

Name of the country: **SPAIN**

EWC Act = Spanish transposition law of 2099/38/EC Law 10/2011 of 19 May amending Law 10/1997 of 24 April on the right of employees in Community-scale undertakings and groups of undertakings to information and consultation

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 ¹			
D	EWC based on subsidiary requirements		Yes		Spanish law is the only national law explicitly providing a procedure for ordering establishment of an EWC based on subsidiary requirements: "Without prejudice to the previous paragraph, on the assumptions referred to in Article 15(2) of this Law, the ruling will order the application of the subsidiary provisions of Title I, Chapter II." (Art. 39)

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

		No	Yes	Which authority (e.g., court) is competent ²
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	The jurisdictional bodies in the field of industrial relations (órganos jurisdiccionales del orden social) (Art. 35) ³
B	Operation of the EWC: breaches and compliance with the law		Yes	

¹ Art. I of the Supplementary Provisions (1997).

² Material and geographical competence.

³ in accordance with Article 2 p) of the amended text of the Labour Procedure Law, ratified by Royal Legislative Decree N°2/1995 of 7 April. And in accordance with various chapters (Art. 38) of the Labour Procedure Law



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	(statutes), agreement or Subsidiary Requirements			In Spain there are no specific labour courts, but there are dedicated court divisions ⁴ .
C	Challenging management on the use of confidentiality and secrecy/withholding information)		Yes, although implicitly ⁶	Geographical competence: <i>In the absence of any agreement or mandatory rules, the basic rule is that jurisdiction lies with the Court of First Instance of the district where the defendant has his or her domicile or, failing that, his or her residence. If the defendant is neither domiciled nor resident in Spain, the competent court will be the Court of First Instance for the district where the defendant is present or was last resident.</i>
E	Individual rights of the SNB/EWC members under national EWC legislation		Yes	

⁴ <https://thelawreviews.co.uk/title/the-labour-and-employment-disputes-review/spain>: “The Spanish court system does not include a separate court with exclusive jurisdiction over labour and employment claims. However, this does not mean that every individual court deals with all subject matters. Instead, there are court divisions specialising in one of the following areas: civil, criminal, administrative, labour and military. The labour division is made up of several courts, with different powers and different territories:

- a. Labour courts are formed by only one judge, whose jurisdiction covers a province, or a smaller territory when necessary because of the distance between the capital city of the province and that geographical area, or for demographic reasons. There can be one or more labour courts within the same territory or province. If there are several labour courts within the same territory, they are assigned disputes according to rules agreed by the judges. These labour courts are the first instance courts for all individual disputes and collective claims which impact is limited to the geographical territory assigned to the labour court.
- b. The labour chambers of the High Courts of Justice include at least one president and two magistrates. If the labour chamber consists of more than three magistrates, the chamber will be divided into sections with three members. Some autonomous regions, for geographical or historical reasons, have decided to divide their territory and have set up more than one labour chamber for this purpose (e.g., Andalusia, Castile and León, and the Canary Islands). Labour chambers decide collective claims the impact of which is limited to the geographical territory assigned to that labour chamber and the 'appeals for reconsideration' of certain disputes resolved by the labour courts within their jurisdiction. The labour chambers of the High Court of Justice of Andalusia are also competent to hear disputes from the two Spanish autonomous cities in North Africa.
- c. The labour chamber of the National Court is also a collegiate court, consisting of a president and two magistrates. It is located in Madrid and has jurisdiction over the nation as a whole. This chamber decides collective claims which impact extends beyond the territory of one autonomous region.
- d. The labour chamber of the Supreme Court is the highest court in Spain, with powers throughout the Spanish territory. The Supreme Court is the court of second instance for those claims judged at first instance by the labour chambers of the High Courts of Justice or the National Court, and under very limited circumstances it will hear individual claims if the judgment of one labour chamber of the High Court of Justice contradicts that of another High Court of Justice, the Court of Justice of the European Union, the Constitutional Court or the Supreme Court itself in a similar case.
- e. The Constitutional Court is not a jurisdictional court but is the final instance court in disputes regarding breaches of fundamental rights.”

