

Name of the country: [Ireland](#)

Transposition Act = 'European Communities (Transnational Information and Consultation of Employees Act 1996) (Amendment) Regulations 2011', Official publication: Iris Oifigiúil ; Publication date: 2011-07-19

**1. Presence of legally based administrative or judicial conflict solving procedures for:**

		No	Yes	Unclear	brief explanation
A	SNB (including the pre-SNB phase, i.e. requesting the necessary information about the company, staff distribution, etc.)		yes		
B	EWC based on Art. 6 agreements		Yes, but only via conciliation at the Workplace Relations Commission (WRC) (i.e. not a court)		
C	EWC based on art. 13 agreement	No, exclusion from coverage by the EWC Act			
D	EWC based on subsidiary requirements			Unclear	SR EWCs are mentioned in the EWC Act but are not referred to in the penal section of the act.

**2. Litigation on different sets of rights: presence of national provisions**

		No	Yes	Which authority (e.g., court) is competent <sup>1</sup>
A	Breaches against the provision of information to the SNB as per art. 4 (4) of Directive		Yes <sup>2</sup>	Disputes concerning—

<sup>1</sup> Material and geographical competence.

<sup>2</sup> With regard to companies failing to provide the legally-required information and failing to set up a Special Negotiating Body within 6 months of the applications, only the Minister for Enterprise, Trade and Employment has the right to prosecute the employer concerned. (source: 'Letter sent by SIPTU to Minister Varadker on 20th November, 2020 requesting changes to the EWC legislation as it is not fit for purpose.' Available at: EWC Directive transposition into Irish law [www.siptu.ie](http://www.siptu.ie) (last checked on 26/09/2022).



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	2009/38/EC (information on the number of employees)/Failure to establish a SNB			(a) the interpretation or operation of an agreement referred to in section 11(1), or establishment of SNB may be referred by either the central management or employees' representatives to an <u>independent arbitrator</u> . If the parties cannot reach agreement on the appointment or terms of appointment of an arbitrator, either of them may apply to the Labour Court established by section 10 of the Industrial Relations Act, 1946, which <u>shall refer the dispute to the arbitration</u> of one or more persons as it thinks fit. An arbitrator to whom under subsection (2) a dispute is referred shall make his or her determination on the basis of the written submissions of the parties, but may conduct a hearing, at which both parties may be present, if he or she thinks the circumstances of the case require it. <sup>3</sup>
B	Operation of the EWC: breaches and compliance with the law (statutes), agreement or Subsidiary Requirements	Unclear		Minister for Enterprise and Employment <sup>4</sup>
C	Challenging management on the use of confidentiality and		Yes	An arbitrator appointed by the Minister for Enterprise, Trade and Employment <sup>5</sup>

<sup>3</sup> Section 21 of the EWC Act (2018, consolidated).

<sup>4</sup> Art. Section 3 of the EWC Act (2018, consolidated).

<sup>5</sup> Section 20 of the EWC Act (2018, consolidated): 20.—(1) Disputes between the central management and employees (or their representatives) employed in the State concerning the withholding by the central management of commercially sensitive information or as to whether information disclosed by the central management in confidence to employees' representatives is of a kind that, pursuant to section 15, may not be revealed, may be referred by either the central management or employees' representatives to an independent arbitrator appointed by the Minister under regulations made for the purposes of this section.



	secrecy/withholding information)			
E	Individual rights of the SNB/EWC members under national EWC legislation		Yes <sup>6</sup> (protection of employee representatives, section 17 of the Act)	
F	(Others to be filled in)			

If yes, please take those differences into account when answering the following questions.

### 3. Capacity to act in court

		Brief explanation/ differences for 2A-2F above)
1	Who/which body can start a judicial procedure?	unclear
2	What legal status (ius standi) is a requirement to start a judicial procedure? (legal personality, capacity to act in courts, other forms?)	
3	What is the legal status of the EWC (legal personality or other capacity to act in court)?	According to the European Commission EWCs have collectively a legal capacity <sup>7</sup> although the European Commission (2018: 58) contradicts itself indicating that only individual workers representatives have a legal capacity on behalf of the EWC (European Commission 2018: 34).  According to Section 21 of the EWC Act, "employees' representatives", but it's unclear if they have this capacity individually or collectively as EWC.
4	In case of lacking capacity to act in court: how can it be circumvented (think of representation by trade unions)?	By individual EWC members starting litigation
5	Who represents the EWC in law?	Individual EWC members
6	What is the capacity to act in court of joint type ('forum' or French-type) EWCs composed of both	No reference in law

(2) An arbitrator appointed under subsection (1) shall be paid, from moneys made available for that purpose by the Oireachtas, such fees as the Minister, with the consent of the Minister for Finance, may determine.

