

Name of the country: [Italy](#)

Transposition Act = Legislative Decree No 113 of 2012 (= EWC Decree)

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		
C	EWC based on art. 13 agreement	No			The EWC Decree does not apply, hence no procedure to enforce
D	EWC based on subsidiary requirements		Yes		

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

		No	Yes	Which authority (e.g., court) is competent ¹
A	Breaches against the provision of information to the SNB as per art. 4 (4) of Directive 2009/38/EC (information on the number of employees)/Failure to establish a SNB		Yes	Dispute resolution committee dedicated/designed to solve EWC disputes; under supervision of “president of the court having jurisdiction over the Regional Department of Labour with authority to impose administrative penalties for the alleged infringements” ² .
B	Operation of the EWC: breaches and compliance with the law (statutes), agreement or Subsidiary Requirements		Yes	In case of no failure of conciliation: The Regional Department of Labour, of the province within whose territory the establishment of the Community-scale undertaking or of the Community-scale group of undertakings is situated
C	Challenging management on the use of confidentiality and secrecy/withholding information)		Yes	
E	Individual rights of the SNB/EWC members under national EWC legislation			There are some specific individual rights of the members of the SNB/EWC, provided by art. 12 of legislative decree 113/2012, aimed at guaranteeing their role and participation to the reunions

¹ Material and geographical competence.

² Art. 18 of the EWC Decree. Article 18 of legislative decree 113/2012 envisages that a conciliation procedure must be established in order to deal with disputes concerning the application of the decree regarding the establishment of the special negotiating body or of the agreement establishing an EWC, including article 10.1 and article 10.2. The conciliation procedure should be completed within 40 days. The conciliation committee is made of three members: one appointed by workers’ representatives, one by the company management and one appointed jointly by workers’ representatives and company management. Should the conciliation procedure fail, an administrative procedure to consider the dispute is started under the responsibility of the territorial offices of the Ministry of Labour and Social Policies. (Source: Roberto Pedersini, EWCs in Italy - Madrid, 20 November 2019).



F	(Others to be filled in)			
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3. Capacity to act in court

		Brief explanation/ differences for 2A-2F above)
1	Who/which body can start a judicial procedure?	EWC, SNB or employee representatives before Labour Inspectorate. Before Courts only trade unions ³
2	What legal status (ius standi) is a requirement to start a judicial procedure? (legal personality, capacity to act in courts, other forms?)	For the purpose of enforcement of EWC rights in front of the Labour Inspection legal capacity is enough.
3	What is the legal status of the EWC (legal personality or other capacity to act in court)?	Legal capacity
4	In case of lacking capacity to act in court: how can it be circumvented (think of representation by trade unions)?	Trade unions can bring a case to court, rather than to the Conciliation Committee
5	Who represents the EWC in law?	EWC members
6	What is the capacity to act in court of joint type ('forum' or French-type) EWCs composed of both management and employees' representatives and can it be an obstacle?	No differentiation in law

4. Starting a procedure and timelines

		Brief explanation
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,...	Yes: first an attempt at conciliation must be undertaken by the disputing/concerned parties. The law gives this function to the agreements. The majority principle seems to be applied anyway.
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)	A member can file a case in the competent court for the territory within the terms established by law for the type of right to be enforced. Notification by the entitled party to the Regional Department of Labour, of the province within whose territory the establishment of the Community-scale undertaking or of the Community-scale group of undertakings is situated
3	What is the deadline to start a judicial procedure?	21 days to appoint members of the dispute resolution committee + 21 days for them to meet to work out a solution

³ European Commission 2018: 58.



4	Are there other relevant deadlines in the judicial procedure?	Parties (EWC or management), within a period of twenty days of the request, appoint the members of the dispute resolution ⁴ committee. Within thirty days of the date of notification of the infringement, the persons concerned may send defence papers and documents to the Regional Director of Labour and may request to be heard by the same Director.
5	What is the role of out of court settlements once a case has been filed?	Out of court conciliation is the only route.
6	How long does a judicial procedure typically take?	In case of conciliation the deadline is 21 days.
7	Is an injunction or a summary procedure possible?	Not specifically

5. Costs

		Brief explanation
1	What are the court fees for a judicial procedure?	Determined by the Director of labour Inspection: "The Regional Director of Labour, or a person to whom authority is delegated, once he has examined the documents and the arguments set out in the defence papers as well as in the minutes of the failed resolution procedure, determines, with reasoned order, the sum due for the infringement and orders payment of it, together with costs." (Art. 18 of the EWC Decree).
2	Is legal representation by a lawyer required in a judicial procedure?	Applicable to court procedure only (not to dispute resolution committee): As a general rule, in courts of law you will have to be represented by a lawyer: professional representation is mandatory (obbligato di difesa tecnica). This rule does not apply to claims for small sums (claims of €1 100 or less before the justice of the peace) or if you yourself are a qualified lawyer (Section 86 of the Code of Civil Procedure). ⁵
3	Who pays the costs for:	The EWC members shall have the means required to apply the rights arising from this Legislative Decree
	- Legal expert	General clause: number of experts limited to one
	- Court fees	Reduced payment referred to in Article 16 of Act No. 689 of

⁴ Art. 18 para 3 of the EWC Decree. Should they fail to appoint someone within the aforesaid period referred to in paragraph 2, point c), the latter may be appointed, upon the request of the party that is first to take action, by the president of the court having jurisdiction over the Regional Department of Labour with authority to impose administrative penalties for the alleged infringements, in the event of a negative outcome of the dispute resolution procedure, identified in paragraphs 6 and 7.

