

Name of the country: Poland

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Transposition act = Consolidated legislation - USTAWA z dnia 5 kwietnia 2002 r. o europejskich radach zakładowych (amended by the EWC Act 2019-1832)

**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	It is unclear whether in Poland there is a mechanism for dispute resolution that could be initiated by a party to the EWC agreement (= workers' reps). Prosecution and litigation seems possible only upon the initiative.	Art. 39 of the EWC Act in conjunction with the Code of Conduct in case of Offences
B	EWC based on Art. 6 agreements		Yes	At the same time provisions of the Petty Offences Procedure Code contain provisions about appeals to a (district) court made by parties who sustained harm from the actions	+ The public prosecutor in such cases shall be the labour inspector.



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				of the perpetrator (Art. 6) and 25 para 4) <sup>1</sup>	
				Although, the European Commission (2018: 38) claims that EWCs in Poland can be party to legal proceedings <sup>2</sup>	
C	EWC based on art. 13 agreement	No, excluded			
D	EWC based on subsidiary requirements		Yes	As above	

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

		No	Yes	Which authority (e.g., court) is competent <sup>3</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 <sup>4</sup>	The public prosecutor in such cases shall be the labour inspector.
B	Operation of the EWC: breaches and compliance with the law (statutes), agreement or Subsidiary Requirements		Unclear	
C	Challenging management on the use of confidentiality and secrecy/withholding information)		Yes <sup>5</sup>	SNB, EWC and employee reps have the legal

<sup>1</sup> <https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/kodeks-postepowania-w-sprawach-o-wykroczenia-16911555>

<sup>2</sup> „In a further 11 countries (the Czech Republic, Finland, Germany, Ireland, Latvia, Lithuania, the Netherlands, Poland, Slovakia, Spain and Hungary,) EWCs can be a party in legal proceedings.”

<sup>3</sup> Material and geographical competence.

<sup>4</sup> Art. 39

<sup>5</sup> Art. 36 of the EWC Act: 3. Where it is found that the confidentiality of information or its withholding is incompatible with paragraphs 1 or 2, the special negotiating body, the European Works Council and the representatives representing the employees, in accordance with the agreement concluded under Article 18, may apply to the district court, the commercial court, for an exemption from the obligation of confidentiality or for an order that the information be disclosed.

Para. 5: 5. The Court, on application of the Central Board or ex officio, may, by way of a decision, to the extent necessary limit the right to inspect the evidence enclosed by the Central Board in the case file in the



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				capacity to address the court + the court can issue an order to disclose information
E	Individual rights of the SNB/EWC members under national EWC legislation		Yes	
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?	Labour Inspector (according to the EWC Act) But also the harmed party (Petty Offences Procedural Code)
2	What legal status (ius standi) is a requirement to start a judicial procedure? (legal personality, capacity to act in courts, other forms?)	No special status required according to the Procedural Code of Petty Offences: a physical person or an (social) organisation can act as subsidiary prosecutor <sup>6</sup>
3	What is the legal status of the EWC (legal personality or other capacity to act in court)?	Limited legal/court capacity in confidentiality cases. (Art. 36 para. 3 of the Polish EWC act).  Lacking / Unclear with regard to general legal capacity to initiate court litigation
4	In case of lacking capacity to act in court: how can it be circumvented (think of representation by trade unions)?	Trade unions have legal personality in Poland. It is under legal debate whether they could represent EWCs in disputes  It seems that in Poland there is no mechanism for dispute resolution that could be initiated by party to the EWC agreement (= workers' reps). Prosecution and litigation seems possible only upon the initiative Labour Inspectorate  Contacting labour inspectorate could also be an option.
5	Who represents the EWC in law?	A proxy
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

course of court proceedings, if the disclosure of such evidence would entail the risk of disclosure of business secrets or other secrets protected under separate provisions. A decision of the court limiting the right to inspect evidence shall not be subject to appeal.

<sup>6</sup> Art. 26 and 27 of the Procedural Code for Petty Offences



#### 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, but it does mention simple majority to pass resolutions <sup>7</sup>
2	How does one file a case in court? (Who, format, steps)	The harmed party should notify the Public Prosecutor (in case of EWCs it is the Labour Inspection) about the offence. The party obtains a confirmation and indication of the case's number and follow-up instructions. <sup>8</sup>
3	What is the deadline to start a judicial procedure?	Generally, actions may be lodged with the court at any time, unless special regulations provide for a time limit. <sup>9</sup>
4	Are there other relevant deadlines in the judicial procedure?	If within 1 month from notification about an offence/breach the public prosecutor has not taken action (submitted a case to court) the harmed party can submit a case to court as a subsidiary prosecutor (Art. 27 of the Procedural Code for Petty Offences).  7 days for an appeal against a judgement of the court of first instance
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?	Yes: 1. In confidentiality cases; 2. In all cases, the Code of Petty Offences Procedure makes available a summary procedure track

#### 5. Costs

	Brief explanation
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<sup>7</sup> Art. 27 of the EWC Act: Article 27 The European Works Council shall adopt resolutions by a simple majority of the members present, except in the case referred to in Article 16(2), where the European Works Council shall have the rights and obligations of a special negotiating body in accordance with Article 35(2).