(3) The parties to an arbitration under this section shall each bear their own costs. (4) The procedure adopted by the arbitrator shall, as far as practicable, protect the confidentiality of the information concerned. (5) A party to an arbitration under this section may not appeal to a court against a determination of the arbitrator except on a point of law.

<sup>6</sup> Section 17 of the EWC Act (consolidated). In relation to Section 17, cases are heard, in the first instance, at the adjudicator service and then appealed to the Labour Court.

<sup>7</sup> European Commission 2018: 34



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management and employees' representatives and can it be an obstacle?	
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#### 4. Starting a procedure and timelines

		Brief explanation
	What court	Proceedings in relation to a summary offence under section 18 [setting up an SNB] and confidentiality disputes [Section 20] may be brought and prosecuted by the Minister for Enterprise and Employment; however, according to analysis by the Irish SIPTU trade union 'industrial relations disputes coming under its remit can only be investigated and processed through the criminal courts at the discretion of the Minister for Enterprise and Employment.' <sup>8</sup>  Labour Courts (but very limited role <sup>9</sup> ) <sup>10</sup> ;
1	Does the law set conditions as to how the EWC can take a valid decision on entering a judicial procedure? Think of voting, quorum, the necessity of a physical meeting to take a decision,...	No
1.a	Does the law contain any requirements on the internal rules concerning question 1?	No
2	How does one file a case in court? (Who, format, steps)	The application must be lodged respectively in: 1) Workplace Relations Commission (WRC); 2) Minister for Enterprise, Trade and Employment; There are special forms for bringing actions, many of them are in downloadable form on the <a href="#">Courts Service</a> web site and the remainder are contained in the <a href="#">Court Rules</a> . These forms will indicate what elements must be included in the file. Some limited guidance can be sought from officials in the Courts Service, but these officials can only give procedural information as they are precluded from advising on the merits of a claim or recommending how to process it.
3	What is the deadline to start a judicial procedure?	

<sup>8</sup> In: 'Letter sent by SIPTU to Minister Varadker on 20th November, 2020 requesting changes to the EWC legislation as it is not fit for purpose.' Available at: [EWC Directive transposition into Irish law www.siptu.ie](http://www.siptu.ie) (last checked on 26/09/2022).

<sup>9</sup> Section 21 para (6): "(6) A party to an arbitration under this section may not appeal to a court against a determination of the arbitrator except on a point of law."

<sup>10</sup> At least in some cases: Section 17B of the EWC Act. (confirm or vary decision by an adjudication officer)



4	Are there other relevant deadlines in the judicial procedure?	The <a href="#">Rules</a> of each court specify the time limits and you can check this information with the Courts Service office where you lodge your claim <sup>11</sup>
5	What is the role of out of court settlements once a case has been filed?	
6	How long does a judicial procedure typically take?	
7	Is an injunction or a summary procedure possible?	

## 5. Costs

		Brief explanation
1	What are the court fees for a judicial procedure?	Court charges, known as court fees, are payable on most types of application. The fees must be paid when the application is lodged in the appropriate Courts Service Office. Details of the different fees are on the <a href="#">Courts Service</a> web site. Payments to a solicitor, should you use one, are different, and they are not a matter for the Courts Service. Should you instruct a solicitor he or she will advise you as to amount of the fee that will be charged and when it is to be paid. <sup>12</sup>
2	Is legal representation by a lawyer required in a judicial procedure?	It is not always necessary to use an intermediary, it is a matter for you to decide, and will depend upon the complexity of your case. If you do decide to use an intermediary, you must use a solicitor. The Law Society is the body which accredits and governs the profession of solicitor.
3	Who pays the costs for:	General clause: EWC members shall be afforded such reasonable facilities as will enable them to carry out their functions as employees' representatives promptly and efficiently <sup>13</sup> BUT: the parties to an arbitration under this section shall bear their own costs. <sup>14</sup>
	- Legal expert	Costs: <a href="https://e-justice.europa.eu/37/EN/costs?IRELAND&amp;member=1">https://e-justice.europa.eu/37/EN/costs?IRELAND&amp;member=1</a>
	- Court fees	
	- Other costs (travel/interpretation)	yes
4	Does a EWC normally have an independent budget and/or an own bank account under a given national legislation?	No

