protection of Persons Reporting Irregularities (2021:890)**[506] (Sweden's Whistleblowing Act) with special protection against reprisals for workers who report irregularities. Swedish companies with over 250 employees and public sector employers had until 17 July 2022 to establish internal whistleblowing channels, while the deadline for organisations with 50–250 employees was 17 December 2023 (DLA Piper 2021). The basic protection provided by this Act also extends to employers with fewer than 50 employees. While such employers are not legally obliged to establish internal reporting channels, protection against, for example, reprisals for persons who report internally in another manner applies where such channels do not exist (Vinge 2021).

Similar to the 2016 Act that it replaced, the 2021 Act thus observes:

- 'If a whistleblower is subjected to reprisals as a consequence of his or her whistleblowing, the employer may be obliged to pay damages to the whistleblower.
- … the New Whistleblowing Act cover(s) both the private and public sectors.
- Agreements which terminate or restrict the employee's protection in accordance with the Act will continue to be void.

---

504. OSL.
505. Lag om särskilt skydd mot repressalier för arbetstagare som anmäler allvarliga förseelser (2016:749).
506. Lag (2021:890) om skydd för personer som rapporterar om missförhållanden.

- The burden-of-proof is the same, i.e. if the whistleblower demonstrates circumstances which give rise to the presumption that the whistleblower has been subject to reprisals, it is the employer who must demonstrate that reprisals were not taken.
- The whistleblower may turn to his/her **employee organisation** for consultations before any report of irregularities is made.' (Vinge 2021; our emphasis)

However, the new Act goes further than the earlier law. For instance:

- 'as well as employees and hired labour, it covers self-employed persons, job applicants, trainees, volunteers and interns, persons who are part of a company's administrative, management or supervisory bodies, and active shareholders; as well as those who are not whistleblowers themselves but risk being subject to retaliation (for example, **union representatives**, a whistleblower's family and close colleagues).' (Ågrup 2022; our emphasis)

Furthermore, group-wide reporting channels are permitted in companies with 50–249 employees. If a company is bound by a collective agreement, the **relevant parties** to the agreement may agree to deviate from rules regarding internal reporting channels and those regarding reporting and follow-up if this does not entail a breach of any of the individual rights in the Directive (Vinge 2021). The scope of protection set out in the Act may be extended through collective agreements, but it cannot be altered to reduce the minimum level afforded by the Act (Thorpe and Branson 2021). It also obliges organisations to establish whistleblowing channels and sets new standards for processing personal data and dealing with professional confidentiality. Tønnesen (2022) also notes that Swedish law goes beyond what is outlined in the Directive by offering protection to whistleblowers where the information being disclosed contains a 'general interest'; by comparison, the Directive aims at breaches of EU law.

2.3 Implications of whistleblowers' protections for worker representatives handling confidential information

As noted, Sweden's **Act on the Protection of Persons Reporting Irregularities (2021:890)**[507] (Whistleblowing Act) provides protection to whistleblowers and to an extended group of people who are not whistleblowers but who could encounter retaliation, including **union representatives**.

The law stipulates that reporting persons are protected from retaliation from a business operator. Those who are subjected to reprisals by a business operator in violation of the Act are entitled to damages. It is binding for the benefit of workers and does not restrict protection that may apply on other grounds (for example, according to labour law or Sweden's **Constitution**.[508]

---

507. Lag (2021:890) om skydd för personer som rapporterar om missförhållanden.
508. Sverige grundlag.

2.4 Confidential information versus trade secrets

No standard definition exists in Sweden for the type of information that should be kept confidential. A bargaining-based approach is used to define what is confidential, with such information 'likely to be something that someone has a strong interest in protecting against disclosure' (Rasnača and Jagodziński forthcoming).

However, under Section 21 of the **Act on Co-Determination at the Workplace (1976:580)**[509] (Act on Employee Consultation and Participation in Working Life), such information can include:

- 'an employer's business conditions, economic conditions, trade secrets or production methods;
- internal relationships with **trade unions** or information about an individual's financial or personal circumstances, or other matters of importance; or
- other matters of importance, especially from the point of view of business or affairs, where the need for confidentiality may be deemed to be of interest.' (Bergqvist et al. 1997; our emphasis)

According to preparatory Acts (that is, Acts used to prepare legislation), trade secrets, work procedures and business relationships are defined as the technical and commercial relationships concerning a business that a company wishes to keep secret and which can cause harm or inconvenience to the business if disclosed. Under Section 2 of the **Trade Secrets Act (2018:558)**,[510] trade secrets are:

'information:

1. concerning the business or operational circumstances of a trader's business or a research institution's activities;
2. which, either as a body or in the precise configuration and assembly of its components, is not generally known or readily accessible to persons who normally have access to information of the type in question;
3. which the holder has taken reasonable measures to keep secret; and
4. the disclosure of which is likely to lead to competitive injury to the holder.'

Experience and skills gained by an employee over the normal course of their employment do not constitute a trade secret; nor does information regarding a matter which constitutes a criminal offence or other serious wrongdoing.

2.5 Worker representation bodies and representatives' information and consultation rights and duties

Under Section 19 of the **Act on Codetermination at the Workplace (1976:580)**[511] (Act on Employee Consultation and Participation in Working Life),

509. MBL.
510. Lagen om företagshemligheter (2018:558).
511. MBL.

an employer must regularly inform an **employee organisation** to which they are bound by a collective agreement about:

> 'the manner in which the business is developing in respect of production and finance and as to the guidelines for personnel policy. The employer shall also afford the employees' organisation an opportunity to examine books, accounts, and other documents that concern the **employer's business**, to the extent required by the **labour union** in order to protect the common interests of its members in relation to the employer.'[512] (Our emphasis)

Section 19(a) provides that an employer who is not bound by a collective agreement 'shall continuously keep **employees' organisations** that have members who are employees at the employer notified of how operations are developing as regards production and financially and similarly on the guidelines for personnel policy' (our emphasis). Under Section 14(2), the obligation is also related to the **central employees' organisation** to the extent that such information is significant to a matter under negotiation.

As already noted, for **H&S**, the **Work Environment Act (1977:1160)**[513] provides for a **safety representative's** access to information and participation. Section 6 of Chapter 6 provides that this representative 'is entitled to access the documents and obtain the other information needed for the representative's activities.'

Generally, **board members representing employees** have the same rights as those representing company shareholders under Chapter 8 of Sweden's **Companies Act (2005:551)**.[514] However, **BLER** cannot be involved in dealing with issues linked to collective bargaining or industrial action, or other issues involving a conflict of interest between the company and **union** (Section 14).

For **EWCs**, under Section 2(1) of the **Act (2011:427) on EWCs**, information must be 'given at a time, in a manner and with a content that allows the **employee representatives** to make a careful assessment of possible consequences and, if necessary, prepare consultations with the community company or group of companies' (our emphasis). Section 2(2) pertains to the time, manner and content of consultation of **employee representatives**, enabling them 'on the basis of the information received, within a reasonable time to submit their views on proposed measures so that they can be taken into account in the decision-making process of the community enterprise or group of enterprises.'

Notably, under Section 44,[515] information provided to the **EWC** must relate to:

> '1. the structure of the community enterprise or group of enterprises;
> 2. the economic and financial situation of the community enterprise or enterprise group; and

512. Section 19 of the MBL.
513. AML.
514. Aktiebolagslag (2005:551).
515. Lagen (2011:427) om europeiska företagsråd.

3. expected developments regarding the activities, production and sales of the community enterprise or enterprise group.'[516]

More specifically, under Section 45, I&C with the **EWC** will concern:

'1. the employment situation and its expected development;
2. investments;
3. significant organizational changes;
4. the introduction of new work methods or production processes;
5. production transfers;
6. mergers;
7. closures of operations or significant reductions in operations, as well as
8. collective redundancies.'[517]

Moreover, Sweden transposed (from EWC Recast Directive 2009/38/EC subsidiary requirements) requirements to give a reasoned response (a 'reasoned answer') and to extended I&C on decisions that affect employees to a considerable extent (Laulom and Dorssemont 2015).

With regard to **SEs** and **SCEs**, similar provisions apply. In the **Act (2004:559) on employee influence in European Companies (SEs)**,[518] Section 45 provides the **SEWC's** right to I&C with the SE in matters that relate to the company, its subsidiaries or branches in an EEA state other than the one in which the SE has its registered office, or that fall outside the authority of the decision-making bodies of an individual EEA state. Section 46 refers to the timing, means of provision and content of the information that will enable a **SEWC** to carefully assess possible consequences and, when appropriate, prepare consultations with the SE. Consultation should enable the **SEWC**, based on the information provided, 'to submit views on planned measures so that they can be taken into account in the European Company's decision-making process' (Section 46). Under Section 47, the SE must meet with the **SEWC** at least once a year and inform and consult about the company's business development and future plans.

In the **Act (2006:477) on the involvement of employees in SCE**,[519] Section 48 provides for the **SCEWC's** right to I&C on matters that concern the SCE, its subsidiaries or branches in a different EEA state than the one where the SCE has its seat, or that fall outside the authority of the decision-making bodies in an individual EEA state. Sections 49 and 50 are similar to Sections 46 and 47 of the **SE Act** (above) but for **SCEWCs** and the **SCE**.

For employees, notably, the Swedish **Employment Protection Act (1982:80)**[520] became fully effective from 1 October 2022. While the law already obliged an employer to inform employees of the principal terms of work, this law introduces enhanced information requirements.

---

516. Section 44 of the Act (2011:427) on EWCs (Lagen (2011:427) om europeiska företagsråd).
517. Section 45 of the Act (2011:427) on EWCs (Lagen (2011:427) om europeiska företagsråd).
518. Lag (2004:559) om arbetstagarinflytande i europabolag.
519. Lag (2006:477) om arbetstagarinflytande i europakooperativ.
520. Lag (1982:80) om anställningsskydd.

2.6 Challenging company decisions and accessing justice

Under the **Act on Codetermination at the Workplace (1976:580)**[521] (Act on Employee Consultation and Participation in Working Life), an employer or **worker representative** can request confidentiality for given information. Under Section 21(2), if there is no agreement on confidentiality at the local or central level, or if a **workers' organisation** has not asked for centralised negotiations concerning confidentiality, the requesting party may bring the matter to the Labour Court within the 10 days following negotiations, and confidentiality applies until the Court has given a decision. If a party does not raise the matter to the Court within 10 days, the duty of confidentiality ceases (this is the general rule, but there are more area-specific rules in certain situations). If the request for confidentiality is unwarranted and the parties realise or should have realised this, confidentiality does not apply and the action in Court is 'not receivable' (Section 21). This rule is intended for cases where a requirement of confidentiality is pointless or demanded to cause damage to the other party. It protects a party against abuse of confidentiality by giving it the right to ignore the duty to maintain confidentiality.

Notably, with **BLER**, under Section 14 of the **Board Representation (Private Sector Employees) Act (1987:1245)**,[522] **employee representatives** cannot participate (or thus challenge) issues relating to collective agreements, industrial action or other issues where a **trade union** at a workplace has a significant interest that may conflict with that of the company. Nor, under Section 2 of the **Act on Codetermination at the Workplace (1976:580)**[523] can they take part in a decision concerning the aims or direction of the activity (see Section 14 of the **Board Representation (Private Sector Employees) Act (1987:1245))**.[524]

In Sweden, **EWCs** have full legal personality, allowing **EWC representatives** to initiate judicial proceedings on behalf of, and to represent, the EWC in relation to third parties (Jagodziński and Stoop 2023). EWCs have the capacity to act in court both collectively and as individual EWC members (Jagodziński and Lorber 2015). **EWCs** can thus go to court (or a similar labour council or arbitration institute) to challenge an employer's imposed duty of confidentiality. This is an EWC right, not the individual right of EWC members. Moreover, in Sweden, under Section 61 of the **Law on EWC (2011:427)**,[525] '(c)ases concerning the admissibility of confidentiality must be dealt with promptly.'

With regard to **SEs**, Sweden's **Act (2004:559) on employee influence in European Companies (SEs)**[526] does not include the principle of the spirit of cooperation stated in Art. 9 of Directive 2001/86/EC supplementing the Statute

521. MBL.
522. Lag (1987:1245) om styrelserepresentation för de privatanställda.
523. MBL.
524. Lag (1987:1245) om styrelserepresentation för de privatanställda.
525. Lagen (2011:427) om europeiska företagsråd.
526. Lag (2004:559) om arbetstagarinflytande i europabolag.

for a European Company with regard to the involvement of employees (SE Directive). Under Section 69 of the Act,

> 'when applying the law on resort to the courts in labour disputes, … what is said about **employee organizations** shall also apply to the **employees' negotiating delegation, works councils** and **other bodies for information and consultation**. What is said there about collective agreements also applies to such agreements referred to in this Act. Cases concerning the admissibility of confidentiality must be dealt with promptly.' (Our emphasis)

The **SNB** and **representative body** may acquire rights, assume obligations and bring actions before a court of law or other authority under Section 64 of the Act, with legal proceedings brought before the Labour Court in the first instance (Section 69).

Similar provisions apply under Section 69 of the **Act (2006:477) on the involvement of employees in SCE**.[527] Arguably, however, Section 66 of this Act and Section 71 of the **Act (2006:477) on the involvement of employees in SCEs** indirectly give the SE and SCE **representative bodies** extended rights to determine what information shall be made confidential. For instance, under Section 71 of the latter Act,[528] an obligation of confidentiality may be imposed if it is necessary for a company's interests. Labour Asociados (n.d.: 15) comments:

> 'it is not obvious that the phrase "in the interest of the company" could be considered to be the equivalent of the phrase in the Directive: "that would seriously harm the functioning of the [SCE] or the participating legal entities". Hence, it could be argued that Act 2006:477 gives companies more decision-making power regarding what information should be made confidential.'

2.7 Worker representatives' duties in maintaining confidentiality, and their contacts with other representatives and stakeholders

As already indicated, in Sweden, approaches to confidentiality vary, depending on the form of workers' representation, sector or issue involved. The **Act on Codetermination at the Workplace (1976:580)**[529] (Act on Employee Consultation and Participation in Working Life) regulates confidentiality of information concerning **local** and **centralised worker representation** or **trade unions** in the **private sector**.[530] Both an employer and **worker representatives** can request confidentiality. Negotiations concerning

527. Lag (2006:477) om arbetstagarinflytande i europakooperativ.
528. Lag (2006:477) om arbetstagarinflytande i europakooperativ.
529. MBL.
530. Eurofound (2022) indicates that this Act applies to both the private and public sectors, although the scope for concluding agreements and, to some extent, negotiation, is more limited in the public sector.

confidentiality can also concern matters such as how far and when information can be disclosed.

Under Section 22 of the Act, no disclosure of a trade secret is said to have occurred when a **worker representative** passes on information to a **member of the union organisation**. Section 21 refers to the type of information that needs to be protected. The duty of confidentiality arising from this Section must be viewed in the context of a contractual relationship, with regard to which there are no real limits on confidentiality. **Any party** who is subject to an obligation to provide information has the right to negotiate with the other party in respect of a duty of confidentiality regarding that information. If negotiations concern information under Section 19 (see Section 2.5 of this chapter), Section 14[531] applies, *mutatis mutandis*. Under Section 22, a person who, on behalf of a **local** or **central employee organisation**, has received information subject to a duty of confidentiality may disclose it to a **member of the board of directors** of the organisation, notwithstanding that duty (which will also apply to that board member).[532]

Thus, whether confidentiality is established through negotiation or a court decision, the **worker representative** who receives the information can share it with **members of their union**, to whom confidentiality also applies (Section 22). If a **local worker representative** receives confidential information, they can pass it on to **board members of the local employee organisation**. While the information must not be passed upwards in the organisation to the union's board, a member of the **central organisation's board** may access information provided in a central negotiation where the workers' organisation is represented by a **centrally-employed delegate** (Holke and Olauson 2014). Importantly, it is possible to expand or restrict the circle within which confidential information can be disclosed via a collective agreement. If, during negotiations or with regard to information provided to workers, an employer does not require confidentiality, according to the Act, **worker representatives** can disclose information on a trade secret to other workers but not to persons outside the company due to their duty of loyalty.

