

Name of the country: **Estonia**

Transposition Act = Consolidated legislation Community-scale Involvement of Employees Act\_08-01-2021

**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			
D	EWC based on subsidiary requirements			Unclear. Estonia transposed only partially reference to the subsidiary requirements <sup>1</sup>	

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

		No	Yes	Which authority (e.g., court) is competent <sup>2</sup>
	Which court competent?			EWCs' right to address court with regard to confidentiality disputes (Art. 39) directly in the EWC implementation act (before in Employee Trustee Act 2006). Otherwise state supervision by Labour Inspectorate.
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, but only on: Violation of obligation to provide information on number of employees and their distribution	
B	Operation of the EWC: breaches and compliance with the law (statutes),		Not all aspects / breaches are enforced: 1. Hindering international informing and	

<sup>1</sup> European Commission 2018: 13.

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



	agreement or Subsidiary Requirements		consulting or involvement of employees; 2. Maintaining confidentiality (by EWC members and experts); 3. Failure to perform the obligation of annual informing and consulting, or informing and consulting under exceptional circumstances, provision of incomplete or false information.	
C	Challenging management on the use of confidentiality and secrecy/withholding information)		Yes <sup>3</sup>	
E	Individual rights of the SNB/EWC members under national EWC legislation		no	
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?	EWC members individually <sup>4</sup> or trade unions <sup>5</sup>
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)?	EWC collectively has no legal capacity / status
4	In case of lacking capacity to act in court: how can it be circumvented (think of representation by trade unions)?	Yes, by seeking representation by trade unions or by individual EWC members (at least in confidentiality cases).
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 mention

<sup>3</sup> EWC Act (consolidated): "§ 39. Resolution of dispute related to confidential information in court An employees' representative specified in subsection 38(3) of this Act has the right of recourse to courts in order to resolve a dispute arising from the confidentiality of information and refusal to provide information."

<sup>4</sup> E.g. in confidentiality cases, Art. 38 para 3. In confidentiality cases " § 39. Resolution of dispute related to confidential information in court. An employees' representative specified in subsection 38(3) of this Act has the right of recourse to courts in order to resolve a dispute arising from the confidentiality of information and refusal to provide information. "

<sup>5</sup> European Commission 2018: 34.



#### 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)	
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?	Article 14(6) of the Conciliation Act states:  If a settlement agreement is concluded at the time when the dispute is pending before a court, the parties to conciliation proceedings may, pursuant to section 430 of the Code of Civil Procedure, have the settlement agreement validated by the court hearing the case as a compromise agreement.
6	How long does a judicial procedure typically take?	
7	Is an injunction or a summary procedure possible?	Unclear <sup>6</sup>

#### 5. Costs

		Brief explanation
1	What are the court fees for a judicial procedure?	Not specified directly / not applicable due to procedure before Labour Inspectorate. / not possible to verify what costs are applicable and when are they payable, but, by reference to the Employment Contracts Act of the Republic of Estonia, which designates the Labour Inspectorate as the institution responsible for the enforcement of EWC rights, it can be inferred that court some costs are applicable to these administrative proceedings.
2	Is legal representation by a lawyer required in a judicial procedure?	

<sup>6</sup> Injunctions are possible, under the Employees' Trustee Act (unclear if can be applied to EWC members directly).

3	Who pays the costs for:	General statement on coverage of costs only <sup>7</sup>
	- Legal expert	
	- 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?	Probably not / unclear
6	Can the EWC <i>members</i> be sentenced to pay the costs of the other party in the judicial procedure?	

## 6. Sanctions

		Brief explanation
	How is a breach of law classified?	Not specified? Or: Penal sanctions (penal and misdemeanour code) <sup>8</sup>  OR:  Administrative offence, fines applied by the Labour Inspectorate <sup>9</sup>
1	What are the sanctions for breaches of EWC laws?	Financial penalty: Equivalent of 800 euros (200 fine units <sup>10</sup> ) if committed by private person; equivalent of 32 000 euros if committed by legal person <sup>11</sup>  In confidentiality cases up to 383 euros <sup>12</sup>

<sup>7</sup> The EWC members must have the means required to perform the functions arising from the transposition (Section 40).

<sup>8</sup> The Estonian Employee Trustee Act 2006 Art. § 264, 'Failure to perform obligations of elected members of trade unions in relations with employers', stipulates that 'An elected shop-steward who fails to ensure avoidance of disruption of work during a period prescribed by law or a collective agreement shall be punished by a fine of up to 100 fine units'. Different sanctions (§§ 267) are laid down for violation of the obligation to maintain the confidentiality of information, which 'shall be punished under the conditions and pursuant to the procedure prescribed in §§ 25 and 26 of the Employee Trustee Act.'

<sup>9</sup> European Commission 2018: 62.

<sup>10</sup> According to §47(1) of the Penal Code, a fine unit is the base amount of a fine and is equal to 4 euros.

<sup>11</sup> Art. 85 of the EWC Act (consolidated).

<sup>12</sup> Act amending the TKS § 851 provides for liability for a violation of the confidentiality obligation. Violation of the obligation not to reveal any confidential information by members of the SNB, of the RB, the involved experts and translators and the



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, in confidentiality cases
6	Can the EWC collectively be sentenced to pay fines or be subject to other sanctions?	