⁶ The law does not provide explicitly for a possibility to challenge managerial decisions regarding confidentiality, however, confidentiality is mentioned among infringements and there is court capacity to rule in confidentiality cases (e.g. Art. 33 or 38)



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				<p><i>Where none of these criteria applies, the claimant may file the claim with the Court of First Instance for the district of his or her domicile.</i></p> <p><i>For these purposes:</i></p> <p><i>Claims against business owners and professional people brought in connection with their business or professional activities may also be brought in any of the places where they carry on their activities, at the claimant's choice.</i></p> <p><i>Claims against legal entities may also be brought in the place where the situation or legal relationship that is the subject of the claim occurred or is to have effect, provided that the legal entity has an establishment or a representative there.⁵</i></p>
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?	For collective disputes: representative trade unions, business associations, and legal or union representation bodies may appear in a collective dispute procedure, even if they have not promoted it, as long as their scope of action corresponds, or is broader than that of the dispute.
2	What legal status (ius standi) is a requirement to start a judicial procedure? (legal personality, capacity to act in courts, other forms?)	

⁵ https://e-justice.europa.eu/85/EN/which_country_s_court_is_responsible?SPAIN&member=1



3	What is the legal status of the EWC (legal personality or other capacity to act in court)?	<p>Capacity to take legal action</p> <p>“Procedural legitimation”: Employers, employees' representatives, the special negotiating body and the European Works Council shall be entitled to initiate the proceedings referred to in this Law in accordance with the provisions set out in Article 20. Employees' trade unions and employers' associations shall be entitled to defend their legitimate rights and interests. (Art. 37)</p> <p>However, the European Commission (2018: 60) reports/claims “legal personality” for EWCs.</p>
4	In case of lacking capacity to act in court: how can it be circumvented (think of representation by trade unions)?	<p>Not applicable (EWCs have legal capacity).</p> <p>But: Faced with a labour dispute that affects all or part of the workforce, a union or certain representatives can file a lawsuit (class action / collective dispute).</p> <p>There are three requirements for collective disputes in Spain. It must be a dispute:</p> <ul style="list-style-type: none"> • that affects a group of workers or a generic group susceptible to common determination; • that it is about general interests, that is, that it is about satisfying claims as a group and not as individuals; and • that involves an interpretation of state regulations, collective agreements (whatever their effectiveness), pacts or company agreements, or of a collective business decision (including those of collective transfers and that of substantial modifications of working conditions).
5	Who represents the EWC in law?	<p>Not stipulated in EWC law.</p> <p>However, generally (in civil proceedings → confirm if it applies to labour disputes??):</p> <p>‘Procurador’ This is the professional legal representative who is responsible for court, delivery of briefs at the court office etc. Procuradores serve and the court, there is no exact equivalent in UK court systems</p> <hr/> <p>Lawyer (Abogado) This is the legal professional who would usually provide the substance, case, briefs and evidence, and speak in Court on your behalf.</p> <hr/> <p>Depending on the type and value/importance of the matter, either or both of these in a court case. In order to represent you, they must have a “Litigation Power of Attorney which you have to sign in front of a Notary Public (Notario) or in front of the Court</p>
6	What is the capacity to act in court of joint type (‘forum’ or French-	No mention in law.

⁷ <https://www.gov.uk/government/publications/legal-aid-in-spain/legal-aid-in-spain>



type) EWCs composed of both managem ent and employee s' represent atives and can it be an obstacle?	
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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)	The case can be filed by the injured party or by the Labour and Social Security Inspectorate ⁸ .

⁸ Law on infringements and sanctions in the Social Order, Article 52. Principles of processing:

1. The procedure will follow the following procedures:

(a) It shall be initiated, on its own initiative, by the Act of the Inspection of Labour and Social Security, by virtue of acts of trade, on its own initiative or through denunciation, or at the request of a person concerned.