Notably, in Sweden's public sector, rules on transferring information from one body of **worker representation** to another are stricter. The **Public Access to Information and Privacy Act (2009:400)**[533] provides no room for the **bargaining parties** to negotiate or terminate confidentiality in collective agreements. Under Sections 11 and 12, **worker representatives** who receive classified information are bound by the confidentiality normally applied to the task laid down in that law. Despite this, a **representative** of an **employee organisation** or **union** may submit the task further to a **member of the**

---

531. Under Section 14, confidentiality is to be negotiated at the local level, and if no agreement is reached, at the central level if the workers' organisation or union requests it.

532. While no particular rules exist on confidentiality in relation to mergers, an employer should negotiate with the union before deciding on important changes in the business; hence the rules of the Act on Codetermination at the Workplace (1976:580) apply.

533. OSL.

organisation's board. In the public sector, information can be transferred only if the **representative** is linked to the authority that issues the information. Otherwise, the rule of transfer of confidentiality does not apply. However, the duty of confidentiality does not prevent a **union representative** from using such information to perform their tasks without disclosing it. These provisions also apply to appointed **H&S representatives** in the public sector.

For **H&S representatives** in the private sector, the **Work Environment Act (1977:1160)**[534] regulates their rights to and duty of confidentiality, and **worker representatives** can freely inform **unions**. Thus, under Section 13 of Chapter 7, **H&S representatives** 'may not unduly disclose or exploit what he or she has learned during the assignment about trade secrets, work procedure, business relationships, an individual personal circumstances or circumstances important to the country's defense.' The work contract cannot extend the material scope of confidentiality in this context nor restrict exceptions to it.[535] However, a **safety representative**, **member** or **participant appointed by a local employee organisation** may, notwithstanding the above duty of confidentiality, pass information on to a member of the executive committee of the organisation or to a **work environment expert at a central employee organisation** to which the local organisation belongs. The informant must notify the recipient of the duty of confidentiality (which then applies to the recipient). In activities of the public authorities, provisions of the **Public Access to Information and Secrecy Act (2009:400)**[536] apply instead.

No express duty of confidentiality is enshrined in the **Board Representation (Private Sector Employees) Act (1987:1245)**,[537] nor in the **Companies Act (2005:551)**,[538] but **worker representatives** are regarded as board members and have the same legal responsibility as them, including a duty of loyalty. Under Section 20 of Chapter 8 of the latter Act, **employee representatives on the board** should always receive information and be given the opportunity to take part in the business of the board of directors in the same manner as regular members. As already noted, however, a **board-level representative** cannot participate in board discussions concerning matters related to negotiations with an employee organisation, a collective agreement's termination, or other matters in which an employee organisation with members at the relevant workplace has an interest, which may conflict with those of the company. Under the Act, **employee representatives** have the same tasks, obligations, rights and responsibilities as other members or directors on the board, although this may not occur in practice (Berg 1999). Moreover, although **BLER** are bound by a general duty of

---

534. AML.

535. However, with the consent of the interested person for whose benefit confidentiality is intended, in relation to a specific case, confidentiality can be lifted or its exceptions can be widened (Gullberg and Thomsson 1990). Moreover, A representative can also forward the information to the Work Environment Authority or other supervisory bodies in authorised cases (for example, under Section 7 of Chapter 6, when there is an immediate and serious danger to workers' lives or health, as well as to an employee organisation in other cases).

536. OSL.

537. Lag (1987:1245) om styrelserepresentation för de privatanställda.

538. Aktiebolagslag (2005:551).

confidentiality, the board can also decide on a duty of confidentiality by making the members sign a confidentiality agreement or detailing how they should handle information disclosed during a meeting in the **Rules of Procedure**.[539] A board of directors may also decide on confidentiality for specific, sensitive issues dealt with at meetings and refer to what information is provided and to whom.

However, Sjödin (2015) notes that, for **BLER**, no indication is given in law about the possibility of them passing on information within a narrow circle, causing legal uncertainty and divergence in opinion and practices. As it would be hard for **employee representatives** to perform their duties if they could not inform their **union** about various matters, a practice has developed that allows **union representatives** to share information only with the **board of their union** (in other words, not with individual members or employees). The duty of confidentiality and other responsibilities applying to board members then transfer to recipients of the information. Presumably, the **employee representative** can agree with the Chair of the Board on the extent to which they can discuss board matters within a narrow circle of **union representatives** (Sjödin 2015). However, Berg (1999) noted that the **Board Representation (Private Sector Employees) Act (1987:1245)**,[540] which is 'partly built upon giving trade unions insight into the business, sets high demands for an open flow of information, and it is important for **board-level employee representatives** to be able to discuss Company board matters with other **union representatives**' (our emphasis).

Swedish laws on **EWCs**, **SEs** and **SCEs** have restrictive formulations on confidentiality, providing that it should be stipulated unilaterally by an employer 'if necessary, with regard to the company's best interests.' With **EWCs**, for example, under Section 58 of the **Law on EWC (2011:427)**[541] (Swedish EWC Act), anyone who has received confidential information can pass it on to other **worker representatives (employee members** or **experts** in the same body). However, a **worker representative** who receives confidential information has the right to forward the information to **other union members** if they inform the recipient of the duty of confidentiality which applies to them. This duty continues to apply even after termination of their assignment as an **employee representative**. If negotiations are not conducted at a central union level, an **employee representative** can pass on this information to the **central level** (that is, to persons who are not employed at the company – Sjödin 2015).[542]

Similarly, for **SEs** and **SCEs**, under Section 66 of the **Act (2004:559) on employee influence in European Companies (SEs)**[543] and Section 71 of the

---

539. Dissenting members can make a reservation against a Board's decision about confidentiality in the minutes but this does exempt them from respecting confidentiality. They may ask for a decision from the board, allowing them to disclose information to their union.

540. Lag (1987:1245) om styrelserepresentation för de privatanställda.

541. Lagen (2011:427) om europeiska företagsråd.

542. Sections 44 and 45 of the Law on Workers' Participation in Cross-Border Mergers (2008:9) state the same rule on confidentiality and damages in law on workers' participation in EWCs, SEs and SCEs.

543. Lag (2004:559) om arbetstagarinflytande i europabolag.

Act (2006:477) on the involvement of employees in SCEs,[544] respectively, the employer may decide on confidentiality for **members of the negotiating delegation** or the **works council**, their assisting **experts** and **other employee representatives within an I&C procedure** if required in the best interests of the company. However, anyone receiving confidential information, despite this obligation, can pass it on to other **members of the same negotiating delegation** or **works council** and their **experts** if the informant notifies the recipient of the relevant confidentiality obligation. Again, this duty remains, even after their role as a **member**, **other employee representative** or **expert** ends. Thus for these **employee representatives on administrative or supervisory boards** of companies with **EWCs**, **SEs** and **SCEs**, the same argument could be made as for **BLER** in a Swedish company – they should be considered full members of the board and obliged to respect the same duty of confidentiality as applies to other board members (Sjödin 2015).

Lastly, under Sweden's **Trade Secrets Act (2018:558)**,[545] a duty of confidentiality covers all information that can harm the employer if disclosed. Given **workers'** duty of loyalty, they should respect confidentiality concerning trade secrets, independently of whether they are connected to work duties. Misappropriation of a trade secret occurs when a person, without a trade secret holder's consent, 'accesses, appropriates, or otherwise acquires the trade secret; uses the trade secret; or discloses the trade secret' (Section 3). Similarly, under Section 312 of the **Stable Employment Law for a Changing Working Life (Ds 2002:56)**,[546] all **workers** are legally bound by a duty of loyalty towards their employer, including a duty of confidentiality, even if this obligation is not specified in writing in an employment contract. This includes trade secrets that are regulated in the Trade Secrets Act[547] (see above).[548] Some private sector workers have a statutory duty of confidentiality for information acquired during their work (for example, lawyers, health care professionals), which can be specified by a collective agreement and/or individual contract, or by rules that an employer has the right to issue unilaterally (Section 314). Duty of loyalty ends once employment is terminated, while the law provides that confidentiality shall apply even after a **worker representative** has left office.

For duties of confidentiality in relation to whistleblowing, see Section 2.3 of this chapter.

---

544. Lag (2006:477) om arbetstagarinflytande i europakooperativ.
545. Lagen om företagshemligheter (2018:558).
546. Hållfast arbetsrätt för ett föränderligt arbetsliv Ds 2002:56.
547. Lagen om företagshemligheter (2018:558).
548. Senior executives are subject to stricter requirements with regard to confidentiality (Nicander 1995).

2.8 Sanctions for breaching confidentiality of information and consultation and remedies for workers and worker representatives

Under Section 21(2) of the **Act on Codetermination at the Workplace (1976:580)**[549] (Act on Employee Consultation and Participation in Working Life), a party (including a **workplace representative**) can be liable for damages if the Court decides that a confidentiality request was warranted. The Court can order compliance with a duty of confidentiality when there is a risk of material injury to the party requesting confidentiality or another party with regard to information disclosure. When examining a request for confidentiality, reflecting a wider approach to employment relations, the Court should strike a balance on the interests involved (to protect the company against the risk of harm, and the **union's** interest in being able to use the information without a confidentiality obligation). Indeed, the Court should attach particular interest to the latter, especially over information about a company's financial conditions and prospects, where special reasons must be shown for the imposition of a duty of confidentiality (Holke and Olauson 2018).

Moreover, the burden of proof concerning a breach of confidentiality and economic compensation lies with the party who claims that the other has committed a breach. The risk of harm when workers access information may be considered small, because workers are bound by a duty of loyalty and are thus generally prevented from sharing sensitive company information with outsiders. Under Section 56 of the **Act on Codetermination at the Workplace (1976:580)**,[550] the party who breaches a confidentiality obligation (whether established by negotiation or by the Court) or makes unauthorised use of it shall pay either economic and/or non-economic damages for any loss that is incurred. Where breaches of confidentiality concerning trade secrets are referred to in a collective agreement, the Act requires that workers pay damages. Sanctions are also provided in the **Trade Secrets Act (2018:558)**.[551]

In Sweden, **H&S representatives** can ask the Labour Court to determine whether information is covered by confidentiality (Gullberg and Thomsson 1990). A breach of confidentiality in this context is also punishable under Section 3 of Chapter 20 of the **Criminal Code (1962:700)**[552] and could be sanctioned with fines and up to one year's imprisonment (Section 3 of Chapter in the **Work Environment Act (1977:1160)**).[553] For those who commit such an act out of negligence, the penalty is limited to fines. The Trade **Secrets Act (2018:558)**[554] is not applicable to **H&S representatives** who disclose a trade secret in the performance of their duties, although they could be liable for damages under the Work Environment

549. MBL.
550. MBL.
551. Lagen om företagshemligheter (2018:558).
552. Brottsbalk (1962:700).
553. AML.
554. Lagen om företagshemligheter (2018:558).

Act (1977:1160). Under the **Trade Secrets Act (2018:558)**,[555] in the case of an employee's disclosure of trade secrets, liability is based on the assumption that they acted intentionally or negligently in accessing and disclosing the information.

With regard to **BLER**, all board members, including **employee representatives**, are obliged to comply with a company board's decisions on confidentiality. If an **employee representative** has forwarded information that causes economic harm to the company, they can be held liable for economic damages, even in the absence of a board decision establishing confidentiality (see Section 1 of Chapter 29 of the **Companies Act (2005:551)**[556] and Sections 1–3 of Chapter 18 of the **Commercial Code**).[557] The confidentiality obligation applies even when no harm occurs. However, liability for compensation is difficult to apply in the absence of harm or a particular decision ordering confidentiality. As with other board members, an **employee representative** will be held personally responsible. As before, if the information that they disclose concerns trade secrets, the sanction provided in the **Trade Secrets Act (2018:558)**[558] should apply, although the Section on employees does not, as the **worker representative** was performing a role beyond their employment relationship (Sjödin 2015).[559] An employer cannot dismiss an **employee representative on a board** of a Swedish company for violating confidentiality as this could amount to violation of the right of association.

With regard to **EWCs**, **SE** and **SCE employee representatives**, Section 59 of the **Law on EWCs**, Section 68 of the **Law on Workers' Influence in SE**, and Section 73 of the **Law on Workers' Influence in SCEs** provide for responsibility for damages, according to Section 56 of the **Act on Codetermination at the Workplace (1976:580)**[560] in cases of confidentiality breaches. For instance, under the **EWC Act (2011:427)**[561] (Swedish EWC Act), **individual EWC members** can be ordered to pay fines or incur other sanctions for breaching confidentiality. According to Section 59,

> 'Anyone who violates this Act, an agreement pursuant to this Act or the non-disclosure obligation referred to in this Act must provide compensation for damages incurred in accordance with Sections 55 and 56, Section 57, second paragraph, Section 60, first paragraph, and Sections 61 and 62 of the Act (1976:580) on codetermination in working life.'

As already mentioned, the admissibility of confidentiality must be dealt with promptly, but the issue has never been brought to court. Sjödin (2015) comments that, as with **BLER**, it is assumed in this context that an employer is not allowed

---

555. Lagen om företagshemligheter (2018:558).
556. Aktiebolagslag (2005:551).
557. Kommersiell kod.
558. Lagen om företagshemligheter (2018:558).
559. Board members cannot incur civil liability under the Trade Secrets Act (2018:558). Moreover, it is uncertain whether a worker representative on a board would be seen as acting as an employee. One consequence is that they might be liable to stricter responsibility than other board members, however.
560. MBL.
561. Lagen (2011:427) om europeiska företagsråd.

to dismiss an **employee representative** solely on the grounds of a violation of confidentiality.

Finally, Section 7 of the **Trade Secrets Act (2018:558)**,[562] states:

> 'An employee who intentionally or negligently misappropriates, from his or her employer, a trade secret which he or she learned in the course of his or her employment under such circumstances that he or she knew or should have known that he or she was not permitted to disclose such a secret, shall provide compensation for the loss incurred as a result of the action.'

This obligation is valid throughout the employment relationship. In some circumstances, however, an employee can be liable for disclosure of trade secrets after their employment ends (Section 7.2), such as when they prepare and plan to retain and disclose information immediately after termination of employment. An employer and employee can enter into an agreement on the duty of confidentiality after termination of employment within certain limits pertaining to property law. Finally, breaches of a statutory obligation of confidentiality are provided for under Section 3 of Chapter 20 of Sweden's **Criminal Code (1962:700)**.[563]

Thus, unlike in some countries, sanctions, and remedies for worker representatives in Sweden around the confidentiality of I&C are not tied to specified monetary sums.

2.9 Limitations on companies' application of confidentiality rules to information and consultation and to codetermination, and criteria for their application

Swedish law does not give employers an opportunity to withhold information that could harm the company because their duty to provide information is limited to information needed by the **workers' organisation** or **union** (Swedish Government official report (SOU) 2004: 85). However, employers can legitimately withhold information when its disclosure could seriously harm the company (for example, concerning development and research work of a particularly secret nature, or information regarding bidding in competition with other companies). If an employer considers that information that they are required to provide might cause damage to the enterprise, they must initiate negotiations with the **trade union** on confidentiality. If agreement cannot be reached, a party may bring an action before the Labour Court for a ruling of confidentiality, within 10 days of the close of negotiations. Until the Court settles the issue, the other party must comply with a request for confidentiality (Nyström 2020).