## 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, alternative dispute resolution<sup>13</sup> by the Labour Inspectorate<sup>14</sup>. In fact, Labour Inspectorates conducts proceedings about violations of EWC rights as "extra-judicial proceedings".</p> <p>Article 14(6) of the Conciliation Act states:</p> <p>If a settlement agreement is concluded at the time when the dispute is pending before a court, the parties to conciliation proceedings may, pursuant to section 430 of the Code of Civil Procedure, have the settlement agreement validated by the court hearing the case as a compromise agreement.</p>

employees' representatives participating in an information and consultation procedure, if, during negotiations, the parties decided to establish one or more information and consultation procedures instead of an RB, is punishable by a fine of up to 100 fine units, which is 6,000 kroons/383 euros. The fine is equal to the fine provided for violation of confidentiality information by employees' representatives by national law. See Art. 25 of the Töötajate usaldusisiku seadus (Employees' Trustee Act) of 13 December 2006 – RT (RT = Riigi Teataja = State Gazette) I 2007, 2, 6 with later amendments (consolidated version available in English at: <https://www.riigiteataja.ee/en/eli/510012014001/consolide>). Identical provisions apply to members of trade unions breaching, among other things, confidentiality (see Art. 26<sup>4</sup> of the Trade Unions Act of 14 June 2000 (RT I 2000, 57, 372).

<sup>13</sup> Conciliation act RTI/2009//59/385.

<sup>14</sup> Art. 88 of the EWC Act (consolidated).



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		<p><b>[E] Role of the Mediator</b></p> <p>Estonian law emphasises the impartiality of the mediator. However, as regards the resolution of the dispute, the legislature has foreseen the possibility of a mediator generating a suitable option for the parties. According to the second sentence of Article 1(2): <i>'A conciliator may, on the basis of the facts of conciliation and the progress of conciliation proceedings, propose to the parties his or her own solutions to the dispute.'</i> It should be noted that Estonian law combines the methods of conciliation and mediation into one Act (see Basic Terms and Definitions) which arguably permits the mediator taking a more active role than general envisaged in mediation. However, a mediator has no right to make binding decisions or use his authority in any other manner in an</p> <p style="text-align: right;"><small>Material chronology prawnik autor</small></p> <hr/> <p>attempt to lead the parties to a settlement the mediator personally favours. The mediator can make suggestions on how to resolve the dispute, but the parties retain the power to decide whether or not the suggestion is an acceptable one.</p> <p><b>[F] Payment of the Mediator</b></p> <p>Regarding the payment of the mediator, Article 9(1) of the Conciliation Act states that:</p> <p style="padding-left: 40px;">The parties to conciliation proceedings are to pay to the conciliator a previously agreed-upon fee for the conciliator's services in conducting the proceedings and to cover the related costs. The conciliator may require the parties to make an advance payment on the conciliation fee.</p> <p>Therefore the amount of payment of the mediator is determined by agreement between the parties and the mediator. The state does not have any influence over the level of mediation fees.</p> <p>Mediators can establish fixed fees or negotiate the payment separately for each case. A good example of that is Article 33<sup>1</sup> of the Notary Fees Act,<sup>9</sup> which states that the fee for a notarial service to carry out mediation is a fee agreed upon by the parties, except in cases where the mediation service is provided through the Conciliation-Arbitration Court of the Chamber of Notaries. The Chamber of Notaries has a fixed fee schedule for mediation services, but if notaries offer mediation services outside the framework of the Conciliation-Arbitration Court of the Chamber of Notaries they are free to establish their own fees through negotiations with the parties.</p> <p>Sworn advocates are also allowed to set their own fees. According to the Article 60(1) of the Bar Association Act: <i>'An advocate's fee shall be agreed upon in a contract with a client.'</i> Article 61(1) of the Bar Association Act specifies the form of the fee:</p> <p style="padding-left: 40px;">A fee shall be determined:</p> <ol style="list-style-type: none"> <li>1) on the basis of time (hourly fee);</li> <li>2) in a fixed amount (flat fee);</li> <li>3) contingent on the recovery obtained for the client as a result of the provision of the legal services (contingency fee).</li> </ol> <p>Another important provision present in the Bar Association Act is Article 62(1): <i>'A client shall compensate for the necessary costs incurred by the advocate or the management of the law office in the provision of the legal services.'</i> So under Estonian law it is possible for an attorney-at-law acting as a mediator to ask for compensation from the disputing parties for costs such as telephone costs, paper usage etc. incurred in relation to conducting the mediation proceedings. It is possible that other mediators who are not notaries or sworn attorneys also agree with the parties upon the terms for compensation, but no relevant right derives from either the Conciliation Act or the Notaries Act.</p> <p>Regarding the distribution of costs between the parties, Article 9(2) of the Conciliation Act states:</p> <p style="padding-left: 40px;">The parties to conciliation proceedings are jointly and severally liable for payment of the agreed-upon fee to the conciliator ... Unless they agree otherwise, the parties are not required to reimburse one another's costs.</p> <p>So under the Estonian law, the mediator can claim unpaid costs from either</p>
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<sup>15</sup> Source: EU Mediation Law Handbook: Regulatory Robustness Ratings for Mediation Regimes edited by Nadja Alexander, Sabine Walsh, Martin Svatos.

		<p><b>§10.04 INITIATING MEDIATION</b></p> <p>Estonian law does not give a concrete list of examples of cases where mediation proceedings can be initiated. A very general principle has been established that says little about the nature of the disputes that could be subject to mediation. Article 1(3) of the Conciliation Act establishes that conciliation proceedings are proceedings in a civil matter if the dispute concerned arises from a private law relationship and can be referred to a county court for determination. So, in the first instance, all civil disputes that can be tried by court could be subject to mediation. However, without a doubt there are disputes that might be better handled by the judiciary. Therefore, when deciding on whether or not to mediate, other relevant provisions of the Conciliation Act should be referred to.</p> <p>When it comes to triggering mediation proceedings, however, the law is clear. Mediation is a voluntary process requiring the consent of the parties to mediate. Exceptions can be made only in cases where mediation is a mandatory pre-trial procedure foreseen by law or when the court considers it reasonable to mediate. The following gives a more specific overview of the process of initiating and triggering mediation.</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)	