(b) The minutes shall be notified by the said Inspection to the responsible person or subjects, who shall have a period of 15 days in which to make any allegations which he considers relevant in defence of his right, to the competent body. to dictate resolution.

(c) After the appropriate time limit and the necessary steps have been taken, if any arguments have been made, the person concerned shall be given a further hearing at the end of eight days, provided that the proceedings are taken existence of facts other than those incorporated in the minutes.

(d) In the light of the action, the competent authority shall issue the relevant decision.

2. The procedure for imposing penalties for minor and serious infringements, as referred to in Article 48 (5) of this Law, shall be initiated on its own initiative by the relevant entity or by communication to the same inspection of the Labour and Safety Inspectorate. Social; the entity or the corresponding organ of the



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		<p>There must be an attempt at conciliation or mediation; it is a necessary requirement to initiate a lawsuit before the competent labor authority. Only if no agreement is reached can a claim proceed.</p> <p>What is agreed to during conciliation or mediation will have the same effectiveness attributed to collective agreements by art. 82 of the E.T., provided that certain requirements are met. In the case of economically dependent self-employed workers, it will have the same effectiveness as the professional interest agreements regulated in article 13 of the Self-Employed Worker Statute Law. In any case, a copy of the agreement will be sent to the Labor Authority.⁹</p>
3	What is the deadline to start a judicial procedure?	
4	Are there other relevant deadlines in the judicial procedure?	
5	What is the role of out of court settlements once a case has been filed?	<p>There are conciliation, mediation and arbitration service dedicated to collective labour mechanisms.</p> <p>The most prominent trade unions and employers' associations within certain geographical areas have established conciliation and arbitration bodies that can be used for some types of claims (these are usually class or group actions). Spanish law gives the same effect to claims registered with these private bodies as to those registered with the public conciliation bodies of the autonomous regions.¹⁰</p>
6	How long does a judicial procedure typically take?	<p>Reportedly, the process of litigation in Spain can be slow and expensive and where possible. Therefore many legal firms try to negotiate and settle disputes out of court in the first attempt¹¹.</p> <p>However, labor cases are resolved fairly quickly, especially those involving layoffs. Normally the conciliation occurs within a month, and if there is no agreement between one and three months, there is a trial.¹²</p>
7	Is an injunction or a summary procedure possible?	Yes ¹³

Autonomous Community shall notify the charges to the person concerned, giving him a hearing, subject to the procedure to be established.

⁹ <https://www.unpredictableblog.com/blog/employment-spain>

¹⁰ <https://thelawreviews.co.uk/title/the-labour-and-employment-disputes-review/spain>

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¹² <https://www.unpredictableblog.com/blog/employment-spain>

¹³ In Spain specific proceedings that involve especially urgent matters (e.g., proceedings on annual leave or collective claims challenging collective redundancy procedures) are possible, when the claimant is entitled to