Indeed, the **Act on Codetermination at the Workplace (1976:580)**[564] (Act on Employee Consultation and Participation in Working Life) provides

562. Lagen om företagshemligheter (2018:558).
563. Brottsbalk (1962:700).
564. MBL.

worker representatives with a right to information in relation to collective negotiations under Sections 15 and 18, and with a general, continuous right to information concerning the business' economic and productive development, as well as guidelines for staff policy under Section 19. The scope of this right is reduced when a firm is not covered by a collective agreement (Section 19) – in this situation, an **employee organisation** does not have the right to review accounts or obtain copies of documents related to investigations. However, 90% of firms in Sweden are covered by a collective agreement (ETUI 2024). Likewise, employers are not obliged to provide **worker representatives** with information concerning individual employees (SOU 2005) though they may be liable to do if this is seen as necessary for negotiations. Preparatory Acts provide that the employer's interests should be considered when assessing a **workers' organisation** or **union's** 'need' for particular information. Such an evaluation should thus be objective and a balance achieved between conflicting interests, while according importance to what an organisation sees as significant.

With regard to **BLER**, when it comes to information that managers are entitled to withhold, Section 14 of the **Board Representation (Private Sector Employees) Act (1987:1245)**[565] excludes **employee representatives** from participating in meetings that deal with issues related to a collective agreement, industrial action or other issues with regard to which a **union organisation** in the workplace has a material interest that may conflict with those of the company. And when the employer's activity is of a religious, scientific, artistic or other non-profit nature or has political or opinion-forming purposes, **employee representatives** are not entitled to participate in decision-making that concerns the business' aims or focus (Section 14.2). **BLER** reasonably have a right to pass on information in their union if needed, given the confidentiality rules outlined in Section 2.7 of this chapter, and circumstances must be assessed on a case-by-case basis.

With regard to **EWC**, **SE** and **SCE worker representatives**, there are no rules that allow employers to withhold information that could harm the company because the duty to inform is limited to what workers need. Also, when it comes to information relating to companies listed on the Swedish stock market, the **Securities Market and Market Abuse Penalties Act (2016:1307)**[566] regulates unauthorised disclosure of inside information. Section 3 of Chapter 2 states:

> 'A party who discloses inside information [or advice or an order based on inside information] with the exception of cases where the disclosure takes place as a normal step in the exercise of employment, profession or duties, shall be convicted of unauthorised disclosure of inside information, the penalty for which shall be a fine or imprisonment for not more than two years.'

---

565. Lag (1987:1245) om styrelserepresentation för de privatanställda.
566. Lag (2016:1307) om straff för marknadsmissbruk på värdepappersmarknaden.

2.10 Sanctions on companies or company representatives for abusing confidentiality rules

The bargaining-based approach pursued in Sweden is characterised by the lack of regulations on management responsibility for confidentiality abuses (only France seems to tackle intentional abuses of confidentiality clauses by management, sanctioned by a fine). Furthermore, Sweden is not one of the few Member States in which there are legal remedies with which to challenge confidentiality, and nowhere are (specified) sanctions foreseen for management who abuse the confidentiality clause. Furthermore, when it comes to sanctioning **worker representatives** for abusing confidentiality rules, sanctions are available under bargaining-based arrangements and thus are not specified for companies or their representatives.

In this context, under Para. 1 of Section 56 of the **Act on Codetermination at the Workplace (1976:580)**[567] (Act on Employee Consultation and Participation in Working Life), when an **employer** or employee breaches a duty of confidentiality referred to in the Act or makes improper use of any information obtained that is subject to such a duty, they will need to pay (an unspecified level of) compensation for any loss incurred. Under Section 3 of Chapter 20 of the **Criminal Code (1962:700)**,[568] however, no liability will be incurred in the cases referred to here.

Aligned with other regulations, Sweden's **Board Representation for Private Sector Employees (1987:1245) Act**[569] does not explicitly address company sanctions for confidentiality abuses. The duty of confidentiality and other responsibilities applying to **board members** are transferred to the recipients of the information. If passing on information could damage the company, however, representatives can incur individual responsibility. For its part, the **Companies Act (2005:551)** focuses on the company auditor's (Section 41) and a general examiner's (Section 17) duty of confidentiality.

As already noted, **EWCs**, **SEs**, **SCEs** and **cross-border mergers** have restrictive formulations on confidentiality. However, Jagodziński and Lorber (2015: 133; our emphasis) suggest that

> 'by implication from the **Codetermination Act of 1976** … it would be possible to derive the applicability of "interim remedies" to instances of transnational information and consultation by EWCs.' (Our emphasis)

Sweden's **Whistleblowing Act (2021:890)**[570] provides that reporting persons are protected from retaliation from a business operator. Those who are subjected to reprisals in violation of the Act are entitled to damages from the company.

---

567. MBL.

568. Brottsbalk (1962:700). Under Section 3 of Chapter 20, if a person who is obliged to keep certain information or an official document secret nevertheless discloses it, they may have committed a criminal offence. An intentional breach of duty of confidentiality may incur a fine or imprisonment for a maximum of one year, and a breach due to negligence may be subjected to a fine. A person who commits a minor act through negligence is not guilty of an offence (Swedish Ministry of Justice 2020).

569. Lag (1987:1245) om styrelserepresentation för de privatanställda.

570. Lag (2021:890) om skydd för personer som rapporterar om missförhållanden.

Agreements that terminate or restrict an employee's protection under the Act will be void.

3. Illustrative case law

As we have seen, in Sweden, confidentiality and other duties applying to **board members** with regard to information are transferred to its recipients. If passing on information can damage the company, however, **representatives** can incur individual responsibility. While this question has never been brought before a Swedish Court, the ECJ held in *Grøngaard and Bang* (Case C-384/02) that the exemption from the prohibition of disclosure of insider information should be interpreted restrictively and that the scope for disclosing such information is limited (see Section 3 of the chapter on Finland). The Danish Supreme Court found that, for the two employees in the case, it was a natural aspect of their **employee representative** role to discuss a merger with their union members. Because Danish legislation is much like that in Sweden on this topic, it might be assumed that the Swedish Supreme Court would issue a similar statement about the possibility of sharing confidential information within a narrow circle, within the limits of the *Grøngaard and Bang* judgment.

More generally, Westerberg and Partners (2022) report that Sweden's Labour Court has exclusive jurisdiction in cases of misappropriation of trade secrets when the defendant is a current or former employee of the company, and the employer is bound by a collective agreement with a **trade union**. This Court's judgment cannot be appealed. The District Court in the defendant's domicile has jurisdiction in cases of misappropriation of trade secrets when the defendant is a current or former employee of the claimant, and the employer is not bound by a collective agreement with a **union**. It handles the case under the procedural rules in Swedish labour law, and its judgments are appealed to the Labour Court (Westerberg and Partners 2022).

4. Relevant EU legislation

As with other Member States, Sweden has applied relevant EU legislative rules concerning confidentiality and worker representation. The amendment to the Act on Codetermination, based on an official experts' report commissioned by the government (SOU 2004: 85), transposed the **Framework Directive on information and consultation 2002/14/EC** (see Appendix tables). The **EWC Recast Directive 2009/38/EC** was implemented by Act 2011:427 on EWCs. Sweden applied EU legislative rules concerning the transposition of the **Whistleblowing Directive 2019/1937/EC** via Act (2021:890) (Whistleblowing Act).

Others include:

- the **Trade Secrets Directive 2016/493**, transposed via Act (2018:558);
- the **Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees (SE Directive)**, transposed by the Law on Workers Influence in SEs (2004:559);
- the **Worker Involvement in SCEs Directive 2003/72/EC**, transposed by the Law on Workers Influence in SCEs (2006:477);
- the **Directive 2005/56/EC on Cross-border Mergers of LLCs**, transposed by the Law on Workers' Participation in Cross-Border Mergers (2008:9); and
- the **Market Abuse Regulation 596/2014**, transposed via the Securities Market and Market Abuse Penalties Act (2016:1307).

5. Sources

Relevant provisions/Acts (selected)

Act on Codetermination at the Workplace (1976:580) (MBL). Unofficial translation, amendments up to and including SFS 2010: 229. https://www.government.se/contentassets/bea67b6c1de2488cb454f9acd4064961/sfs-1976_580-employment-co-determination-in-the-workplace-act-sfs-2021_1114.pdf (English).

DS 2022:56 (Stable employment law for a changing working life)

Law on Board Representation for Private Sector Employees (1987:1245). Unofficial translation, amendments up to and including SFS 2010:2053. https://www.government.se/government-policy/labour-law-and-work-environment/19871245-board-representation-private-sector-employees-act-lag-om-styrelserepresentation-for-privatanstallda/ (English).

Law on Workers' Participation in Cross-Border Mergers (2008:9)

Law on Employment Protection (1982:80). https://www.government.se/government-policy/labour-law-and-work-environment/198280-employment-protection-act-lag-om-anstallningsskydd/

Law on EWCs (2011:427). SE-MNE200938-2011-tr-en.pdf (English).

Law on special protection against reprisals for workers who report serious wrongdoings (2016:749).

Law on Trade Union Representatives' Status at the Workplace 1974, Swedish Ministry of Industry, Employment and Communications, SE-103 33, Stockholm. https://socialsciences.exeter.ac.uk/media/universityofexeter/collegeofsocialsciencesandinternationalstudies/politics/research/statorg/sweden/ngolawsite/labourlaw/Labour_Law-Trade_Union_Representatives_Act_-English.pdf (English).

Law on Workers Influence in SE (2004:559).

Law on Workers Influence in SCE (2006:477). https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=7439 (English).

Public Access to Information and Secrecy Act (1990:400). https://www.government.se/contentassets/2ca7601373824c8395fc1f38516e6e03/public-access-to-information-and-secrecy.pdf (English).

Public Employment Act (1994:260). Unofficial translation. https://www.government.se/government-policy/labour-law-and-work-environment/1994260-the-public-employment-act-lag-om-offentlig-anstallning/ (English).
Securities Market and Market Abuse Penalties Act (2016:1307). https://www.global-regulation.com/translation/sweden/8448552/law-%25282016%253a1307%2529-where-the-penalty-for-market-abuse-on-the-securities-market.html
SOU 2004:85 (Proposal for amendments to the Swedish framework of information and consultation rules). https://scholar.google.be/scholar?q=SOU+2004:85&hl=en&as_sdt=0&as_vis=1&oi=scholart (English).
SOU 2005:89 (Monitoring of Compliance with Collective Agreements).
Swedish Act (2021:890) (Law on special protection against reprisals for workers who report irregularities. Unofficial translation. https://www.government.se/contentassets/4c12e7e33d43403ea34067bbd240a3a9/act-on-the-protection-of-persons-reporting-irregularities-2021_890.pdf (English).
Swedish Companies Act (2005:551). https://www.yumpu.com/en/document/read/35325178/companies-act-sfs-2005551 (English).
Swedish Informant Protection in Certain Sectors of Economic Activity Act (Law 2017:151).
Trade Secrets Act (2018:558). WIPO IT Portal. https://www.wipo.int/wipolex/en/text/479010 (Swedish).
Prop. 1975/76, om hemspråksndervisning för invnndrarbarn (Proposition 1975/76:118) | Sveriges riksdag (riksdagen.se) (Swedish).
Prop. 2004/05:142, Marknadsmissbruk (Proposition 2004/05:142) | Sveriges riksdag (riksdagen.se) (Swedish).

Jurisprudence and commentaries

Grøngaard and Bang (C-384/02 Grøngaard and Bang [2005] ECR I-9939. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62002CJ0384&qid=1676334315564

References

Ågrup K. (2022) Update from Sweden – 2021, International Bar Association, 2.02.2022. https://www.ibanet.org/update-from-sweden-2021
Berg A. (1999) Managing directors positive about employee representatives on the board: Sweden, Eurofound, 27.07.1999. https://www.eurofound.europa.eu/es/resources/article/1999/managing-directors-positive-about-employee-representatives-board
Berg A. (2004) Committee proposes changes to implement EU information and consultation Directive, Eurofound, 6.09.2004. https://www.eurofound.europa.eu/en/resources/article/2004/committee-proposes-changes-implement-eu-information-and-consultation
Bergqvist O., Lunning L. and Toijer G. (1997) Medbestämmandelagen, Lagtext med kommentarer, Norstedts Juridik.
ETUI (2024) Sweden, worker-participation.eu. https://www.worker-participation.eu/national-industrial-relations/countries/sweden

Eurofound (2022) Working Life in Sweden, 19.05.2022. https://www.eurofound.europa.eu/country/sweden#background

Gullberg H. and Thomsson R. (1990) Arbetsmiljösekretess, Allmänna förlaget.

Holke D. and Olauson E. (2014) The co-determination Act. Section 37 f. och s. 312 f.

Holke D. and Olauson E. (2018) Co-determination law with commentary, Norstedts Juridik AB.

Jagodziński R. and Lorber P. (2015) Enforcement frameworks and employees' rights of access to enforcement procedures, in Jagodziński R. (ed.) Variations on a theme? The implementation of the EWC Recast Directive, ETUI, 107–178. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

Jagodziński R. and Stoop S. (2023) Access to justice for European Works Councils: A hands-on overview for practitioners, ETUC. https://www.etuc.org/en/access-justice-european-works-councils

Katz L. (2017) Negotiating international business – The negotiator's reference guide to 50 countries around the world, 3rd ed., CreateSpace.

Lafuente S. (2023) The quiet transnationalisation of board-level employee representation in national law and practice: a case for pan-European legislation, Working Paper 2023.06, ETUI. https://www.etui.org/publications/quiet-transnationalisation-board-level-employee-representation-national-law-and

Laulom S. and Dorssemont F. (2015) Fundamental principles of EWC Directive 2009/38/EC, in Jagodziński R. (ed.) Variations on a theme? The implementation of the EWC Recast Directive, ETUI, 33–68. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

Nicander H. (1995) Lojalitetsplikt före, under och efter avtalsförhållandet, Juridisk Tidskrift, 96, 31–49.

Nyström B. (2020) Freedom of association and trade union activity at the workplace in Sweden, Italian Labour Law Journal, 2 (13), 51–66. https://doi.org/10.6092/issn.1561-8048/11982

Rasnača Z. and Jagodziński R. (forthcoming) Confidentiality and workers' information and consultation rights: a jigsaw puzzle.

Sjödin E. (2015) A Europeanised worker influence. A legal study of the influence of the directive's implementation in Sweden, Iustus Förlag. https://www.diva-portal.org/smash/get/diva2:846084/FULLTEXT01.pdf

Swedish Ministry of Justice (2020) Public access to information and secrecy: the legislation in brief. https://www.government.se/contentassets/2ca7601373824c8395fc1f38516e6e03/public-access-to-information-and-secrecy.pdf

Swedish National Mediation Office (2019) Annual report 2019, Medlingsinstitutet. https://www.mi.se/app/uploads/MI-a%CC%8Arsrapport-bok-202019-ori_skm.pdf

Thorpe N. and Branson R. (2021) The EU whistleblowing Directive: a Swedish perspective, Fieldfisher, 7.12.2021. https://www.fieldfisher.com/en/insights/the-eu-whistleblowing-directive-a-swedish-perspect

Tønnesen U. (2022) Sweden passes whistleblower Directive, Integrity Line, 5.10.2022. https://www.integrityline.com/expertise/blog/genomforande-av-visselblasardirektivet/#:~:text=The%20Whistleblower%20Act%20(SFS%202016,while%20remaining%20protected%20from%20retaliation

Valdés Dal-Ré F. (2006) Directive 2001/86/EC supplementing the European Company with regard to the involvement of employees, Synthesis Report, Labour Asociados.

