
**Comparative Tables on
EWC Legal Proceedings (Court and Out-of-Court/Extrajudicial)
in the EU Member States**

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Preface

European works councils frequently complain that they are not informed and consulted by central management on time. They ask themselves and others how they can assert their rights, if necessary before the courts. They are often referred to the few known court decisions with the comment that the European works councils there successfully pushed through their claims.

Members of European works councils come from different countries. The agreement is usually subject to the law of the Member State in which the management has its head office. This means that most of the members of a European works council are operating within a legal system that is unfamiliar to them. In addition to the rights and duties of European works councils, they must also have an idea of how to assert their rights, if necessary by legal means, within the unfamiliar legal system and of what has to be taken into consideration.

The author has therefore drawn up an overview of every member country, in which, in addition to the ability to sue and to be sued and the legal capacity, points such as the liability for bearing costs have also been included. The overview was drawn up with the help of national experts, who were given the same questionnaires. On the basis of their answers, the first draft of the overview was then drawn up. This was then given to the experts for checking, completion and correction. Often the answers of the various experts from one member country differed from each other. This is understandable as this is a relatively new subject area and, in most member countries, no experience whatsoever exists with measures out of court and in court in the context of European works councils. This means that there is hardly any case law to clarify one or other point¹. In instances where the experts' answers differ significantly, the author wrote to the relevant national Employment Ministry in order to clarify the issue as far as possible. Unfortunately, not all of them replied². Despite the considerable care taken, the need for clarifications in the enclosed overviews cannot be ruled out. This could, in particular, prove necessary in the distinction between the agreements under Article 13 and Article 6 of Directive 94/45/EG (different legal quality / different legal consequences). Although the questionnaire asked for details of any differences that might exist, they were not always provided. The author appreciates any additional information.

Nonetheless, overall, the answers revealed that, in the Member States, there are a few important differences that must be taken into consideration before and during court action. Thus for example, the European works council has not, in

¹ To date, as far as is known, only in France have court decisions been delivered, that had been instituted by already existing EWCs. In Germany, to date, there have been only disputes concerning the preparatory stages in setting up an EWC.

² It was not possible to draw up an overview for Ireland and Portugal.

every country, legal capacity and the capacity to sue as a body; often only the individual members and the trade unions have that right. The institution of conciliation procedures apparently is stipulated by law only in Italy; in the other Member countries, however, it is always possible on a voluntary basis. Summary procedures are not possible in every country. Labour Courts do not always have competence. Often the national laws do not contain sufficiently clear regulations as to who should bear the costs of the procedures. In this respect, some legislative bodies have obviously relied on the fact that this is either laid down in the agreements or that the trade unions assume the costs. The possibilities of sanctions also differ -to a lesser extent -from one another. It seems, however, that in most member states the possibilities of sanctions refer to such cases only, where a European Works Council was created according to the subsidiary prescriptions of the Directive¹.

Where "Transposing Law" is referred to in the overview, this means the national law transposing Council Directive *941451EC* of 22nd September 1994 on the establishment of a European works council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (= EWC Directive).

The heading "Extra judicial conciliation procedures" includes all out-of-court types of conflict settlement. Insofar as the national experts' answers provided details, they were included. It was not possible to process the detailed country reports on the different extra judicial procedures drawn up on behalf of the EU Commission, as this would have exceeded the scope of an overview. For anyone wishing to find out more about extra judicial procedures: the reports of each country can be found on the Homepage of the European Commission at http://europa.eu.int/comm/employment_social/news/2002/may/conciliation_en.html

The author hopes that the overviews will be generally helpful to European works councils. Perhaps the mere fact that European works councils know about the legal possibilities will, at the end of the day, bring the management of undertakings to fulfil its obligations of informing and consulting, in good time and comprehensively, in order to avoid proceedings? If this is not the case, the European works councils will, in any case, need a person, which has the respective country-specific knowledge in order to assert their claims.

The author would like to thank everyone who supported her, thus enabling her to draw up the overviews.

A. Büggel, 2002

¹ The respective legislative provisions indicate into this direction.