5. Costs

		Brief explanation
1	What are the court fees for a judicial procedure?	<p>A court fee is a national tax that must be paid in certain cases, by legal entities, for going to court and making use of the public service of the administration of justice. The Ministry of Finance and Public Administration is legally responsible for managing this tax. The requirement to pay this fee was introduced on 1 April 2003. It is currently governed by Law 10/2012 of 20 November 2012 concerning certain fees in the context of the administration of justice and the National Institute of Toxicology and Forensic Science. Law 10/2012 has been amended twice, first by Royal Decree-Law 3/2013 of 22 February 2013 and later by Royal Decree-Law 1/2015 of 27 February 2015. The main change introduced by the second amendment was the abolition of court fees for private individuals in all jurisdictions and all types of proceedings – private individuals had been required to pay court fees since the entry into force of Law 10/2012.¹⁴</p> <p>Court fees in labour disputes are obligatory in cases of lodging of appeals (<i>suplicación</i> or <i>casación</i>) in employment cases.</p> <p>EWCs can potentially benefit from a personal exemption to pay court fees as legal entity who are entitled to legal aid and can demonstrate that they meet the statutory requirements.¹⁵</p> <p>There is no specific website where information can be found on the cost of legal proceedings in Spain. Nevertheless, there are web pages, such as those of the bar associations, which provide information on the fees of their members.</p>
2	Is legal representation by a lawyer required in a judicial procedure?	<p>generally (in civil proceedings):</p> <p>‘Procurador’ This is the professional legal representative who is responsible for formal communications with the court, delivery of briefs at the court office etc. Procuradores serve as intermediaries between lawyers and the court, there is no exact equivalent in UK court systems:</p> <p>Lawyer (Abogado) This is the legal professional who would usually provide the substantive legal advice, prepare the case, briefs and evidence, and speak in Court on your behalf.</p> <p>Depending on the type and value/importance of the matter, either or both of these may be required to represent you in a court case. In order to represent you, they must have a “Litigation Power of</p>

file the claim directly with the competent labour court (<https://thelawreviews.co.uk/title/the-labour-and-employment-disputes-review/spain>)

¹⁴ <https://e-justice.europa.eu/37/EN/costs?SPAIN&member=1>

¹⁵ <https://e-justice.europa.eu/37/EN/costs?SPAIN&member=1>



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		Attorney” (Poder para pleitos) from you which you have to sign in front of a Notary Public (Notario) or in front of the Court Officer.
3	Who pays the costs for:	General statement on coverage of costs ¹⁶
	- Legal expert	Can be limited to 1
	- Court fees	<p>EWCs, as legal entities, may qualify to apply for Legal Aid: For legal entities to qualify for legal aid, their taxable base for corporate tax must be lower than the equivalent to three times the annual calculation for the IPREM.</p> <p>In any case, other external signs that demonstrate the actual financial capacity of the applicant will be taken into account.</p> <p>Specifically, the following are entitled to legal aid:</p> <ol style="list-style-type: none"> 1. (...) 2. the following legal entities, where they can show that they lack sufficient means for litigation: non-profit organisations; foundations registered in the corresponding administrative register; <ol style="list-style-type: none"> 1. in employment proceedings: all employees and beneficiaries of the social security system;¹⁷ <p>In general, court fees have to be paid upfront, except for social or labour courts where in the first instance no court fees are due for labour disputes and in case of appeal or when the file is sent to the high court: 500€ appeal and 750€ for Supreme Court.¹⁸</p>
	- Other costs (travel/interpretation)	Should be covered by management based on the general formula.
4	Does a EWC normally have an independent budget and/or an own bank account under a given national legislation?	No

¹⁶ Art. 19 of the EWC Law: “The operating expenses of the European Works Council and the select committee shall be

borne by the central management, which shall provide the financial and material resources necessary to enable them to perform their duties in an appropriate manner”

¹⁷ <https://e-justice.europa.eu/37/EN/costs?SPAIN&member=1>

¹⁸ <https://www.velascolawyers.com/en/civil-law/171-new-law-on-judicial-costs-in-spain.html#:~:text=Flat%20fees%20for%20Civil%20Proceedings,750%20for%20Supreme%20Court.>



