

Name of the country: [Malta](#)

Transposition act = EWC Act consolidated (2017) = SUBSIDIARY LEGISLATION 452.107

EUROPEAN WORKS COUNCIL (FURTHER PROVISIONS) REGULATIONS 10th June, 2011, LEGAL NOTICE 217 of 2011, and by Legal Notices 282 of 2017.

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

		No	Yes <sup>1</sup>	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			
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 <sup>2</sup>
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	Industrial Tribunal
B	Operation of the EWC: breaches and compliance with the law (statutes), agreement or Subsidiary Requirements		Yes	
C	Challenging management on the use of confidentiality		Yes, both for: 1. Confidentiality <sup>3</sup>	Industrial Tribunal

<sup>1</sup> Any person who fails to comply with any obligation imposed on such person under these regulations shall be guilty of an offence and shall on conviction be liable to a fine (multa) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69) and not more than eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87). (Art. 11 of the EWC Act)

<sup>2</sup> Material and geographical competence.

<sup>3</sup> EWC Act, Art. 9: (3) Where a dispute arises as to the confidentiality of information or a document given to a recipient, the recipient whom the central or local management has entrusted with such information or document on terms requiring it to be held in confidence, may refer the dispute to the Industrial Tribunal for a decision as to whether it was reasonable for the management to require the recipient to hold the information or document in confidence.



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	and secrecy/withholding information)		2. <b>Secrecy (!)</b> – separate procedure <sup>4</sup>	
E	Individual rights of the SNB/EWC members under national EWC legislation		Yes: (9) Any person may make a written complaint in relation to any aspect relating to the election of the representatives to the Special Negotiating Body including the eligibility to stand for election, eligibility to vote or the organisation of such a ballot, to the Director responsible for Industrial and Employment Relations, who shall investigate whether such a complaint is well-founded and who may direct that appropriate measures be taken by any person involved to eliminate any grounds for well-founded complaints, and any decision taken by the Director on any matter relating to the organisation of the ballot shall be final.	Director responsible for Industrial and Employment Relations
F	(Others to be filled in)			

### 3. Capacity to act in court

		Brief explanation/ differences for 2A-2F above)
1	Who/which body can start a judicial procedure?	Unclear / not defined

(4) If the Industrial Tribunal considers that the disclosure of the information or the document by the recipient would not, or would not be likely to, prejudice or cause serious harm to the undertaking concerned, it shall make a declaration that it was not reasonable for the management to require the recipient to hold the information or document in confidence.

(5) If a declaration is made under sub-regulation (4), the information or document shall not at any time thereafter be regarded as having been entrusted to the recipient who made the application under sub-regulation (3), or to any other recipient, on terms requiring it to be held in confidence.

<sup>4</sup> EWC Act, Art. 9: (6) The central or local management is not required to disclose any information or document to a recipient when the nature of the information or document is such that, according to objective criteria, the disclosure of the information or document would seriously harm the functioning of, or would be prejudicial to the undertaking concerned.

(7) Where there is a dispute between the central or local management and a recipient as to whether the nature of the information or document which the competent organ has failed to provide is such as is described in sub-regulation (6), the management or a recipient may refer the dispute to the Industrial Tribunal for a decision as to whether the information or document is of such a nature.

(8) If the Industrial Tribunal decides that the disclosure of the information or document in question would not, according to objective criteria, seriously harm the functioning of, or be prejudicial to, the undertaking concerned, the Industrial Tribunal shall order the management to disclose the information or document, and the order shall specify:

- (a) the information or document to be disclosed;
- (b) the recipient or recipients to whom the information or document is to be disclosed;
- (c) any terms on which the information or document is to be disclosed; and
- (d) the date before which the information or document is to be disclosed.



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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)?	None mentioned
4	In case of lacking capacity to act in court: how can it be circumvented (think of representation by trade unions)?	
5	Who represents the EWC in law?	
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?	Not mentioned 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,...	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)	<p>A lawyer or legal procurator is needed to bring action in the Inferior Courts. If action is brought in the Superior Courts, both a lawyer and a legal procurator are required.</p> <p>The application must be drawn up in the Maltese language. It must be filed in writing and the lawyer or legal procurator must file it in person.</p> <p>A request may also be filed for proceedings to be conducted in the English language if one of the party is a foreigner.</p> <p>In Malta there is no possibility of filing an application by e-mail or fax.<sup>5</sup></p>
3	What is the deadline to start a judicial procedure?	A case may be brought to court at any time. However, the respondent is entitled to plead prescription at any stage of the proceedings in court. <sup>6</sup>
4	Are there other relevant deadlines in the judicial procedure?	