<sup>11</sup> [https://e-justice.europa.eu/34/EN/how\\_to\\_bring\\_a\\_case\\_to\\_court?IRELAND&member=1](https://e-justice.europa.eu/34/EN/how_to_bring_a_case_to_court?IRELAND&member=1)

<sup>12</sup> [https://e-justice.europa.eu/34/EN/how\\_to\\_bring\\_a\\_case\\_to\\_court?IRELAND&member=1](https://e-justice.europa.eu/34/EN/how_to_bring_a_case_to_court?IRELAND&member=1)

<sup>13</sup> Section 17 para 2

<sup>14</sup> Section 21 para 5 (EWC2018, consolidated)



5	Can the EWC be sentenced to pay the costs of the other party in the judicial procedure?	Yes, in arbitration each party covers its own costs <sup>15</sup> .
6	Can the EWC <i>members</i> be sentenced to pay the costs of the other party in the judicial procedure?	the parties to an arbitration under this section shall bear their own costs.

## 6. Sanctions

		Brief explanation
	How is a breach of law classified?	Offence <sup>16</sup> Administrative offence <sup>17</sup>
1	What are the sanctions for breaches of EWC laws?	<p>Financial penalty or imprisonment:</p> <p>(a) for obstruction of setting up an EWC/SNB (sharing information on workforce distribution, etc.): on summary conviction, to a fine not exceeding £1,500 or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both the fine and the imprisonment, or</p> <p>(b) on conviction on indictment, to a fine not exceeding £10,000 or, at the discretion of the court, to imprisonment for a term not exceeding three years or to both the fine and the imprisonment.</p> <p>(2) If the offence under [section 18(1), (2) or (3A) = setting up an EWC/SNB] is continued after conviction, the person shall be guilty of a further offence on every day on which the act or omission constituting the offence continues, and for each such further offence the person shall be liable on summary conviction to a fine not exceeding £200 or on conviction on indictment to a fine not exceeding £1,000.</p> <p>Comment: disputes between management and EWC are handled by an arbitrator; sanctions are imposed by 'court' (Labour Court??), but it is unclear how a case can be brought to court and by whom (public prosecutor? Labour Inspection?)</p> <hr/> <p>The European Commission sets the maximum at: Up to EUR 222 219<sup>18</sup></p>

<sup>15</sup> Section 20 para (3) of the EWC Act.

<sup>16</sup> Section 18 of the EWC Act.

<sup>17</sup> According to: European Commission 2018: 62

<sup>18</sup> According to: European Commission 2018: 62



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2	Can the court rule to stop or reverse the companies' decision-making?	There are decisions with regard to facilities and means for EWC members that an 'adjudication officer' can take and order the company to take specific actions <sup>19</sup> Unclear if a possibility to reverse a decision exists.
3	Whom should fines be paid to?	
4	Can a member of management be held personally liable (personal vs. corporate liability)	Yes <sup>20</sup>
5	Can individual EWC members be sentenced to pay fines or be subject to other sanctions?	Yes (e.g. in confidentiality breaches)
6	Can the EWC collectively be sentenced to pay fines or be subject to other sanctions?	Since it allegedly has no collective court capacity → probably not.

## 7. Out of court settlements

		Brief explanation
1.	In general, are alternative conflict resolutions available in a given country can out of court settlements be reached once a case has been filed? Does it happen in practice?	arbitration is the de facto default option, but interestingly The Arbitration Acts, 1954 and 1980, shall not apply to or in relation to an arbitration under section 20 or 21. (Section 23 of the EWC Act).

## 8. Resources for EWCs

		Brief explanation
1.	Can unions provide legal support or financing for litigation?	
2.	What other resources are available in terms of legal support to EWCs and/or EWC members in your country (e.g., Arbeiterkammer, legal support centres)	

<sup>19</sup> Section 17A of the EWC Act: "17A. A decision of an adjudication officer under section 41 of the Workplace Relations Act 2015 in relation to a complaint of a contravention of section 17 shall do one or more of the following, namely—(a) declare that the complaint was or, as the case may be, was not well founded, (b) order the employer to take a specified course of action, (c) order the employer to pay to the employee compensation of such amount (if any) as the adjudication officer considers just and equitable having regard to all of the circumstances.]. Such decision can be changed or approved by a Labour Court (Section 17B).

<sup>20</sup> Section 18.