5	Can the EWC be sentenced to pay the costs of the other party in the judicial procedure?	<p>When does the losing party have to pay the costs of the proceedings?</p> <p>Articles 394 to 398 of the Code of Civil Procedure cover the order to pay costs in civil proceedings.</p> <p><i>In actions for a full judgment, the costs of first instance are payable by a party whose claims have all been dismissed, unless the case raises serious matters de facto or de jure to be clarified.</i></p>
6	Can the EWC members be sentenced to pay the costs of the other party in the judicial procedure?	<p><i>If claims are granted or dismissed in part, each party pays its costs and half the joint costs, unless there are grounds for imposing them on one of the parties because of frivolous litigation.</i></p> <p><i>Where the costs are imposed on the losing party, that party will be required to pay, for the part corresponding to lawyers and other legal professionals not subject to rates or scales, only a total amount of no more than one third of the sum at issue for each of the litigants that have secured the decision. For these purposes only, claims on which no value can be put will be valued at EUR 18 000, unless the court determines otherwise because of the complexity of the case.</i></p> <p><i>The provisions in the preceding paragraph do not apply if the court declares that the litigant ordered to pay the costs has acted frivolously.</i></p> <p><i>Where the party ordered to pay the costs is entitled to legal aid, he or she will be required to pay the costs occasioned by the defence of the interests of the opposing party only in cases specifically indicated in the Legal Aid Act.</i></p> <p><i>In no circumstances will costs be imposed on the public prosecutor's office in proceedings to which it is party.</i></p> <p>Experts' fees</p> <p><i>Experts used in court proceedings are known as peritos. A Register of Legal Experts (Registro de Peritos Judiciales) can be found at each High Court (Tribunal Superior de Justicia).</i></p> <p><i>Article 241(1)(4) of the Code of Civil Procedure covers, as a specific item to be included in calculating costs, the 'fees of experts and other payments which may have to be paid to persons playing a part in the proceedings'. This refers to costs incurred by persons who, although not a party to the proceedings, have certain expenses as a result of attending the proceedings to provide some service.</i></p> <p><i>Article 243 of the Code of Civil Procedure stipulates that in all proceedings and actions, costs are calculated by the clerk of the court that heard the case or appeal. Any fees corresponding to writs and documents relating to proceedings which are unnecessary, superfluous or not authorised by law, or items in lawyers' fees which are not listed in detail or which refer to fees that have not been earned in the litigation are not included in the calculation.</i></p> <p><i>The court clerk will reduce the amount of lawyers' and other legal professionals' fees that are not subject to rates or scales if the fees claimed exceed one third of the sum at issue and the litigant who was ordered to pay the costs was not found to have acted frivolously.</i></p>



	<i>The costs of actions or incidental steps for which the winning party has expressly been ordered to pay by the decision on costs in the main proceedings are not included either.¹⁹</i>
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6. Sanctions

		Brief explanation
	How is a breach of law classified?	Administrative offence (various degrees of seriousness apply: serious or very serious infringements) ²⁰
1	What are the sanctions for breaches of EWC laws?	Administrative penalty: Minimum 626 euros to 1,250 euros ²¹ To maximum: 100,006 euros to 187,515 euros ²² According to the European Commission (2018 : 63) : Sanction related to establishment of EWC: fine up to EUR 187 515 Sanction related to operation of EWC: fine up to EUR 6 250 Art. 48 of the Law on offences and sanctions in the social order ²³ 7. In the case of cumulation of offences relating to the same subject in a single procedure, it shall be the body responsible for imposing the penalty for all such offences, whichever is the case for the imposition of the highest, compliance with the attribution of sanctioning powers carried out in the preceding paragraphs.
2	Can the court rule to stop or reverse the companies' decision-making?	Yes, explicitly: "Where appropriate, it will order the immediate suspension of the infringement and shall require a return to the previous situation, obliging the defendant to make good any damage resulting from his conduct, including the payment of compensation for any damages and financial losses which might have arisen." (Art. 39)
3	Whom should fines be paid to?	