Vinge (2021) What an employer should know about the new whistleblowing Act, 15.06.2021. https://www.vinge.se/en/news/what-an-employer-should-know-about-the-new-whistleblowing-act/

Westerberg and Partners (2022) Trade secrets 2022: Sweden law & practice. https://westerberg.com/wp-content/uploads/2022/05/014_SWEDEN.pdf

United Kingdom

Based on a national report by Pascale Lorber

1. Regulatory context and information and consultation mechanisms

The United Kingdom's industrial relations system emphasises voluntarism in relationships between the social partners, and minimal state involvement. Collective bargaining is highly decentralised with a low level of coordination, and most takes place at the workplace or establishment level (Eurofound 2019). Furthermore, '(f)ormal "representativeness" criteria for unions and employer bodies are generally not used.' Representation occurs largely on a voluntary basis, most commonly conducted at the workplace level (Eurofound 2019).[571]

The so-called 'New Labour' government, elected in 1997, adopted a more conciliatory approach to unions than predecessor Conservative governments, but emphasised individual legal employment rights to protect workers. From 2010, under the Coalition government (the Conservative Party and Liberal Democrats), challenges to employer behaviour were restricted, with mediation promoted as a means of dispute resolution. Some earlier individual employment rights also diminished. The Conservatives, who were the sole party of government again from 2015, adopted the controversial **Trade Union Act 2016** (Eurofound 2019) although not all of its provisions were implemented at that time. While the share of employees who are union members seemed to bottom out at 23.3% in 2017, after slight increases over the next few years, it reached its lowest point in recent decades at 23.1% in 2021 (Statista 2023).

In the voluntarist tradition, the UK system largely developed via trade union engagement in consultation. The main form of collective representation and workers' voice has thus been through collective bargaining and **trade unions**. Furthermore, with **H&S**, representatives are often union representatives. However, since 1999 with the union recognition law and 2004 with the I&C regulation (particularly, the **Information and Consultation of Employee Regulations 2004 (ICER)** which transposed the Framework Directive on I&C 2002/14/EC), legislation enabled unions and employees, respectively, to use statutory procedures to seek the introduction of representation arrangements that are not established voluntarily, effecting in practice what has been termed 'legislatively-prompted voluntarism' (Terry et al. 2009). Moreover, unions have

571. Since 1999, statutory procedures have existed for establishing trade union recognition, although voluntary agreements have predominated.

tended to prefer recognition rather than seats on **joint consultative committees** (**JCCs**, sometimes known as works councils or employee forums, which largely concern consultation rather than negotiation). JCCs at times substitute for union representation but are also prevalent in workplaces that recognise unions, and are more common in public sector and larger workplaces. Research by Lomas et al. (2019) suggests that 'there is a significant and positive three-way moderating effect when JCCs are interacted (sic) with union representation and high-involvement management.'

Worker participation has thus developed through the EU's influence, challenging the single channel of representation in the United Kingdom (Davies and Kilpatrick 2004). This first occurred via directives related to restructuring (Collective Redundancies and Acquired Rights Directives). Subsequently, the national legal framework had to adapt to collective structures of representation, such as **EWCs**. However, UK law does not provide for **BLER**, although relevant instruments on **employee representation** in **SEs** and **SCEs** were transposed. From 1 January 2021, at the end of the Brexit transition, SEs were converted into UK Societates,[572] which retain the legal personality they had when they were SEs (Companies House 2020).

2. Relevant law and regulatory provisions

2.1 National law regulating and referring to confidentiality of information and consultation and worker representation

The United Kingdom takes a mainly statutory approach to legal frameworks on confidentiality. Generally, UK rules impose an obligation on the recipient of information to keep it confidential if labelled as such by an employer, and give preference to the employer regarding decisions to withhold information completely. UK law thus seems first to consider a potential breach of confidentially by an employee or a **representative** before examining when information can be withheld.

The **Information and Consultation of Employee Regulations 2004** (**ICER**) provides for the confidentiality of I&C for workers and their **I&C representatives** or **employee representative**.[573] Both before and since the existence of 'European influence,' the **Trade Union and Labour Relations (Consolidation) Act (TULRCA) 1992**, within a collective laissez-faire approach, has made provision for the disclosure of information for the purpose of collective bargaining. Confidentiality is mentioned, but the content of collective bargaining is not regulated.

---

572. UK branches of SEs registered in an EU member state have had to comply with the Overseas Company Regulations from 1 January 2021.

573. The Trade Union Act 2016 makes no reference to confidentiality.

With regard to **H&S**, Section 28 of the **Health and Safety at Work etc. Act 1974** (HWSA) provides for restrictions on disclosure of information, including in relation to **safety representatives** about matters affecting health, safety and welfare.

Concerning **EWCs**, the EWC Directive 94/45/EC and Information and Consultation Directive 02/14/EC were implemented in the United Kingdom via the **Transnational Information and Consultation of Employees (TICER) Regulations 1999** (amended by the **Transnational Information and Consultation of Employees (Amendment) Regulations 2010** to include the Recast Directive 2009/38/EC and the **ICER 2004**). These instruments transposed nearly verbatim the directives on confidentiality, as did transposition of the Employee Involvement in SEs 2001/86/EC, Employee Involvement in SCEs 2003/72/EC, and Cross-border Mergers of LLCs 2005/56/EC Directives via the **European Public LLC (Employee Involvement) (Great Britain) Regulations 2009** (Regulations 24 and 25 of Part 7); **SCE (Involvement of Employees) Regulations 2006** (Regulations 26 and 27 of Part 7); and **Companies (Cross-Border Mergers) Regulations 2007** (Regulations 41 and 42 of Chapter 6), respectively. Bercusson (2002) suggested that this re-emphasises a relative unfamiliarity of the notion of confidentiality in I&C in the United Kingdom and permeation of its statutes by EU concepts of I&C obligations. UK law does not require or protect confidentiality in other settings for I&C when worker representatives are consulted on redundancies or transfers of undertakings.

When the United Kingdom left the EU it retained EU social policy implemented pre-exit, but sources of law have become national rather than European. As such, they are subject to review by the UK government and Parliament, potentially without needing to be compliant with EU law or the ECJ's scrutiny.

2.2 National provisions concerning whistleblowing and whistleblowers' protection

In the United Kingdom, whistleblower protection has come primarily from the **Public Interest Disclosure Act 1998** (**PIDA**). Prior to its passage, common law protected whistleblowers when they disclosed confidential information that was in the public interest. The PIDA was passed after accidents which could have been avoided if workers who had spoken out had been listened to (Vickers 2000). It also responded to a wider practice of introducing 'gagging clauses' in employment contracts, preventing employees from speaking to the press or third parties about their employment, and making it a disciplinary offence if they did (Smith et al. 2017).

The **Public Interest Disclosure Act 1998** (**PIDA**), in force since 2 July 1999, provides protection for workers against dismissal or action short of dismissal (such as disciplinary actions) if they made a 'protected disclosure' (the relevant protection provided by this Act was inserted into Section 103A on dismissal of the

Employment Relations Act (ERA) 1996). The latter is defined as disclosing information which tends to reveal

- a criminal offence;
- a failure to comply with a legal obligation;
- a miscarriage of justice;
- a H&S danger;
- environmental damage; or
- deliberate concealment of any of these (Section 43B) (DLA Piper 2021, 2023; Protect[574] 2023).

In practice, the most common form of wrongdoing concerns failure to comply with a legal obligation, although disclosures about H&S matters have risen in the wake of the pandemic.

Since 2013, disclosure must also be made only if a worker has a reasonable belief that it is in the public interest, a change introduced by Section 17 of the **Enterprise and Regulatory Reform Act 2013**. Also, the cap on compensation for unfair dismissal has been lifted for whistleblowing. The legislation encourages internal disclosure first but allows for external disclosure to specific authorities and under certain conditions, notably, if there is a serious failure on the part of the employer under Sections 43C, 43G and 43H of the **Employment Relations Act (ERA) 1996**.

Under the law, whistleblowers are protected against all forms of retaliation, including threats and attempts of retaliation. The PIDA creates two levels of protection for whistleblowers:

- Section 47b of the **Employment Relations Act (ERA) 1996** protects workers from being subjected to any detrimental treatment on the grounds that they have made a 'protected disclosure'; and
- under Section 103A of the **Employment Relations Act (ERA) 1996**, an employee's dismissal will be automatically deemed unfair if the (main) reason for it is that they made a protected disclosure.

Other than these two protections, the **Public Interest Disclosure Act 1998 (PIDA)** does not provide for other measures of support or for a mechanism to bar retaliation. Under the above two provisions, an individual who has made a protected disclosure and has been subject to detriment or dismissal can claim compensation (with no upper limit) in the UK's Employment Tribunal. For dismissal cases, interim relief (an order for continued employment, pending the case outcome) can be sought, as can a final remedy (reinstatement or re-engagement).

For employees, under Section 43J of the **Employment Relations Act (ERA) 1996**, any provision in an employer–employee agreement is void if it seeks to prevent a worker from making a protected disclosure (in other words, this will not constitute a contractual breach of confidentiality). DLA Piper (2023) also observe

574. UK whistleblowing charity.

that the **Public Interest Disclosure Act 1998 (PIDA)** does not specify any sanctions for violations against whistleblowers' protection or the duty of keeping their identity confidential. Rather, it allows an employee to bring a detriment claim or to have their dismissal ruled unfair. The **Whistleblowing Code**, established by the UK Whistleblowing Commission in 2013, suggests it is best practice to establish such sanctions (DLA Piper 2023).

Whistleblowing protection in the United Kingdom (as in France) has taken priority over a confidentiality obligation, provided the relevant criteria of protected disclosure are respected. The protection afforded by UK whistleblowing legislation extends to employees (which could include **employee representatives**), agency workers, members of limited liability partnerships, judicial office-holders and workers who are not employees, and is a 'day one right' (Kingsley Napley 2022) – that is, it applies immediately and has no length of service requirement. Those who are not employees are protected from detrimental treatment by making a protected disclosure; similarly, employees are also protected from being subjected to detrimental treatment short of dismissal (Kingsley Napley 2022). However, Kingsley Napley (2022) also note that a key challenge in bringing a whistleblowing claim relates to showing that one has been subjected to harm on the basis of making a protected disclosure. Causation is even more challenging in dismissal cases. For the dismissal to be automatically unfair on whistleblowing grounds, it must be demonstrated that the sole or main reason for dismissal was the making of the protected whistleblowing disclosure. Some regulated sectors (such as financial services or health care) have specific, more onerous whistleblowing requirements.

Thus, while UK regulations grant comprehensive protection for whistleblowers, there are differences between UK and Directive requirements that the UK did not transpose prior to Brexit (DLA Piper 2021). Subsequently, it seems unlikely that the Directive will be implemented in the United Kingdom, and unclear whether UK legislation will be amended to incorporate the same rights to align UK workers' rights with those of their EU counterparts (DLA Piper 2021).

Notwithstanding this, under the **Trade and Cooperation Agreement**, effective from 1 January 2021, the UK and EU must commit to a 'level playing field' on the levels of protection in labour and social standards, with implications for UK legislation. Furthermore, in late March 2021, the UK government committed to reviewing existing whistleblowing laws. This was in response to a record number of recent cases brought before the Employment Tribunal, and various associations calling for reform of the framework to secure greater protection for whistleblowers, particularly during the pandemic when many workers raised concerns about unsafe working practices. Indeed, the number of claims involving whistleblowing in the tribunal system rose by 92% between 2015 and 2023, which may 'point to failures in companies whose staff sound the alarm' (Gabert-Doyon 2024). The fitness for purpose of UK legislation has also been underscored by international developments since the **Public Interest Disclosure Act 1998**

(PIDA) came into force, in particular, the principles contained in the Council of Europe Recommendation[575] and the enactment of statutes elsewhere.

On 30 March 2023, the government launched a review with the UK Department for Business and Trade, gathering evidence on the effectiveness of the current regime. This was expected to be concluded by the end of 2023 (DTI 2023).

2.3 Implications of whistleblowers' protections for worker representatives handling confidential information

Worker representatives are covered by the whistleblowing protection as all the regulations transposing Directives refer to 'recipients' of information. However, UK law does not require or protect confidentiality in other settings for I&C when representatives are consulted on redundancies or transfers of undertakings. However, some obligations exist for **H&S representatives** under the **Safety Representatives and Safety Committee Regulations 1977** (see Section 2.5 of this chapter).

Section 43k of the **Public Interest Disclosure Act 1998 (PIDA)** protects not only employees but other workers, meaning that a wider definition of worker applies for whistleblowing than for other employment rights under the **Employment Relations Act (ERA) 1996**. The law does not protect facilitators, however; people connected to the whistleblower and who could suffer retaliation in a **work-related context**; or legal entities that a whistleblower owns, works for, or is otherwise connected to (DLA Piper 2023).

The **UK Whistleblowing Code of Practice** (see also Section 2.2 of this chapter) outlines best practice for whistleblowing policies for employers, workers and their **representatives** for effective whistleblowing arrangements. It sets out recommendations for raising, handling, training and reviewing of whistleblowing in the workplace (DLA Piper 2021, 2023). As noted, the **Public Interest Disclosure Act 1998 (PIDA)** does not require that employers implement a whistleblowing policy; they must merely refrain from subjecting whistleblowers to harm or dismissal if a protected disclosure is made. It is widely considered best practice for employers to develop and implement a whistleblowing policy, however, and both the Code and Department for Business, Energy and Industrial Strategy (BEIS) Guidance suggest what should be included.

UK statutory provisions contained in Part IVA of the **Employment Relations Act (ERA) 1996** and employer procedures give priority to internal reporting of alleged wrongdoing. In this context, Protect (2024) has advocated for a bill

---

575. As a departing Member State, the United Kingdom abstained from the European Council's vote in 2019 on implementation of the Directive. In a letter (4 October 2019) to the European Scrutiny Committee, its government declared that, due to the UK's exit from the EU, it was not required to transpose the Directive. Concerns about the 'overall proportionality' of the Directive were cited and that, prior to the legislation, the UK 'already exceeds EU minimums in a number of areas of worker rights.'

that will extend legal protection to **trade union representatives** who do not work for the whistleblower's employer but are at risk of victimisation for raising whistleblowing concerns. The new clause would also offer legal protection to **representatives** who suffer harm as a result of assisting a whistleblower (for example, writing documents or attending meetings), but who do not make a disclosure themselves. However, Lewis and Vanderkerckhove (2016) noted that UK research shows that unions are frequently used by whistleblowers as recipients but not as a first port of call, with mixed results. This is despite that fact, they argued, that trade unions are vital to ensuring that appropriate whistleblowing arrangements are introduced, applied and reviewed; the possibility that members are more likely to raise a concern in a union environment; and that employers are more likely to respond appropriately if there is a strong union presence in the workplace.

2.4 Confidential information versus trade secrets

As already indicated, no statutory definition of confidentiality exists in the United Kingdom in relation to I&C instruments, which largely replicate the provisions of relevant EU directives. There is thus no legal procedure to follow for information to be labelled confidential (cf. whistleblowing – see Sections 2.2 and 2.3 of this chapter). Indeed, the United Kingdom, like Poland, has been described as having an employer-centred approach to regulating confidentiality, the employer largely being in charge of defining which information should be kept confidential. This contrasts with a 'cooperative' or 'bargaining-based' approach in Sweden (see earlier), and approaches elsewhere that fall somewhere in-between (Rasnača and Jagodziński forthcoming).