<sup>8</sup> Art. 57 of the Procedural Code for Petty Offences.

<sup>9</sup> [https://e-justice.europa.eu/34/EN/how\\_to\\_bring\\_a\\_case\\_to\\_court?POLAND&member=1](https://e-justice.europa.eu/34/EN/how_to_bring_a_case_to_court?POLAND&member=1)



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1	What are the court fees for a judicial procedure?	
2	Is legal representation by a lawyer required in a judicial procedure?	<p>In breaches governed by the EWC Act: Yes, attorney or barrister (advocate)<sup>10</sup></p> <p>In principle, in civil proceedings the parties and their governing bodies or statutory representatives may act before the court in person or through representatives.</p> <p>However, the CCP provides for mandatory representation by a lawyer in specified situations.</p>
3	Who pays the costs for:	General statement about coverage of operational costs of SNB and EWC
	- Legal expert	Expert costs can be limited to one
	- Court fees	The losing party
	- Other costs (travel/interpretation)	Under the general clause
4	Does a EWC normally have an independent budget and/or an own bank account under a given national legislation?	Yes, it should have a budget <sup>11</sup>
5	Can the EWC be sentenced to pay the costs of the other party in the judicial procedure?	If it loses the case, it may be ordered to cover the costs.
6	Can the EWC <i>members</i> be sentenced to pay the costs of the other party in the judicial procedure?	If they lose a case in which they are a defendant (=found guilty of an offence), they may be ordered to pay the costs <sup>12</sup>
	Legal aid	<p>Both natural persons and legal persons may apply for legal aid – a court-appointed legal representative to handle the case (pełnomocnik z urzędu).</p> <p>Natural persons may request appointment of an advocate or a legal counsel if they submit a statement to the effect that that they would not be able to pay an advocate's or a legal counsel's fee without hardship to themselves or their families.</p>

<sup>10</sup> Art. 24 of the Petty Offences Procedure Code

<sup>11</sup> Art. 34 of the EWC Act: "The central management shall establish, in consultation with the European Works Council, the council's annual budget. In the event that the budget is not agreed by the end of the calendar year preceding a given financial year, the central management board shall establish it on its own, with the proviso that it should allocate for the council's activities at least the amount resulting from multiplying the number of the council's members by three times the average monthly remuneration from the last quarter of the year preceding a given calendar year, as announced by the President of the Central Statistical Office in the Official Journal of the Republic of Poland "Monitor Polski"."

<sup>12</sup> Art. 117 ff of the Procedural Code of Petty offences. <https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/kodeks-postepowania-w-sprawach-o-wyroczenia-16911555/dz-13>



	<p>Legal persons (or other organisational units entitled by law to be a party in court proceedings) may request appointment of an advocate or a legal counsel if they demonstrate that they do not have sufficient funds to pay an advocate's or a legal counsel's fee.</p> <p>The court will grant the request if it finds the participation of an advocate or a legal counsel in the case necessary.</p> <p>The issue of exemption from costs and the assignment of a court-appointed legal representative in cross-border disputes is regulated by the Act of 17 December 2004 on the right to legal aid in civil law proceedings conducted in the European Union Member States and on the right to legal aid in order to resolve a dispute amicably before proceedings are instituted.<sup>13</sup></p>
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## 6. Sanctions

		Brief explanation
	How is a breach of law classified?	Criminal (petty) offence <sup>14</sup>
1	What are the sanctions for breaches of EWC laws?	Penalty: maximum fine of EUR 1 250 Imprisonment up to 1 month Social work
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
5	Can individual EWC members be sentenced to pay fines or be subject to other sanctions?	Yes
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	Generally, no.