¹⁹ <https://e-justice.europa.eu/37/EN/costs?SPAIN&member=1>

²⁰ Art. 32

²¹ Art. 32 and 33 of the Law of 10 April 1997 as specified further by Real Decreto Legislativo 5/2000, 4 agosto, Ley sobre Infracciones y Sanciones en el Orden Social (Legal Decree 5/2000, 4 August, Law on Infractions and Sanctions on the Social Order) Section I, Subsection II Art. 9 (as amended by the Ley 40/2006 of 14/12/2006), available at: http://noticias.juridicas.com/base_datos/Laboral/rdleg5-2000.html#a4; ; category of fine: serious infringements, minimum to maximum. Before the amendment by Act 40/2006 BÜGGEL (2002) indicated that fines should range from 3,005 euros and 90,151 euros (ESP 500,001 and ESP 15,000,000). At the moment of adoption of the transposition of Directive 94/45/EC, the relevant provisions regulating sanctions were those of Law 8/1988 of 7 April on infringements and penalties in the field of industrial relations.

²² Category of breach: most serious infractions in their maximum extent (ibid.).

²³ <https://www.global-regulation.com/translation/spain/1453375/royal-legislative-decree-5-2000-of-4-august%252c-which-approves-the-revised-text-of-the-law-on-offences-and-sanctions-in-the-social-order.html>



4	Can a member of management be held personally liable (personal vs. corporate liability)	Yes (Art. 30)
5	Can individual EWC members be sentenced to pay fines or be subject to other sanctions?	Yes (Art. 30)
6	Can the EWC collectively be sentenced to pay fines or be subject to other sanctions?	Yes (Art. 31)

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>Yes: "The provisions of this Chapter are without prejudice to the right of the parties to have recourse to procedures for an out-of-court settlement of disputes." (Art. 41).</p> <p>Mediation: <i>The Register of Mediators and Mediation Institutions (Registro de Mediadores e Instituciones de Mediación) is an information database that can be accessed by the general public, free of charge, through the website of the Ministry of Justice. The Register publishes details of professional mediators and mediation institutions to make it easier for members of the public to access this form of dispute resolution.</i> <i>You can access its search engines via the following links:</i> https://remediabuscador.mjusticia.gob.es/remediabuscador/RegistroMediador https://remediabuscador.mjusticia.gob.es/remediabuscador/RegistroInstitucion</p> <p><i>Generally speaking, mediation is carried out by an impartial third party bound by a duty of confidentiality.</i></p> <p><i>The parties, with help from their lawyers, can decide to try mediation and notify the court, or else they may be contacted by the court when it is thought that the case is suitable for mediation.</i></p> <p>Mediation in the labour field <i>Mediation is very common in labour disputes. It is sometimes compulsory to attempt mediation before resorting to the courts. Collective disputes are usually subject to mediation and in some Autonomous Communities individual disputes are mediated.</i></p> <p><i>The Autonomous Communities have employment mediation bodies which specialise in such matters. At national level, the Servicio Interconfederal de Mediación y Arbitraje, SIMA, (interconfederal mediation and arbitration service)</i></p>



	<p><i>offers a free mediation service for disputes which fall outside the remit of the bodies of the Autonomous Communities.</i></p> <p><i>Law 36/2011 governing the labour courts introduces a genuine novelty by establishing a general rule that all applications must be accompanied by a certificate attesting to a prior attempt at conciliation or mediation before the appropriate administrative service, the Mediation, Arbitration and Conciliation Service (SMAC), or before bodies performing such functions under a collective agreement, although the article following lists the procedures that are exempt from this requirement.</i></p> <p><i>Law 36/2011 introduces express reference to mediation not only during pre-trial conciliation, but also once the court proceedings are under way</i> <i>In the employment field, the services of the Autonomous Communities and of SIMA are free of charge.²⁴</i></p>
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8. Resources for EWCs

		Brief explanation
1.	Can unions provide legal support or financing for litigation?	Yes, they can “defend their legitimate interests” (Art. 37)
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)	Servicio Interconfederal de Mediación y Arbitraje, SIMA, (interconfederal mediation and arbitration service). ²⁵

²⁴ https://e-justice.europa.eu/64/EN/mediation_in_eu_countries?SPAIN&member=1

²⁵ [SERVICIO INTERCONFEDERAL DE MEDIACIÓN Y ARBITRAJE DE ESPAÑA](#)