The duty not to misuse confidential information extends to an employer's trade secrets. In the United Kingdom, trade secrets have no statutory or case law definition. Academics take the view that secrecy of this kind refers not so much to knowledge of business organisations but rather to a 'secret process or formula, detailed design of a machine … confidential information of a non-technical or non-scientific nature (disclosure of which to a competitor could cause significant harm) or detailed knowledge of the working of a specialised business' (Smith et al. 2017: 111).

2.5 Worker representation bodies and representatives' information and consultation rights and duties

When the **Information and Consultation of Employee Regulations 2004 (ICER)** initially came into force in April 2005, it gave workers in all commercial organisations with 50 or more employees a legal right to request I&C arrangements about key issues that affect their work and work organisation. This right does not occur automatically, however. Employers can act proactively to reach agreement with their workforce about I&C issues, choosing to set up a **staff forum** to consult with and inform the workforce about key issues. Alternatively, the employees can take the initiative. Until the 2020 changes (below), it took a formal request from

at least 20% of the workforce (with an absolute minimum of 15 employees) to trigger the regulations and start formal negotiations to set up I&C arrangements (Chartered Institute of Personnel and Development (CIPD) 2024).

From April 2020, however, the formal request threshold was reduced to 2% (although the absolute minimum remained at 15 employees). Firms with pre-existing I&C arrangements do not necessarily have to make any changes in response to a request; those without existing arrangements have six months from the time of a valid request to reach agreement before they are automatically required to adopt the fallback arrangements specified in the regulations (CIPD 2024). However, pre-existing or newly-negotiated arrangements must:

- be set down in writing;
- cover all employees in the undertaking;
- set out the ways in which the employer will inform and consult employees or their **representatives**;
- be approved by employees; and
- set out the topics that employees will be informed and consulted about (CIPD 2024; our emphasis).

To satisfy the standard provisions of the regulations in the absence of a negotiated agreement, I&C topics must at least include: the economic situation of the business; employees' job prospects; and major changes to how work is organised. In the case of pre-existing or negotiated agreements, topics are up for discussion and negotiation with the workforce, although the above areas still provide a good starting point for this (CIPD 2024). All of the above is in addition to separate legal requirements for the employer to consult the workforce about redundancies, changes to pension schemes, or plans to transfer ownership of the business.

Before and since the existence of so-called 'European influence', however, social dialogue in the United Kingdom has been conducted through collective bargaining. Within a collective laissez-faire approach, the content of collective bargaining has not been regulated but there is an obligation to disclose information for the purpose of collective bargaining where confidentiality is mentioned. Under Section 181 of the **Trade Union and Labour Relations (Consolidation) Act (TULRCA) 1992**, an employer should disclose information:

> '(a) without which the **trade union representatives** would be to a material extent impeded in carrying on collective bargaining with him [sic]. and
> (b) which it would be in accordance with good industrial relations practice that he [sic] should disclose to them for the purposes of collective bargaining.' (Our emphasis)

With regard to **H&S**, UK legislation requires consultation with relevant representatives (usually **trade union representatives**) on matters that pre-date European objectives (Deakin and Morris 2012). The requirement to provide relevant information is subject to exceptions, including a complete withholding of confidential information when its disclosure may cause substantial injury to the employer's undertaking (phrased as for Section 182 of the **Trade Union and Labour Relations (Consolidation) Act (TULRCA) 1992** for collective

bargaining (see Regulation 7 of the **Safety Representatives and Safety Committees Regulations 1977** – UK Health and Safety Executive (HSE) 2013).

The **Transnational Information and Consultation of Employees Regulations 1999/3323 (TICER)** was the initial UK labour law requiring employers to inform and consult employees on significant changes to businesses, and transposed the first EWC Directive 1994/45/EC. Following the United Kingdom's withdrawal from the EU, the **Employment Rights (Amendment) (EU Exit) Regulations 2019 (amended TICER)** were adopted, taking effect from the end of the Brexit transition period. From 1 January 2021, no new requests to set up an EWC or **I&C procedure** could thus be made by employees in the United Kingdom. They can continue to participate in an **EWC**, however, if the agreement establishing it provides for that (Thomson Reuters 2024), and the Central Arbitration Committee (CAC), an independent tribunal with statutory powers that adjudicates on I&C matters, has jurisdiction to hear **EWC** complaints.

Provisions relevant to the ongoing operation of existing **EWCs** thus remain in force. Under the **Transnational Information and Consultation of Employees (Amendment) Regulations 2010**, Regulation 9 (amending Regulation 17) includes the following:

> '(e) for paragraph (5) substitute—
> "(5) If the parties decide to establish an information and consultation procedure instead of a **European Works Council**, the agreement establishing the procedure must specify a method by which the information and consultation representatives are to enjoy the right to meet to discuss the information conveyed to them".' (Our emphasis)

Also, where information disclosed under an **EWC agreement** or **I&C procedure** includes information on the employment situation in the Community-Scale undertaking(s), under regulation 9(f), it will include information related to the use of agency workers.

Regulation 10 of the amended TICER 2010 inserts a new Regulation 18A into the 1999 TICER Regulations, setting out how **EWC members** and **I&C representatives** are to be informed and consulted. Under Regulation 10(3), information should be provided at such a time and in such a manner that would enable recipients to acquaint themselves with and examine its content; make a detailed assessment of its possible impact; and, where appropriate, prepare for consultation. Regulation 10(5) requires that consultation should take place at a time and in a manner such as would enable an **EWC** or **I&C representatives** to give an opinion, based on the information given to them within a reasonable time after receiving it, 'having regard to the responsibilities of management to take decisions effectively' (Regulation 10(6)). Furthermore, in accordance with EWC Recast Directive 2009/38/EC, information provided to, and consultation of, **EWC members** and **I&C representatives** is confined to transnational matters.

With regard to **SEs**, in the **European Public LLC (Employee Involvement) (Great Britain) Regulations 2009** (which transposed the Directive 2001/86/

EC supplementing the Statute for a European Company with regard to the involvement of employees – SE Directive), Regulations 24 and 25 of Part 7 on confidential information primarily replicate Art. 8 of the Directives by emphasis of a first provision on breach of duty and a second on withholding information. Regulations 26 and 27 of Part 7 in the **SCE (Involvement of Employees) Regulations 2006** (which transposed Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees – SCE Directive) similarly matches Art. 10 of the SCE Directive. The situation is similar with Directive 2005/56/EC on Cross-border Mergers of LLCs transposed by the **Companies (Cross-Border Mergers) Regulations 2007** and its Regulations 41 (duty of confidentiality) and 42 (withholding of information by the transferee or merging company) in Chapter 6. Complete withholding of information is also subject to objective criteria, determined on the basis of serious harm to the company's functioning or prejudice to it if the information is disclosed.

2.6 Challenging company decisions and accessing justice

UK law appears to leave the choice of classifying information as confidential to the employer. Only if this is challenged by the information recipient (for example, with a view to sharing it with the rest of the workforce or **local representatives**) would the CAC apply a 'reasonableness' test. For example, Regulation 25(6) of the **Information and Consultation of Employee Regulations 2004 (ICER)** states:

> 'A recipient to whom the employer has entrusted any information or document on terms requiring it to be held in confidence may apply to the CAC for a declaration as to whether it was reasonable for the employer to require the recipient to hold the information or document in confidence.'

Reasonableness is measured in terms of whether the availability of the information would have caused harm to the undertaking. Moreover, the UK government produced a guide on the ICER (Department of Trade and Industry (DTI) 2006) which includes a section on 'confidentiality.' This 'soft law' has been used as evidence in cases brought before the CAC, and is considered to have some 'persuasive weight', even if not binding.

Under Para. 1 of Section 183 (Complaint of failure to disclose information) of the **Trade Union and Labour Relations (Consolidation) Act (TULRCA) 1992**, a **trade union** can complain in writing to the CAC that an employer has failed

> '(a) to disclose to representatives of the union information which he (sic) was required to disclose to them by Section 181, or
> (b) to confirm such information in writing in accordance with that section.'

If the CAC takes the view that the matter is likely to be settled by conciliation, it can refer the complaint to the UK's Advisory, Conciliation and Arbitration Services (ACAS), an independent body of union and employer representatives and an independent chair, who advise both employers and employees and can resolve individual and collective conflicts via mediation or conciliation, and notify **trade**

union and employer accordingly. ACAS will then seek to promote settlement of the matter. If the complaint is not settled or withdrawn, and ACAS perceives that further attempts at conciliation are unlikely to reach a settlement, it will inform the CAC of its opinion. The CAC will hear and determine the complaint and make a declaration, stating whether it finds the complaint well-founded and why.

Under Para. 5 of Section 183, if the CAC finds the complaint partly or wholly well-founded, its declaration will specify:

> '(a) the information in respect of which the Committee finds that the complaint is well founded.
> (b) the date (or, if more than one, the earliest date) on which the employer refused or failed to disclose or, as the case may be, to confirm in writing, any of the information in question; and
> (c) a period (not being less than one week from the date of the declaration) within which the employer ought to disclose that information, or, as the case may be, to confirm it in writing.'

Furthermore, Section 184 of the **Trade Union and Labour Relations (Consolidation) Act (TULRCA) 1992** outlines processes concerning further complaints of failure to comply with the declaration, while Section 185 provides for the determination of claim and award (legislation.gov.uk 2024a). As already mentioned, UK law does not require or protect confidentiality in other settings for I&C when **worker representatives** are consulted on redundancies or transfers of undertakings.

With regard to **H&S**, as noted, UK legislation requires consultation with **relevant representatives** (usually **trade union representatives**) on matters that pre-date European obligations. If an employer does not comply with Regulation 7 of the **Safety Representatives and Safety Committees Regulations 1977**, **H&S inspectors** (from HSE and local authorities) may enforce the regulations where there is no evidence of consultation.

In the United Kingdom, an **EWC** can go to court (or a similar labour council or arbitration institution) to challenge the imposed duty of confidentiality. Moreover, under the **Transnational Information and Consultation of Employees (Amendment) Regulations 2010**, Regulations 19C and 19D oblige **EWCs** to inform employees of the outcome of the I&C procedure, while employees or **employee representatives** have a right to complain to the CAC if this does not happen within six months from the date of the alleged failure to inform or the provision of false or incomplete information. 'The UK has thus gone beyond the legal minimum set by the Directive, but not in a direction that seems to be encouraged by the European legislator as there is no trace of such a zealous interpretation of the Directive in the Expert Group Report (European Commission [2010] or any similar document' (Cremers and Lorber 2015: 102–103). Furthermore, Regulations 19E and 19F of the amended Act impose, respectively, a new obligation for I&C of EWCs to be linked to the I&C of **national employee representation bodies**; and for the initiation of negotiations for the establishment of an **EWC** or **I&C procedure** where the structure of a Community-Scale Undertaking(s) changes significantly.

With regard to **SEs**, under Para. 24(1) of Part 7 of the **European Public LLC (Employee Involvement) (Great Britain) Regulations 2009**, a breach of statutory duty occurs when an SE, its subsidiary, a participating company or a concerned subsidiary does not follow the terms on which confidential information was disclosed to a person. Moreover, this individual (who could include an **employee representative**) must not disclose the information except in accordance with those terms. However, no action lies where the recipient reasonably believes the disclosure to be a protected disclosure under Section 43A of the **Employment Relations Act (ERA) 1996**. Under Para. 6, a recipient may apply to the CAC for a declaration on whether it was reasonable for the body (for example, an organisation) to require them to hold the information in confidence. If the CAC considers that the disclosure would not, or would be unlikely to, harm the company's legitimate interests, it must declare that it was not reasonable for it to make the recipient keep the information confidential (Para. 7). If a declaration is made, the information is then not regarded as having been entrusted to the applicant or any other recipient on terms requiring it to be held in confidence (Para. 8).

On withholding information, under Para. 25(1) of Part 7 of the Act, neither an SE or a participating company has to disclose information to a person where it would, according to objective criteria, seriously harm its functioning, or would be prejudicial to an SE or its subsidiaries or establishments, or the participating company or its subsidiaries or establishments. Under Para. 25(2), where there is a dispute between the SE or participating company and a **representative body**, **member of that body**, **I&C representative** or an **employee** concerning the nature of the information which the SE or participating company has failed to provide is such as is described in Para. (1), then an SE or participating company, or a person (referred to in sub-para. (a) or (b) in Para. 25(2)) may apply to the CAC for a declaration about its nature. If the CAC's declaration is that the information would not be seriously harmful or prejudicial, it will order a company to disclose the information in a particular manner (Para. 25(4)) (legislation.gov.uk 2024b).

Similar provisions on confidentiality and withholding information apply in an **SCE**, its subsidiary, a participating legal entity, any concerned subsidiary, or a participating individual under Parts 26 and 27 of the **SCE (Involvement of Employees) Regulations 2006** (legislation.gov.uk 2024c). Under Parts 41 and 42 of Chapter 6 of the **Companies (Cross-Border Mergers) Regulations 2007**, the same holds for a transferee company or merging company, and in disputes with a **member of an appointed or elected SNB** or, in their absence, an employee (legislation.gov.uk 2024d).

2.7 Worker representatives' duties in relation to maintaining confidentiality, and their contacts with other representatives and stakeholders

As already noted, UK law seems first to consider a potential breach of confidentially by an **employee** or **representative** before examining when information can

be withheld. National regulations do not specify that information is held in confidence, even after the expiry of **representatives'** terms of office, in contrast with the requirements of both EWC and I&C directives. An employer may disclose information but flag it as confidential and require that only some parties be privy to it. With this disclosure comes the obligation of the recipient not to disclose it to others.

Section 182 of the **Trade Union and Labour Relations (Consolidation) Act (TULRCA) 1992** restricts the general duty to disclose information (by indicating that information given in confidence to an employee should not be disclosed; similarly, information that would cause substantial injury should not be disclosed). Furthermore, ACAS says more about the restrictions in this section and, in Section 181, about the idea of 'good industrial relations' (ACAS 2003). While these aspects relate to collective bargaining and not I&C, there may be an overlap in terms of topics (for example, with financial information which may be disclosed in either collective bargaining and I&C). Thus, workers and their **representatives'** rights can be better delineated with ACAS guidance (when considering serious harm to the company), given the absence of assistance in statutory instruments on I&C.

Moreover, under Section 25(1) of the **Information and Consultation of Employee Regulations 2004 (ICER)**, anyone to whom an employer entrusts information in confidence must not disclose it, except 'where the terms permit him (sic) to do so.' This could include **I&C representatives, negotiating representatives, experts** or **advisors**. Under Section 26, an employee should not disclose information where it would, 'according to objective criteria … seriously harm the functioning of, or would be prejudicial to, the undertaking.' Under Section 26(2), in a dispute between the employer and an **I&C representative**, or in their absence, an **employee representative**, about the nature of information that an employer has not provided, the employer may apply to the CAC for a declaration on whether it is of a confidential nature. A CAC decision can be appealed only to the Employment Appeal Tribunal on a point of law. In addition, legislation on confidentiality for I&C purposes specifically exempts recipients of confidential information from their duty if disclosure is made under a reasonable belief that it is in the public interest. Regulation 25(5) provides that a statutory breach of the duty of confidentiality does not occur if the information recipient reasonably believed the disclosure to be a protected disclosure within the meaning of the **Employment Relations Act (ERA) 1996**.