⁵ https://e-justice.europa.eu/34/EN/how_to_bring_a_case_to_court?ITALY&member=1



		1981 shall apply ⁶ , for this purpose
	- Other costs (travel/interpretation)	
4	Does a EWC normally have an independent budget and/or an own bank account under a given national legislation?	No
5	Can the EWC be sentenced to pay the costs of the other party in the judicial procedure?	
6	Can the EWC <i>members</i> be sentenced to pay the costs of the other party in the judicial procedure?	According to the general law, it can happen in some cases

6. Sanctions

		Brief explanation
	How is a breach of law classified?	Administrative/labour law offence ⁷
1	What are the sanctions for breaches of EWC laws?	Various: <ol style="list-style-type: none"> 1. In the event of a breach of a judge's order to management (injunction) to fulfil its duty on information and consultation, the sanction is a custodial sentence of up to 3 months or a fine of up to 206 euros (Art. 650 of the Criminal Code). The decision of a criminal court can also be published in journals chosen by the judge (Art. 36 Criminal Code). 2. Confidentiality cases: an administrative financial administrative penalty ranging from 1033 to 6198 euros. 3. Other infringements 5,165 euros or 30,988 euros
2	Can the court rule to stop or reverse the	Disputable: yes ⁸ , yes ⁹ Sanction of null and void: disputable ¹⁰

⁶ Article 16. "(Reduced payment) Payment of a reduced amount equal to the third part of the maximum third part of the maximum penalty laid down for the infringement committed or, if more favourable and if the minimum of the penalty, equal to twice the relevant amount, in addition to the costs of the proceedings, within a period of sixty days from the immediate notification or, if no such notification has been made, of the notification of the details of the infringement." (Translated with www.DeepL.com/Translator (free version).

⁷ European Commission 2018: 35.

⁸ Inferred based on the literature (for example, European Commission 1998: 5; Borelli 2011: 5) arguing that a breach of information and consultation obligations violates Art. 28 of the 1970 Statuto dei Lavoratori (Act No. 300 of 20 May 1970 on Workers' Protection, also known as the Workers' Statute, as last amended by Decree Law 196 of 2003) allowing Italian trade unions to sue the employer on the grounds of any anti-union behaviour.

⁹ In the event of a breach of a judge's order to management (injunction) to fulfil its duty on information and consultation, the sanction is a custodial sentence of up to 3 months or a fine of up to 206 euros (Art. 650 of the Criminal Code). The decision of a criminal court can also be published in journals chosen by the judge (Art. 36 Criminal Code).

¹⁰ Inferred based on a ruling by the Corte di cassazione on collective redundancy procedures under Art. 4 of Statute No 223/1991, which lays down the employer's obligations to inform and consult the regional employment office and the in-company union representatives, states that dismissals based on Art. 4 are null



	companies' decision-making?	
3	Whom should fines be paid to?	Labour Inspection?
4	Can a member of management be held personally liable (personal vs. corporate liability)?	It depends on the case. Generally speaking yes.
5	Can individual EWC members be sentenced to pay fines or be subject to other sanctions?	Yes, especially in confidentiality cases.
6	Can the EWC collectively be sentenced to pay fines or be subject to other sanctions?	No

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?	<p>"A compulsory out-of-court conciliation is a precondition for admissibility of an application to the court, but the Italian law on procedure expressly provides that this process applies only to individual disputes. Furthermore, local or central government authorities may, in practice, conciliate and/or mediate in labour disputes even when the law does not provide for them to do so, acting either on their own initiative or at the request of the parties. This is now recognised government practice for safeguarding major public or collective interests at local or national level. As far as arbitration is concerned, this is designed only for individual disputes and does not play a role in collective disputes."¹¹</p> <p>Out of court settlements are the de facto standard (Art. 18 of the EWC Decree):</p> <ol style="list-style-type: none"> 1. First: "an attempt at conciliation" should be undertaken by the party concerned; 2. Second step: the signatory parties to the EWC Decree (Ministers of European Affairs, Justice, Labour and Social Policy, Foreign Affairs) provide for

and void if the statutory procedure has not been followed (Judgment No 6759 of 26 July 1996). (European Commission 1998: 5).

¹¹ van Hoek & Hendrickx F. (2009): 97.



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		<p>the setting up of a dispute resolution committee to solve in advance and in a non-adversarial way the disputes relating to all EWC disputes.</p> <p>The dispute resolution committee is composed of three members among whom:</p> <p>a) one appointed by the EWC or by the special negotiating body or by the employees' representatives acting within the scope of the information and consultation procedure; b) one appointed by the central management;</p> <p>c) one appointed by the parties by mutual agreement.</p> <p>3. The disputes resolution committee meets within twenty days and expresses, by a majority, a proposal for the amicable settlement of the dispute.</p>
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8. Resources for EWCs

		Brief explanation
1.	Can unions provide legal support or financing for litigation?	Yes. They can possibly bring a case to court on behalf of an EWC, rather than EWC starting a conciliation procedure. (this was the case in the case of Sofidel ¹² and Fiat ¹³)
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)	

¹² https://ewcdb.eu/sites/default/files/11015ori_IT.pdf

¹³ Here the trade union was affected directly by being excluded from the SNB, <https://ewcdb.eu/legal-provision/10096>