<sup>5</sup> [https://e-justice.europa.eu/34/EN/how\\_to\\_bring\\_a\\_case\\_to\\_court?MALTA&member=1](https://e-justice.europa.eu/34/EN/how_to_bring_a_case_to_court?MALTA&member=1)

<sup>6</sup> [https://e-justice.europa.eu/34/EN/how\\_to\\_bring\\_a\\_case\\_to\\_court?MALTA&member=1](https://e-justice.europa.eu/34/EN/how_to_bring_a_case_to_court?MALTA&member=1)



5	What is the role of out of court settlements once a case has been filed?	None present
6	How long does a judicial procedure typically take?	
7	Is an injunction or a summary procedure possible?	In confidentiality and secrecy disputes: (8) (...) the Industrial Tribunal shall order the management to disclose the information or document, and the order shall specify (...)’ (Art. 9, EWC Act)  In election procedure: Director responsible for Industrial and Employment Relations, who shall investigate whether such a complaint is well-founded and who may direct that appropriate measures be taken by any person involved to eliminate any grounds for well-founded complaints (Art. 6)

## 5. Costs

		Brief explanation
1	What are the court fees for a judicial procedure?	When an application is made, the corresponding charge must be paid. The amount of the charge varies according to the type of case and/or the value of the claim. An advocate (lawyer) or legal procurator makes an application to the court and pays the relevant charge. If the case is to be brought before a superior court, the person filing the suit has to take an oath.
2	Is legal representation by a lawyer required in a judicial procedure?	A lawyer or legal procurator is needed to bring action in the Inferior Courts. If action is brought in the Superior Courts, both a lawyer and a legal procurator are required. <sup>7</sup>
3	Who pays the costs for:	Only a general clause on covering expenses <sup>8</sup>
	- Legal expert	One expert in case of SNB.
	- Court fees	
	- 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?	

<sup>7</sup> [https://e-justice.europa.eu/34/EN/how\\_to\\_bring\\_a\\_case\\_to\\_court?MALTA&member=1](https://e-justice.europa.eu/34/EN/how_to_bring_a_case_to_court?MALTA&member=1)

<sup>8</sup> In particular, the cost of organising meetings and arranging for interpretation facilities and the accommodation and travelling expenses of members of the European Works Council and its select committee shall be met by the central management unless otherwise agreed (Subsidiary Requirements, EWC Act).



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6	Can the EWC <i>members</i> be sentenced to pay the costs of the other party in the judicial procedure?	
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## 6. Sanctions

		Brief explanation
	How is a breach of law classified?	Offence European Commission (2018: 62) classifies it as: criminal offence, but also in the same document as: 'administrative or labour law offence' (2018: 35)
1	What are the sanctions for breaches of EWC laws?	Fine of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69) and not more than eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87). <sup>9</sup>
2	Can the court rule to stop or reverse the companies' decision-making?	
3	Whom should fines be paid to?	
4	Can a member of management be held personally liable (personal vs. corporate liability)	Yes (Any person) <sup>10</sup> Unclear if the management collectively can be considered 'a person' and thus convicted.
5	Can individual EWC members be sentenced to pay fines or be subject to other sanctions?	Yes (Any person)
6	Can the EWC collectively be sentenced to pay fines or be subject to other sanctions?	unclear

## 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 or mediation.  Through mediation, a qualified mediator helps the parties involved to reach agreement. The Malta Arbitration Centre (MAC) was set up to promote and encourage domestic arbitration and international

<sup>9</sup> European Commission 2018 (62) indicated minimum sanction as low as 23 EUR. This pertains to the old levels of sanctions under transposition of the Directive 94/45/EC: i) Depending on type of breach: not less than 10 liri (approximately 23 euros) and not more than 50 liri (approximately 116 Euros) for each and every employee of the Community-scale undertaking or Community-scale group of undertakings (ii) Not less than 500 Liri (approximately 1,164 euros) (Jagodzinski own manuscript)

<sup>10</sup> Art. 14 of the EWC Act.



		<p>commercial arbitration. It is administered by a Board of Governors appointed by the President of Malta, but is independent of Government.</p> <p>If you are considering mediation, you are advised to contact the Malta Mediation Centre through the Registrar at the Malta Mediation Centre, 158, Merchants Street, Valletta VLT 1176. You can also call on 2327 9220 or email <a href="mailto:info@mediation.mt">info@mediation.mt</a>.</p> <p>Mediation is a voluntary process. Parties to any proceedings may, however, jointly request the Court to stay proceedings while they attempt to settle their dispute by mediation. Furthermore, the Court may on its own initiative stay the proceedings for the duration of the process and direct the parties to try and settle the dispute by mediation. The Malta Mediation Centre has a Code of Conduct, which mediators are required to abide by during the mediation proceedings. The fee tariff is regulated by regulations 2 and 4 of Legal Notice 309 of 2008.</p>
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## 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)	



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