With **H&S**, under Section 28(7) of the **Health and Safety at Work etc. Act 1974** (HWSA), a person must not disclose information obtained ('as a result of the exercise of any power conferred by section 14(4)(a) or 20'), including, in particular, any information about a trade secret except for the purpose of their functions, legal proceedings or an investigation or inquiry, or with relevant consent. Where necessary to help to keep employees (or their **representatives**) at any premises adequately informed about health, safety and welfare matters, an inspector shall give them certain types of information (factual information or information on action that is planned in relation to the premises) to enable them to perform their functions. The inspector will also give the same information to

their employer. Relevant information cannot be disclosed without the consent of its provider (Regulation 28(2)).

With regard to **EWCs**, similar protection can be found under Regulation 23(5) of the **Transnational information and consultation of Employees (TICER) Regulations 1999** (this term is not found in the **Transnational Information and Consultation of Employees (Amendment) Regulations 2010**). The equivalent provision in the **European Public LLC (Employee Involvement) (Great Britain) Regulations 2009** (for **SEs**) is Regulation 24(5), and in the **SCE (Involvement of Employees) Regulations 2006** in Regulation 26(5).

As in Italy, the Netherlands and Spain, national EWC legislation in the United Kingdom specifies that the provision of I&C for the **EWC** and **local employee representation bodies** shall begin: 'simultaneously'; 'as far as possible at the same time'; 'within reasonable time of each other'; or 'in a coordinated manner.' In an EWC agreement, if all levels are informed at the same time, there is no reason to impose confidentiality on **EWC representatives** with regard to **local representatives**. This should be secured in the agreement (Jagodziński and Stoop 2021).

2.8 Sanctions for breaching confidentiality of information and consultation and remedies for workers and worker representatives

Under Regulation 25 of the **Information and Consultation of Employee Regulations 2004 (ICER)**, if employees, **representatives** or **experts** disclose confidential information or documents, they could be restrained by an injunction and/or sued for damages (see Squire et al. 2005). As already mentioned, the exception to this, under Regulation 25(5), is for protected disclosures in the public interest under Section 43A of the **Employment Rights Act (ERA) 1996**. Regulation 25 applies to a negotiated or standard agreement but not a pre-existing agreement (where the parties can agree on whatever confidentiality provisions they wish). Moreover, with a pre-existing or negotiated agreement, an employer can make disclosure of confidential information a disciplinary offence.

However, remedies available to **employee representatives** (or **employees** in their absence) when challenging whether information can only be disclosed to some parties or when it is withheld include a declaration or an order from the CAC. The CAC can declare that it was not reasonable for an employer to require the recipient of the information to keep it confidential (Regulation 25(6)). In such cases, the information is regarded as not held in confidence (Regulation 25(8)) and can be made public. Moreover, the CAC can order management to disclose information that it had originally withheld. Such an order can specify the content and form of the disclosure, and the recipients, restrictions and date (Regulation 26(4)). The CAC thus judges whether the disclosure can harm the undertaking or be prejudicial to it.

When it comes to **H&S**, under the **Health and Safety at Work etc. Act 1974** it is an offence, among other things, to intentionally obstruct an **inspector** exercising their duties (Regulation 33(h)); use or disclose any information in contravention of section 27(4) or 28 (Regulation 33(j)); or make a statement which they know is false or 'recklessly' make a statement that they know is false when it is '(i)n purported compliance with a requirement to furnish any information imposed by or under any of the relevant statutory provisions; or (ii) for the purpose of obtaining the issue of a document under any of the relevant statutory provisions to himself (sic) or another person' (Regulation 33(k)). Schedule 3A of the Act specifies the nature of the legal proceedings and the maximum penalty applicable to offences under this section and the existing statutory provisions. Regulation 42(1) provides that the court may, in addition to or rather than imposing a punishment, order a person convicted of an offence to remedy the matter.

With regard to **EWCs**, similar provisions to those in the ICER 2004 apply under the **Transnational Information and Consultation of Employees (Amendment) Regulations 2010**. Under Regulation 6(a) (amending Regulation 8(2)), '[w]here the CAC finds the complaint well-founded it shall make an order requiring the recipient to disclose information to the complainant.' Moreover, under Regulation 19(D), **worker representatives** are not only legally obliged to report back to their constituencies about **EWCs'** work but could also face criminal responsibility if they fail to do so (Cremers and Lorber 2015). In the event of such a failure, an **employee** or an **employee representative** can complain to the CAC.

Concerning **SEs**, under the **European Public Limited Liability Company (Employee Involvement) (Great Britain) Regulations 2009**, Regulation 24(5) provides that no action will be taken where a recipient of confidential information believed its disclosure was a protected disclosure, within the meaning given by Section 43A of the **Employment Rights Act 1996**. Moreover, the recipient can apply to the CAC for a declaration on whether it was reasonable for the company to require that they keep the information confidential (Regulation 24(6)). In **SCEs**, similar provisions (Regulation 26(6) of the **SCE (Involvement of Employees) Regulations 2006**) apply on whether or not a recipient of information must keep the information confidential.

2.9 Limitations on companies' application of confidentiality rules to information and consultation and to codetermination, and sanctions on companies or company representatives for abusing confidentiality rules

As already noted, UK law appears to consider a potential breach of confidentiality by an employee or a **representative** before examining when information can be withheld. Under Regulation 26(1) of the **Information and Consultation of Employee Regulations Act 2004 (ICER)**,

> 'The employer is not required to disclose any information or document to a person for the purposes of these Regulations where [its nature] is such that, according to objective criteria, the disclosure … would seriously harm the functioning of, or would be prejudicial to, the undertaking.'

Moreover, an employee (who could be an **employee representative**, **negotiating representative**, **I&C representative** or **candidate** for the latter role) who is unfairly dismissed (including for disclosing information while reasonably believing it to be a protected disclosure within the meaning of Section 43A of the **Employment Relations Act 1996 – ERA**), can seek recourse.

With **H&S**, under Regulation 2(2) of the **Health and Safety at Work etc. Act 1974** (HWSA), an employer must provide information, instruction, training and supervision needed to ensure, as far as is reasonably practicable, the H&S at work of their employees. Moreover, there is consultation with **relevant representatives** on matters that pre-date European obligations, with some exceptions.

With regard to **EWCs**, Regulation 24(1) of the **Transnational Information and Consultation of Employees (Amendment) Regulations 2010** provides an equivalent provision to Regulation 26(1) of the ICER (above). Moreover, under Regulation 12 (amending Regulation 20), where there is a failure to establish an **EWC** or **I&C procedure**, an Appeal Tribunal can issue a written penalty notice to central management, requiring it to pay up to GBP 100,000 to the Secretary of State. Under Regulation 13 (amending Regulation 21), where a relevant applicant (an **SNB** or **EWC member**) considers that information provided by management is incorrect or incomplete, a complaint must be brought within six months of the alleged non-compliance. If the CAC finds in their favour, within three months of its decision, the applicant can apply for a penalty notice to be issued. The CAC will then issue this to central management in writing, requiring it to pay a penalty to the Secretary of State.

Furthermore, Regulation 14 inserts a new Regulation 21A to provide a remedy for failures of management. A complaint can be made to the CAC by a relevant applicant on certain matters, including in relation to I&C. The CAC, if it finds the complaint well-founded, can order the 'defaulter' (management, central management or a representative agent) to take the necessary steps. Again, the relevant applicant can, within three months of the decision, apply to the CAC for a penalty notice to be issued, requiring the defaulter to pay a penalty to the Secretary of State. Regulation 15 (amending Regulation 22) concerns penalties. Thus, in the United Kingdom, the CAC will hear complaints and the Employment Appeal Tribunal will issue penalties, while in Northern Ireland, the Industrial Court will hear complaints and the High Court will issue penalties.

For **SEs**, as indicated, in the **European Public LLCs (Employee Involvement) (Great Britain) Regulations 2009**, Regulation 6(1) provides that, if the CAC finds an employee's or **employee representative's** complaint to be well-founded, it must make an order requiring the competent organ (for example, the

employer) to disclose information to them by a certain date (Regulation 6(3)). Under Regulation 24(7), if the CAC considers that a disclosure of information by the recipient would not, or would not be likely to, harm the legitimate interests of an undertaking, it must make a declaration that it was not reasonable for the employer to require the recipient to hold the information or document in confidence. If such a declaration is made, the information or document shall not at any time thereafter be regarded as having been entrusted in confidence (Regulation 24(8)). Under Regulation 25(2), an SE or participating company may apply to the CAC for a declaration on whether information or a document is confidential. If the CAC declares that its disclosure would not, according to objective criteria, 'be seriously harmful or prejudicial', it will order the company to disclose the information.

For **SCEs**, similar provision is made under Regulations 26 and 27 of Part 7 of the **SCE (Involvement of Employees) Regulations 2006**, which matches Art. 10 of the SCE Directive.

While companies listed on the Stock Exchange do not have to disclose to the workforce information that is price sensitive, and information (for example, about major restructuring) that may affect their share price may not be disclosed before it is made public, none of the **UK Listing rules**, the **City Code on Takeovers**, or **US rules** prevent a company from sharing price-sensitive information with **employee representatives** before it is disclosed to the market if they are bound by a duty of confidentiality (DTI 2006; Squire et al. 2005).

On whistleblowing, the **Public Interest Disclosure Act 1998 (PIDA)** does not provide a mechanism to prevent retaliation. However, remedies exist where an individual who has made a protected disclosure is subject to harm or dismissal. Where this occurs, employees may claim compensation at the Employment Tribunal (DLA Piper 2021). With dismissal, interim relief (an order for continued employment while awaiting the final outcome of the case) can also be sought, as well as a final remedy (reinstatement or re-engagement). There are no sanctions for false reports, and the Whistleblowing Code and BEIS Guidance are silent on this. They may be covered in a company's whistleblowing policy, however (DLA Piper 2021).

4. Illustrative case law

The following case law shows the type of information that has been withheld (financial information, cost of restructuring or sale of an undertaking), highlighting that this should be exceptional. In the Oracle case, an **EWC** member argued that labelling information as highly restricted and confidential prevented the EWC from fulfilling its role as they could not inform affected stakeholders of a restructuring situation. Management had clearly indicated that a set of slides could not be shared internally or externally and lack of compliance would lead to disciplinary action. Further information was also requested by the EWC to understand the rationale for the restructuring. It was withheld as the employer

argued potential harm for the undertaking. However, the CAC (2018) found in favour of the EWC:

> 'The evidence provided makes clear that the default position of the Employer is (a) not to disclose and (b) to classify as confidential anything it feels it has to disclose in order to comply with the minimum legal obligations. This stands in contrast to the thrust and intent of the Directive and Regulations which is that relevant information should be given to EWC, with protections available where it is objectively reasonable for management to argue that its disclosure would prejudice or seriously harm the undertaking.'

The CAC was critical of the blanket labelling of the information without time limit or identifying within the presentation what was confidential. The employer argued that allowing information disclosure would increase uncertainty and anxiety for l**ocal works councils** and **employee representatives**. The CAC stressed that this does not constitute potential prejudice or harm to the undertaking (CAC 2018).

Another CAC decision considered the reasonableness of withdrawing information, given the potential harm or prejudice caused to the undertaking. In the case of Vesuvius, the employer refused to disclose information about the global redundancy cost of a restructuring exercise that particularly affected the workforce in three Member States. It argued that providing this information would harm its negotiation of redundancy payments at local level as **EWC members** may have disclosed that information to **local representatives**. The CAC disagreed and considered that no harm was established. Instead, the employer could have given the information confidentially to avoid the risk that it had identified (CAC 2019).

At Verizon, the multinational announced the sale of one of its companies (Tumblr) in the press before informing the **EWC**. Part of the justification for withholding information was a non-disclosure agreement which included confidentiality requirements with a third party (the buyer). Despite the wish of the potential buyer to have exclusivity and confidentiality, the employer had to establish the harm that could have been caused by disclosure; otherwise, the earlier EWC law's (the **Transnational Information and Consultation of Employees (TICER) Regulations 1999**) obligations of I&C could be circumvented by a non-disclosure agreement in a sale situation. The CAC also emphasised that the complete withholding of information would be a rarity (CAC 2020). Having examined the commercial context, however, it agreed that the sensitivity of the sale justified the information delay to the EWC, even if the third party agreement would not have been sufficient to meet the criteria of Regulation 24.

4. Relevant EU legislation

While no longer an EU Member State, the United Kingdom has applied and retained provisions from relevant EU legislative rules on confidentiality and worker representation. The ICER 2004 transposes the **Framework Directive on Information and Consultation 2002/14/EC**, while the TICER 1999 (and amendment in 2010) reflect key provisions of the **EWC Directive 1994/95/**

EC and subsequent **EWC Recast Directive 2009/38/EC**, amending the Royal Decree of 10 August 1998 and the Law on Well-being of 1996. The United Kingdom has not transposed the **Whistleblowing Directive 2019/1937/EC** but national law (the PIDA 1998 – see Sections 2.2 and 2.3 of this chapter) includes fairly comprehensive provisions.

Others include:

- the **Directive on Employee Involvement in SEs 2001/86/EC**, transposed via the European Public LLC (Employee Involvement) (Great Britain) Regulations 2009;
- the **Directive on Employee Involvement in SCEs 2003/72/EC**, transposed via the SCE (Involvement of Employees) Regulations 2006; and
- the **Directive on Cross-border Mergers of LLCs 2005/56/EC**, transposed by the Companies (Cross-Border Mergers) Regulations 2007.

5. Sources

Relevant provisions/Acts (selected)

Companies (Crofass-Border Mergers) Regulations 2007.
https://www.legislation.gov.uk/uksi/2007/2974/pdfs/uksi_20072974_en.pdf (English).
Employment Relations Act (ERA) 1996.
https://www.lexisnexis.co.uk/legal/legislation/uk-parliament-acts/employment-rights-act-1996-c18#:~:text=Employment%20Rights%20Act%201996%20(1996,working%20and%20termination%20of%20employment (English).
Employment Rights (Amendment) (EU Exit) Regulations 2019.
https://www.legislation.gov.uk/uksi/2019/535/regulation/1/made
European Public LLC (Employee Involvement) (Great Britain) Regulations 2009
information and consultation of Employees Regulations (ICER) 2004.
https://www.legislation.gov.uk/uksi/2009/2401/contents (English).
Public Interest Disclosure Act (PIDA) 1998.
https://www.legislation.gov.uk/ukpga/1998/23/contents (English).
Regulation on employee involvement for the SE (the European Public LLC (Employee Involvement) (Great Britain) Regulations 2009.
https://www.legislation.gov.uk/uksi/2009/2401/regulation/19/made (English).
Safety Representatives and Safety Committee Regulations 1977.
https://www.legislation.gov.uk/uksi/1977/500/contents/made (English).
SCE (Involvement of Employees) Regulations 2006.
https://www.legislation.gov.uk/uksi/2006/2059/contents/made (English).
Trade and Cooperation Agreement, The EU-UK Trade and Cooperation Agreement – European Commission (europa.eu) (English).
Trade Union and Labour Relations (Consolidation) (TULRCA) Act 1992.
https://www.legislation.gov.uk/ukpga/1992/52/contents (English).
Transnational Information and Consultation of Employees (Amendment) Regulations (TICER) 2004.
https://www.legislation.gov.uk/uksi/2004/2518/contents/made (English).

Transnational Information and Consultation of Employees (Amendment) Regulations (TICER) 2010. https://www.legislation.gov.uk/uksi/2010/1088/contents/made (English).