<sup>13</sup> [https://e-justice.europa.eu/34/EN/how\\_to\\_bring\\_a\\_case\\_to\\_court?POLAND&member=1](https://e-justice.europa.eu/34/EN/how_to_bring_a_case_to_court?POLAND&member=1)

<sup>14</sup> According to Dz. U. 1971 Nr 12 poz. 114 USTAWA z dnia 20 maja 1971 r. Kodeks wykroczeń



<p>in a given country can out of court settlements be reached once a case has been filed? Does it happen in practice?</p>	<p>However:</p> <p>Disputes can be resolved through mediation in a number of areas. Under Polish law, mediation can be used in respect of the following matters (among others):</p> <ul style="list-style-type: none"> <li>• civil</li> <li>• commercial</li> <li>• employment law</li> <li>• criminal</li> <li>• judicial-administrative</li> </ul> <p>Detailed information on mediation can be found in brochures and leaflets produced and distributed by the Ministry of Justice.</p> <p>Mediation is most widely used today in criminal and civil matters.</p> <p>“In 2010 a section was created within the Ministry of Justice to be responsible for mediation issues, currently functional in the Division for Victims of Crime and the Promotion of Mediation (Wydział ds. Pokrzywdzonych Przesłpstwem i ds. Promocji Mediacji) within the Department of International Cooperation and Human Rights. Background information on mediation activities can be found on the website of the Ministry of Justice (Ministerstwo Sprawiedliwoci).</p> <p>In recent years, the Ministry of Justice has been paying particular attention to issues related to the development and popularisation of mediation and other forms of ADR in Poland and increasing the effectiveness of the justice system and its accessibility to citizens.</p> <p>In 2010 a network of mediation coordinators were appointed upon the initiative of the Ministry. There are currently 120 coordinators (judges, probation officers and mediators), in eight courts of appeal, all the regional courts and in six areas of district courts.</p> <p>In respect of advice and opinions, the Minister for Justice works with the Social Council on Alternative Dispute and Conflict Resolution (Spolecznę Radę ds. Alternatywnych Metod Rozwiązywania Konfliktów i Sporów) ('the ADR Council' - email: adr_rada@ms.gov.pl), which plays an important role in promoting the idea of mediation and communication between central government, the justice system and the mediation community.”<sup>15</sup></p>
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<sup>15</sup> [https://e-justice.europa.eu/64/EN/mediation\\_in\\_eu\\_countries?POLAND&member=1](https://e-justice.europa.eu/64/EN/mediation_in_eu_countries?POLAND&member=1)



		<p>In addition, professional bodies carry on institutionalised activities for the promotion of mediation. These include:</p> <p>The Supreme Bar Council Mediation Centre (Centrum Mediacyjne przy Naczelnej Radzie Adwokackiej).  The National Association of Lawyers Commercial Mediation Centre (Centrum Mediacji Gospodarczej przy Krajowej Izbie Radców Prawnych).  Mediation centres of some Regional Associations of Lawyers (Okręgowa Izba Radców Prawnych)  Mediation centres of some Regional Councils of Notaries (Okręgowa Rada Notarialna)  Non-governmental organisations, within the scope of their statutory duties, and universities may have lists of permanent mediators (stały mediator). Information about the lists and centres are provided by the Presidents of district courts. Lists of mediators in criminal matters and cases involving minors are provided by the Presidents of district courts.</p> <p>Mediation is a voluntary way of resolving disputes and conflicts and is conducted on the basis of:</p> <p><b>A mediation agreement ( out-of-court mediation)</b>  A decision of the court for referral to mediation (mediation referred by the court).  The regulation on criminal matters lays down:</p> <ul style="list-style-type: none"> <li>• The conditions to be met by institutions and persons authorised to conduct mediation proceedings.</li> <li>• The appointment and dismissal of institutions and persons authorised to conduct mediation proceedings.</li> <li>• The scope and conditions of access of institutions and persons authorised to conduct mediation proceedings to the case file.</li> <li>• The method and procedure to be followed in mediation proceedings.</li> </ul> <p>In criminal matters and cases involving minors the parties do not pay the costs of mediation – these are covered from Treasury resources. In other types of cases, as a general rule remuneration is subject to agreement between the mediator and the parties. The mediator may however agree to conduct mediation on a pro bono basis.</p> <p>In the case of out-of-court mediation, the mediator's remuneration and reimbursement of their expenses are</p>
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		<p>priced by the mediation centre or the parties agree on them with the mediator before the mediation begins. The parties cannot be exempt from bearing the mediator's costs even if they are exempt from paying the court fees. The mediator in both types of mediation (court and out-of-court) may waive their remuneration.<sup>16</sup></p>
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## 8. Resources for EWCs

		Brief explanation
1.	Can unions provide legal support or financing for litigation?	Yes, especially in terms of legal advice and representation in courts (?). Due to limited resources more difficult (probably) in terms of co-financing 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>16</sup> [https://e-justice.europa.eu/64/EN/mediation\\_in\\_eu\\_countries?POLAND&member=1](https://e-justice.europa.eu/64/EN/mediation_in_eu_countries?POLAND&member=1)