Jurisprudence and commentaries

CAC (2017) The information and consultation regulations: a Guide for Employers and Employees to the role of the Central Arbitration Committee, April. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/622588/I__C_Guide_for_the_Parties__Version_7_-_April_2017_.pdf

CAC (2019) EWC/20/2019 Vesuvius. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/851576/Decision.pdf

CAC (2020) EWC/26/2020 Verizon (3). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878016/20_04_03_Decision.pdf

legislation.gov.uk (2024a) Trade Union and Labour Relations (Consolidation) Act 1992. https://www.legislation.gov.uk/ukpga/1992/52/part/IV/chapter/I/crossheading/disclosure-of-information-for-purposes-of-collective-bargaining

legislation.gov.uk (2024b) European Public LLC (Employee Involvement) (Great Britain) Regulations 2009. No. 2401. https://www.legislation.gov.uk/uksi/2009/2401/contents

legislation.gov.uk (2024c) The European Cooperative Society (Involvement of Employees) Regulations 2006, No. 2059. https://www.legislation.gov.uk/uksi/2006/2059/part/7/made

legislation.gov.uk (2024d) The Companies (Cross-Border Mergers) Regulations 2007, No. 2974. https://www.legislation.gov.uk/uksi/2007/2974/contents/made

References

ACAS (2003) Code of Practice 2: Disclosure of information to trade unions for collective bargaining purposes, Advisory, Conciliation and Arbitration Service. https://www.acas.org.uk/acas-code-of-practice-on-disclosure-of-information-to-trade-unions-for-collective-bargaining

Bercusson B. (2002) The European social model comes to Britain, Industrial Law Journal, 31 (3), 209–244. https://doi.org/10.1093/ilj/31.3.209

CAC (2018) Transnational information and consultation of employees Regulations 1999 as amended by the 2010 regulations decision on complaints under regulation 21, 21A, 23 & 24, Central Arbitration Committee. https://assets.publishing.service.gov.uk/media/5a81831aed915d74e33fe9be/Decision.pdf

CIPD (2024) Information and consultation of employees (ICE), Chartered Institute of Personnel and Development. https://www.cipd.org/uk/knowledge/guides/communication-guide/

Companies House (2020) Guidance: running a UK Societas (UKS), 31.12.2020. https://www.gov.uk/government/publications/uk-societas/running-a-uk-societas-uks

Cremers J. and Lorber P. (2015) Transposition of provisions of the Recast Directive on the functioning of the European Works Council, in Jagodziński R. (ed.) Variations on a theme? The implementation of the EWC Recast Directive, ETUI, 85–106. https://www.etui.org/publications/books/variations-on-a-theme-the-implementation-of-the-ewc-recast-directive

Davies P. and Kilpatrick C. (2004) UK worker representation after single channel, Industrial Law Journal, 33 (2), 121–151. https://doi.org/10.1093/ilj/33.2.121
Deakin S. and Morris G. (2012) Labour law, 4th ed., Hart Publishing.
DLA Piper (2021) Whistleblowing laws in Europe: an international guide, Supplementary – UK.
DLA Piper (2023) Whistleblowing laws in Europe: an international guide. https://inform-new.dlapiper.com/125/5825/uploads/whistleblowing-laws-in-europe-an-international-guide-march-2023.pdf?intIaContactId=eC0cb7ZtS2QNfgPX%2fn7LAA%3d%3d&intExternalSystemId=1
DTI (2006) The information and consultation employees regulations 2004: DTI guidance, Department for Trade and Industry. http://webarchive.nationalarchives.gov.uk/20060217010415/http://www.dti.gov.uk/er/consultation/ic_guidance_Jan2006.pdf
DTI (2023) Review of the whistleblowing framework: terms of reference, Policy paper, Department for Business and Trade. https://www.gov.uk/government/publications/review-of-the-whistleblowing-framework/review-of-the-whistleblowing-framework-terms-of-reference
Eurofound (2019) Working life in the UK, 19.11.2019. https://www.eurofound.europa.eu/country/united-kingdom#work-organisation
HSE (2013) Consulting employees on health and safety: a brief guide to the law, Health and Safety Executive. https://www.hse.gov.uk/pubns/indg232.pdf
Jagodziński R. and Stoop S. (2021) How to deal with confidential information, Manual for European Workers' Representatives 04, ETUI. https://www.etui.org/publications/how-deal-confidential-information
Kingsley Napley (2022) Whistleblowing in the UK: a summary, 9.08.2023. https://www.kingsleynapley.co.uk/insights/blogs/employment-law-blog/whistleblowing-in-the-uk-a-summary
Lewis D. and Vanderkerckhove W. (2016) Trade unions and the whistleblowing process in the UK: an opportunity for strategic expansion?, Journal of Business Ethics, 148, 835–845. https://doi.org/10.1007/s10551-016-3015-z
Lomas R., Barry M., Bryson A., Kaufman B., Lomas G. and Wilkson A. (2019) The 'good workplace': the role of joint consultative committees, unions and HR policies in employee ratings of workplaces in Britain, Journal of Participation and Employee Ownership, 2 (1), 60–90. https://doi.org/10.1108/JPEO-09-2018-0024
Lorber P. (2018) Brexit and workers' rights: the meaning of a No Deal for transnational consultation, Global Workplace Law and Policy, 7.09.2018. http://regulatingforglobalization.com/2018/09/07/brexit-workers-rights-meaning-no-deal-transnational-consultation/
Protect (2024) Trade union reps. https://protect-advice.org.uk/protect-campaign-trade-union-reps/
Rasnača Z. and Jagodziński R. (forthcoming) Confidentiality and workers' information and consultation rights: a jigsaw puzzle.
Smith I., Baker A. and Warnock O. (2017) Smith and Wood's Employment Law, Oxford University Press.
Squire N., Healy K. and Broadbent J. (2005) Informing and consulting employees: the new law, Oxford University Press.
Statista (2023) Percentage of employees who are members of a trade union in the UK from 1995 to 2021. https://www.statista.com/statistics/287232/uk-trade-union-density/#:~:text=The%20share%20of%20employees%20that,percent%20when%20compared%20with%202020

Terry M., Purcell J., Hall M., Hutchinson S. and Parker J. (2009) Towards a 'legislatively-prompted voluntarism'? The impact of the UK information and consultation of Employees Regulations, paper presented at the 2009 ILERA Congress, Sydney, 24-27.08.2009. https://www.ilera-directory.org/15thworldcongress/files/papers/Track_2/Tue_P2_TERRY.pdf

Thomson Reuters (2024) Glossary: European Company. https://uk.practicallaw.thomsonreuters.com/8-107-6245?transitionType=Default&contextData=(sc.Default)&firstPage=true

Vickers L. (2000) Whistling in the wind? The public interest disclosure Act 1998, Legal Studies, 20 (3), 428–444. https://doi.org/10.1111/j.1748-121X.2000.tb00152.x

All links were checked on July 2024.

Cite as: Parker J. (ed.) (2024) Confidentiality of information and worker participation: comparative and selected country handbook, ETUI.

Appendix – tables

The objective of the Framework Directive on Information and Consultation 2002/14/EC in establishing a general framework for informing and consulting employees is 'mainly to consolidate the principle of information and consultation in the EU, whilst, on one hand, supplementing the existing Community directives and, on the other hand, filling the gaps in national laws and practices' (ILO 2020). Appendix table 1 overviews key dimensions of Art. 6 of the Directive on confidential information, and Appendix table 2 summarises other relevant Articles.

Appendix Table 1 **Transposition or otherwise of key confidentiality elements of the Framework Directive on Information and Consultation 2002/14/EC in seven EU Member States and the UK**

	Confidentiality concept	Confidentiality obligation limited to a certain period after expiry of mandates of those concerned	Possibility for an employer to withhold information and/or refuse consultation	Provision for administrative/ judicial review procedures where an employer requires confidentiality or does not provide information
Directive 2002/14/EC	Art. 6 Any information which, in the legitimate interest of the undertaking/ establishment, has expressly been provided to them in confidence	Not specified	Art. 6(2) Member States will provide, in specific cases and within the conditions and limits of national legislation, that the employer is not obliged to communicate information/ undertake consultation when the nature of such, according to objective criteria, would seriously harm the functioning of the undertaking or establishment or would be prejudicial to it	
Belgium	'possibility to cause harm or prejudice to the undertaking'; Art. 33 of Royal Decree of 27 November 1973 (AR 1973) concerning economic information provides that an employer may indicate to a works council the confidential character of the provided information, the diffusion of which could be prejudicial to the undertaking		Art. 27 of AR 1973 concerning economic information provides that the employer may be authorised to derogate from their obligation to provide the works council with certain information (enumerated in detail) which could be prejudicial to the undertaking. Derogation needs the prior approval of specially designated officials. Art. 3 of CCT 39 also makes similar provision for the possibility of non-communication of certain information	Under Art. 33 of AR 1973 concerning economic information, if there is any disagreement within the works council concerning the confidential character of the information, the works council will request approval from a designated official

	Confidentiality concept	Confidentiality obligation limited to a certain period after expiry of mandates of those concerned	Possibility for an employer to withhold information and/or refuse consultation	Provision for administrative/ judicial review procedures where an employer requires confidentiality or does not provide information
Finland	'commercial, industrial, business or professional secret'; specific information which should be kept secret	Did not explicitly transpose the relevant directive's requirement	Under Art. 59 of Act on Cooperation within Undertakings 334/2007, an employer is not obliged to provide employees or the representatives of the personnel group information the dissemination of which would, without prejudice, cause significant damage or harm to the undertaking or its operations	Not specified
Hungary	'commercial, industrial, business or professional secret'	No. Confidentiality obligation applies indefinitely to trade unions and works councils following expiry of their mandate or termination of their employment relationship	No	Not specified
Italy	'in the legitimate interest of the undertaking or establishment', without further specification	Yes. Worker representatives and experts assisting them are prohibited from revealing confidential information to workers or third parties for three years following expiry of their term of office. However, national collective agreements may authorise worker representatives and, where relevant, their advisers, to pass on confidential information to workers or third parties who are bound by a confidentiality agreement, provided that relevant procedures have been identified in the collective agreement	Employers are not required to engage in consultation or provide information which, for proven technical, organisational or production-related reasons, would create significant difficulties for the operation of the undertaking or damage it (Art. 5(2) Legislative Decree 25/2007). As De Matteis et al. (not dated:13) observe: Collective agreements do not recognise for the workers' representatives any codetermination right, but only the right to be informed and consulted on the most important decisions of the company	National collective agreements shall provide for the establishment of a conciliation committee for disputes concerning the confidentiality of the information provided and defined as such, and for establishing, in practice, the technical, organisational or production-related reasons according to which information would be liable to create significant difficulties for the operation of the undertaking concerned or damage it. Collective agreements will also provide the composition of the conciliation committee and its modus operandi (Art. 5(3) Legislative Decree 25/2007). It is not clear whether such collective agreements have been adopted up to now (2020) in order to transpose this provision

	Confidentiality concept	Confidentiality obligation limited to a certain period after expiry of mandates of those concerned	Possibility for an employer to withhold information and/or refuse consultation	Provision for administrative/ judicial review procedures where an employer requires confidentiality or does not provide information
Poland	'commercial, industrial, business or professional secret'	Yes. Works councils and experts are obliged not to disclose information that constitutes a company secret if the employer has requested to keep such information confidential for up to three years after expiry of their mandates. However, this does not prejudice separate provisions on confidentiality	Where particularly justified, an employer may withhold information from the works council if its disclosure may, according to objective criteria, seriously harm the functioning of, or cause considerable damage to the undertaking or establishment	Under Art. 16(3) of Act of 7 April 2006, if a works council believes that the request to keep information confidential or the refusal to provide information does not comply with the provisions of Art. 16(3) and (4), it may appeal to the district court (economic division) to waive the confidentiality or order the release of information or consultation. Under Art. 16(6), this does not prejudice separate provisions on confidentiality
Slovenia	'commercial, industrial, business or professional secret'	Did not explicitly transpose the relevant directive's requirement	No	Not specified
Sweden			Preparatory work to the Act on Codetermination at the Workplace (1976:580) and case law indicate that, in certain cases, an employer may be permitted to refrain from disclosing information to employee representatives or consulting them. The Labour Court has also upheld confidentiality in a transaction involving a listed company invoking the risk of affecting the trading of its shares and competitiveness	See sections under Art. 6 (1) and 6 (2) of the Directive above

	Confidentiality concept	Confidentiality obligation limited to a certain period after expiry of mandates of those concerned	Possibility for an employer to withhold information and/or refuse consultation	Provision for administrative/ judicial review procedures where an employer requires confidentiality or does not provide information
United Kingdom	'in the legitimate interest of the undertaking or establishment', without further specification	Employer indicates the terms, including the timing, under which confidential information may be further disclosed	Under Regulation 26 of ICER 2004, the employer is not required to disclose any information or document to a person or persons when, due to the nature of such information, according to objective criteria, its disclosure would seriously harm the functioning of, or would be prejudicial to, the undertaking	Under Regulation 25 of ICER 2004, a recipient to whom the employer has entrusted any information or document on terms requiring it to be held in confidence may apply to the CAC for a declaration as to whether this was reasonable. If the CAC considers that disclosure by the recipient would not, or would not be likely to, harm the legitimate interests of the undertaking, it shall make a declaration that it was not reasonable for the employer to require the recipient to hold the information or document in confidence. If such a declaration is made, the information or document shall not at any time thereafter be regarded as having been entrusted in confidence

Source: based on information in ILO (2020).

Appendix Table 2 **Transposition or otherwise of other key elements of the Framework Directive on Information and Consultation 2002/14/EC in seven EU Member States and the United Kingdom**

	Protection of employee representatives	Protection of rights	Provision for adequate sanctions	Link between Directive and other regulations
Directive 2002/14/EC	Art. 7 Member States shall ensure that employee representatives, when performing their functions, enjoy adequate protection and guarantees to enable them to carry out their assigned duties properly	Art. 8(1) Provision for appropriate measures in the event of non-compliance with the Directive by the employer or employee representatives (particularly of adequate administrative or judicial procedures to enable the obligations deriving from this Directive to be enforced)	Art. 8(2) Provision for adequate sanctions to be applied in the event of infringement of this Directive by the employer or employee representatives, that must be effective, proportionate and dissuasive	Art. 9 Link between this Directive and other Community and national provisions
Belgium	Employee representatives are given paid free time to fulfil their obligations. Provision for general protection of employee representatives during the performance of their tasks. Employers must provide facilities or appropriate conditions for the proper performance of employee representatives' tasks. Provision for specific protection against dismissal. Provision that the dismissal or transfer of a representative or other changes in their working conditions have to be submitted to obtain prior consent of a court. Provision of protection for workers who are somehow involved in the election procedure as voters or candidates	Under Art. 24 of Law of 20 September 1948, relevant disputes can be solved before the labour courts. Also, compliance with legal and regulatory provisions, as well as collective agreements rendered obligatory by way of Royal Decree is subject to the control of social inspectors or controllers	Several provisions (in laws, decrees or collective agreements) provide for penal sanctions in case of violation of the imposed obligations. Administrative sanctions are also provided for, in particular, in the law of 30/6/1971 on administrative sanctions. Art. 30 of Law of 20 September 1948 provides that Art. 458 Penal Code applies in case of abusive disclosure of global information, the nature of which is prejudicial to the undertaking. The sanction may be imprisonment or a fine	

	Protection of employee representatives	Protection of rights	Provision for adequate sanctions	Link between Directive and other regulations
Finland	Employee representatives have paid free time to fulfil their obligations. Provision for specific protection against dismissal. Provision that dismissal or transfer of a representative or other changes of their working conditions have to be submitted to obtain the prior consent of the representative body to which they belong	Under Art. 64 of Act 334/2007, if the employer fails to abide by the provisions of Articles 10–13 on provision of information, and thus jeopardises its reception, a court of law may, at the request of a staff representative and after having given the employer an opportunity to be consulted on the matter, oblige them to fulfil this duty within a specific time and set a fine to ensure that the order is complied with. Also, if the employer fails in their duty to prepare the personnel plan and training objectives, the Ministry of Labour may, at the request of a staff representative, seek from a court an order forcing the employer to comply. In accordance with Art. 66 of Act 334/2007, supervision of compliance with this Act shall be exercised by the Ministry and by the employers' and employees' associations that have concluded a nation-wide collective agreement whose provisions are required to be observed in the employment relationships of the undertaking	Art. 67 of Act 334/2007 provides that the employer or their representative, who intentionally or negligently fails to observe or violates the provisions of certain articles, shall be sanctioned with a fine for violation of the cooperation obligation. If an employer has dismissed, laid off or reduced the hours of an employee without complying, intentionally or negligently, with the requirement on cooperation, they must pay damages to that employee (Articles 62 and 63 of Act 334/2007). Also, infringement of staff representatives' rights may be subject to penal sanctions under the Penal Code (Chapter 38). Punishment for violation of the obligation of confidentiality as prescribed in Section 57 of Act 334/2007 is imposed pursuant to chapter 38, S.2(2) of the Penal Code, unless more severe punishment for the act is prescribed elsewhere than in chapter 38, S.1 of the Penal Code. For local government, breach of the local government cooperation requirement may be punished with a fine (Art. 24 of Law 449/2007). The law provides also, in a similar way to Act 2007, for damages to an employee whom their employer has dismissed or laid off or reduced their hours of work without complying with the legal requirements in the area of cooperation	

	Protection of employee representatives	Protection of rights	Provision for adequate sanctions	Link between Directive and other regulations
Hungary	Employers have to provide facilities or appropriate conditions for the proper performance of employee representatives' tasks. Provision that dismissal or transfer of the representative or other changes of their working conditions have to be submitted to obtain the prior consent of the representative body to which they belong	Under Art. 199 of the Labour Code, for non-compliance, works councils and trade unions may file legal action before the competent courts. Also, Art. 67 stipulates that any action taken by the employer in violation of Art. 65 (1-3) shall be construed as invalid. Works councils may file for court action for the establishment of such invalidity. The court shall pass its decision within 15 days in non-litigious proceedings	Under Art. 7 of Act LXXV of 1996 on Labour Inspection, the inspector is empowered in certain cases to impose a fine on the employer. The amount of the fine varies for a first infringement and for multiple infringements or a repeat offence. To establish the fine, account is taken of the duration of the state of non-compliance, the extent of the damage, and the number of workers affected. Also, by virtue of Government Decree 218/1999 (XII.28.) on certain infringements (Art. 95), any employer who infringes a) their obligation to provide for the organisation of representative bodies at the workplace to protect the economic and social interests of employees, b) rules concerning the protection under labour law and benefits to be accorded to employees performing a workplace interest representation function, members of the works council or council of public service employees, or labour protection representatives, and c) their obligations for measures objected to by the workplace representation body shall be liable to a fine of up to HUF 100,000. The labour and labour safety inspectors and the mining authority are also competent to implement the procedure applying to the aforementioned infringements. For violation of employment-related obligations by employees, they shall be subject to liability for any damages (Art. 166 Labour Code). The employer may enforce his claim for damages before the competent courts (Art. 173)	

	Protection of employee representatives	Protection of rights	Provision for adequate sanctions	Link between Directive and other regulations
Italy	Employee representatives have paid free time to fulfil their obligations. Provision for specific protection against transfer. Provision of protection for workers who are somehow involved in the election procedure as voters or candidates	Under Art. 7 Legislative Decree 25/2007, in case of infringement by employers of their obligations to provide information or engage in consultation, works councils may appeal to the competent Provincial Labour Directorate and, where appropriate, to the labour inspection and the authorities responsible for criminal matters	Under Art. 7 Legislative Decree 25/2007, infringement by employers of the obligation to provide information or engage in consultation shall be punished by the administrative penalty of a fine of between 3,000 and 18,000 euros for each infringement. Infringement by experts of provisions on confidential information shall be punished by the administrative penalty of between 1,033 and 6,198 euros. The competent body to which complaints should be addressed and which is responsible for applying the penalties referred to above is the competent Provincial Labour Directorate. To the extent that they are compatible, the provisions of Law No 689 of 24 November 1981 (penal law) and Legislative Decree No 124 of 23 April 2004 (on labour inspection) continue to apply. Also, Art. 5 of Legislative Decree 25/2007 provides that, in case employee representatives breach their confidentiality obligation, and without prejudice to the possibility of civil action being taken, the disciplinary measures laid down in the applicable collective agreements shall apply	Provides explicitly that the act transposing the Directive does not affect or is without prejudice to the national provisions transposing Directives 98/59/EC, 2001/23/EC, 94/45/EC and 97/74/EC
Poland	Employee representatives have paid free time to fulfil their obligations. Provision that dismissal or transfer of the representative or other changes of their working conditions have to be submitted to prior consent of the representative body to which they belong	In case of non-compliance with provisions of Act of 7 April 2006, works councils may bring the case before the competent general courts. Also, the labour inspector assumes the role of the public prosecutor in cases of commitment of the minor offences provided for in Art. 19 of the Act	Art. 19 of Act of 7 April 2006 provides for a fine or restriction of liberty in case of violation of the Act, particularly where the employer fails to inform or consult the works council on matters specified in the Act or hinders consultation or discriminates against a works council member in connection with their activities in the field with regard to information or consultation. The same sanctions are provided in case of disclosure of confidential information by a works council member or an expert	

	Protection of employee representatives	Protection of rights	Provision for adequate sanctions	Link between Directive and other regulations
Slovenia	Employee representatives have paid free time to fulfil their obligations. Provisions for general protection of employee representatives during the performance of their tasks. Provision that dismissal or transfer of the representative or other changes of their working conditions have to be submitted to obtain prior consent of the representative body to which they belong. In certain cases, protection is extended also after expiry of the office (for 1 year)	Articles 99-106 of the WPMA provide for the settlement of disputes between the works council and the employer. Such disputes are settled by arbitration and, eventually, before the labour court	The works council has the right to stay the implementation of individual decisions of the employer and to initiate procedures for settling the dispute a) within 8 days of receiving information that the employer has adopted a decision regarding changes of activity, any decline in economic activity, changes in the organisation of production and technological changes without informing the works council in advance of their intention to adopt a final decision thereon and b) within 8 days of receiving information that the employer has adopted a decision concerning status and personnel issues without acquainting the works council in advance of its intention to adopt the decision, in violation of the legal time limits and without requesting joint consultations. In these cases, the employer is not allowed to implement the decision until the final ruling of the competent court (Art. 98 WPMA). Also, under Art. 107 of the WPMA, a legal entity is to be fined for breaches of the right of workers to be informed and consulted. The WPMA as amended in 2007 states that a legal entity is to be fined between 4,000 and 20,000 euros for misdemeanours, whereas the penalty for the responsible person of a legal entity is between 1,000 and 2,000 euros. In addition, a single entrepreneur breaching the Act may be fined between 2,000 and 4,000 euros. A breach of workers' right to I&C may also be defined as a criminal 'breach of the right to be involved in decision-making' according to Art. 207 of the Slovenian Penal Code. The sentence may be in the form of a pecuniary penalty or imprisonment (up to 1 year). Under Art. 36(2) of the ERA, a worker is liable for a violation of the confidentiality obligation if they knew or should have known the nature of the data that they disclosed	Employee representatives who have the right to be informed and consulted under the Directive are not the same as those entitled to I&C on issues falling under other directives (for example, collective redundancies, transfer of undertakings)

	Protection of employee representatives	Protection of rights	Provision for adequate sanctions	Link between Directive and other regulations
Sweden	Employee representatives have paid free time to fulfil their obligations. Provision for general protection of employee representatives during the performance of their tasks	Under Section 54 of the MBL, employers, employees and organisations contravening the Codetermination Act or collective agreements must pay compensation for the damage caused. Under Section 56, a breach of the confidentiality obligation shall incur damages. Compensation proceedings are heard in the Labour Court or District Court	Under Sections 54 ff of the MBL and the relevant case law, contraventions of the Codetermination Act entail both financial and general penalties. The Labour Court, to a large extent, determines the level of damages according to the type of action, with the aim of counteracting actions that contravene the Act or collective agreements. An important principle is that it should not be profitable for an employer to disregard employees' rights in favour of other interests. Established practice of the courts is that damages for serious violations of the right of association can amount to SEK200,000, and to SEK300,000 for serious infringements of Section 11 of the MBL, for any employees' organisation	
United Kingdom	Employee representatives have paid free time to fulfil their obligations. Provision for general protection of employee representatives during the performance of their tasks. Provision for specific protection against dismissal. Provision of protection for workers who are somehow involved in the election procedure as voters or candidates	Regulation 22 of the ICER 2004 provides for complaints to be presented to the CAC regarding compliance with the terms of a negotiated agreement or the standard I&C provisions (PEAs are not mentioned in this regard). Regulation 38 enables the CAC to refer an application/ complaint to ACAS if it is of the opinion that it is reasonably likely to be settled by conciliation. Where the CAC finds the complaint well founded, it shall make a declaration to that effect and may make an order requiring the employer to take the necessary steps to comply with the agreement or the standard provisions. Where a declaration is made by the CAC, the applicant may make an application to the Employment Appeal Tribunal for a penalty notice to be issued	Regulation 23 of the ICER 2004 provides that the penalty notice issued by the Employment Appeal Tribunal will specify the amount of penalty payable and the date by which the penalty must be paid. No penalty set by the EAT under these regulations may exceed GBP 75,000, which would be paid into the Government's Consolidated Fund. For a breach of the confidentiality obligation by employees, Regulation 25 states that this obligation is a duty owed to the employer, and a breach of such is actionable accordingly, except where the recipient reasonably believed the disclosure to be a 'protected disclosure.' Regulation 30(4) provides that, where an employee has disclosed any information or document in breach of their duty of confidentiality, they cannot be regarded as unfairly dismissed where the reason (or principal reason) was the disclosure of confidential information, unless that employee reasonably believed it to be a 'protected disclosure'	Regulation 20(5) of the ICER 2004 Regulations provides that the employer's duties to inform and consult the I&C representatives on decisions that are likely to lead to substantial changes in work organisation or in contractual relations, including those related to collective redundancies and to transfers of undertakings, cease to apply once the employer is under a duty to inform and consult representatives under another Act, and they have notified the representatives in writing that they will comply with this duty under the Act, instead of under these Regulations. Interaction between the different directives on I&C may raise certain issues of coherence, particularly in Member States which have transposed the aforementioned directives in different acts and not in a single one

Source: based on information in ILO (2020).

Acronyms

ACAS	Advisory, Conciliation and Arbitration Service (UK)
ANAC	Autorità Nazionale AntiCorruzione/Italian National Anti-Corruption Authority
BLER	Board-level employee representation
CAC	Central Arbitration Committee (UK)
CCT	Collective Labour Agreement (Belgium)
CPC	Slovenian Commission for the Prevention of Corruption
CPPW	Committee for Prevention and Protection at Work
CFREU	Charter of Fundamental Rights of the European Union
DTI	Department of Trade and Industry (UK)
ECHR	European Court of Human Rights
ECJ	European Court of Justice
EU	European Union
EWC	European Works Council
GDPR	General Data Protection Regulation (EU)
H&S	Health and Safety
HSE	Health and Safety Executive (UK)
I&C	Information and consultation
ILO	International Labour Organization
JCC	Joint Consultative Committee (UK)
LLC	Limited Liability Company
MAR	Market Abuse Regulations
MBL	Lag om medbestämmande i arbetslivet (Act on Codetermination, Sweden)
MEAE	Ministry of Economic and Employment Affairs (Finland)
NCBA	National Collective Bargaining Agreement (Italy)
NGTT	Nemzeti Gazdasági és Társadalmi Tanács (National Economic and Social Council, Hungary)
NLC	National Labour Council (Belgium)
OCJ	Office of the Chancellor of Justice (Finland)
RLS	Rappresentante dei Lavoratori per la Sicurezza (employee representative for health and safety, Italy)
RSA	Rappresentanze sindacali aziendali (employee staff representative, Italy)
RSU	Rappresentanze sindacali unitarie (single trade union representation, Italy)
SAWC	Slovene Association of Works Councils (Slovenia)
SCE(WC)	Societas Cooperativa Europaea (Works Council)
SE(WC)	Societas Europaea (European Company) (Works Council)
SNB	Special negotiating body
VKF	Versenyszféra és a Kormány Állandó Konzultációs Fóruma (Permanent Consultative Forum of the Private Sector and the Government, Hungary)

Acknowledgements

This handbook is the culmination of many people's inputs and support.

Thanks are due to Silvia Rainone (Senior Researcher, European Trade Union Institute (ETUI)), Zane Rasnača (Senior Labour Mobility Officer, European Labour Authority (ELA) and former Senior Researcher, ETUI), Romuald (Romek) Jagodziński (freelance expert and researcher based in Gdansk, and former Researcher, ETUI) and Aline Hoffmann (Head of the Europeanisation of Industrial Relations Unit, ETUI) for their respective parts in conceptualising and initiating this project; developing the national report templates that underpin the country chapters; and/or collating the expert responses in these templates.

Each chapter of this handbook also draws on and updates expert reports commissioned in 2020 to provide information about confidentiality arrangements in work organisations in a range of EU Member States and the United Kingdom. Many thanks for these reports from Frank Hendrickx (Belgium), Maria Jauhiainen (Finland), Tamás Gyulavári (Hungary), Antonio Loffredo (Italy), Barbara Surdykowska (Poland), Valentina Franca (Slovenia), Sabrina D'Andrea (Sweden), and Pascale Lorber (United Kingdom).

Much appreciation is due to Sara Lafuente (Researcher, ETUI), Cyprian Szyszka (Education Officer, ETUI) and Aline Hoffmann (see above) for their suggestions and input on earlier content and formatting of this text. Thanks also to Zane Rasnača and Romek Jagodziński for making available their forthcoming article on confidentiality and workers' information and consultation (I&C) rights.

A thank you also goes to Wouter Zwysen (Senior Researcher, ETUI) for deftly handling the review process; to the reviewers, Lionel Fulton (Researcher, Labour Research Department, United Kingdom) and Professor Valeria Pulignano (Professor of Sociology at the Katholieke Universiteit Leuven (KU Leuven), Belgium) for their insights and helpful points; and to James Patterson (JP Northfield Ltd) for language editing. Warmest regards go also to our colleagues from the Communications and Publications Unit and Documentation Centre for correcting the references and formatting, printing and disseminating the publication, and to Mehmet Koksal (Head of Communications and Publication Unit, ETUI) and Bart Vanhercke (Director of Research, ETUI) for their sage advice and guidance in helping to bring this book to fruition. Last but not least, much gratitude is due to two individuals who prefer not to be named for being instrumental in improving the quality of the content and presentation of this publication.

European
Trade Union Institute
Bd du Jardin Botanique, 20
1000 Brussels

etui@etui.org
www.etui.org

D/2024/10.574/22
ISBN: 978-2-87452-721-0 (print version)
ISBN: 978-2-87452-720-3 (electronic version)

etui.