Country A = <u>Austria</u>	Extra judicial conciliation procedures	Summary procedures	Legal proceedings	Peculiarities/ Comments	Assumption of costs	Sanctions
<p>Legal bases: Transposition Law: Federal Law No. 601 of 17.10.1996, which amended the “Arbeitsverfassungsgesetz”, the “Arbeits- und Sozialgerichtsgesetz” and the federal law on the “Postbetriebsverfassung”, in particular: Arbeitsverfassungsgesetz §§171-207</p> <p>Legal action: Arbeits- und Sozialgerichtsgesetz §§5b, 50</p> <p>Capacity to take legal action and legal competence Under § 53 in conj. with § 40 section 4b of the Arbeits- und Sozialgerichtsgesetz, the EWC by virtue of Art. 6 agreement and the EWC by virtue of law have, among other things, the capacity to sue and take legal action as a body.</p>	<p>A conciliation procedure is not prescribed by law.</p>	<p>Yes, temporary safeguarding of the legal position possible, e.g. when there is “imminent danger”, thus when a rapid decision is necessary. However, management decisions such as closures, outsourcing or disposals cannot be blocked¹</p> <p>Different courts: Art. 6 agreements - Labour Court Art. 13 agreements - Civil Court</p>	<p>Yes, but different courts: Art. 6 agreements: labour court, takes between 6 months and 3 years, depending on the court location and on whether the case is referred to several courts: Art. 13 agreements: civil court;</p>	<p>In the case of Art. 13 agreements, the application of Austrian law depends on the actual wording of the agreement. If the application of Austrian law has not been agreed, a starting-point could ensue from international civil law. A recommendation was made, at the time, to employees' representatives who negotiated an Art. 13 agreement, to agree on the system of law best for their concrete situation.</p> <p>Art. 13 agreements are usually seen as contracts under private law with the consequence that the civil courts are competent.</p>	<p>Each party bears its own costs. There is no claim for reimbursement against the undertaking, irrespective of whether the EWC wins or loses. The EWC's costs are usually assumed, within the framework of the existing legal protection provisions, by the trade union or the “Arbeiterkammer” (chamber of labour). However, acceptance of the costs depends on the previous assessment of the prospects of success. If, for example, there is an unfavourable situation in terms of proof, it can be assumed that not all the costs will be borne.</p>	<p>If the employer violates his duty to provide information about transnational matters with serious repercussions for the employees, a fine of up to 2,180 euros is possible (§ 207 of the constitutional labour law).</p>

Country overview Austria, October 2002

¹An exception exists in the case of mass redundancies: here dismissals can be effectively pronounced only after the „Arbeitsmarktservice” (labour market service) (State labour market administration) has been informed first.

Country B = <u>Belgium</u>	Extra judicial conciliation procedures	Summary procedures	Legal proceedings	Peculiarities/ Comments	Assumption of costs	Sanctions
<p>Legal bases: Transposing Law: Collective Agreement No.62 of 6th February 1996 In conj. with Law F 98 -1269 of 23.4.1998, Law F 98 - 1270 of 23.4.1998 and the law of 20th September 1948 - Loi portant organisation de l'économie (Mon. 27th-28th September 1984), therein Art. 14, and for summary procedures Art. 1035 Code Judiciaire. Capacity to sue and legal competence¹: As a body, the EWC has no capacity to sue or legal competence In Belgium. Only individual members of the EWC, who can assert the EWCs claim in their name, are entitled to sue and have legal competence. Furthermore, the trade unions have the capacity to sue and appear in court and are entitled to assert the EWCs claims in court.</p>	<p>There are no statutory arbitration procedures for EWC disputes. In order to settle a dlspute, the parties can agree to refer the Conciliateur Social at the Belgian Labour Ministry of. He can play only a mediating role. He has no decision-making powers. No costs are incurred for this procedure unless the parties involve a lawyer. This procedure is said to be fast and is the customary procedure for conflicts between employers and employees' representatives.</p>	<p>A distinction has to be made between 1) Summary procedures concerning the question of the confidentiality of information. For these, only the President of the Labour Court decides. The decision usually takes 2 days, but for especially urgent cases, which urgency must be proven, the decision is delivered immediately. 2) In other expeditious cases, the chamber consisting of the President and one employees' representative an one employer's representative decides. In both cases it is possible to prohibit or impose actions. Decisions delivered in the summary procedure may be contested.</p>	<p>The labour court is competent. The labour court industrial tribunal's decision may be contested before the next-higher court. Legal proceedings represent the exception when it comes to conflicts between employer and employees' representatives; see under conciliation procedures.</p>	<p>W/ith regard to acceptance in court, no distinction is made between EWCs and their legal bases (Art. 13 of the Directive, Art. 6 or the EWC by virtue of law).</p>	<p>Each party bears its own lawyer's charges. The party that loses the proceedings bears the court costs. This rule applies to summary procedures and legal proceedings in court. It should be possible, in second proceedings, to demand the costs as compensation from the other party.</p>	<p>The Factory Inspectorate can impose fines for infractions. However, penalties are also possible within the framework of the Criminal Code. See chapter VI of Law F 98 - 1270 of 23.4.1998.</p>

Country overview Belgium, October 2002

¹ The information on this point differed. The author therefore took the information from the Belgian Employment Ministry as the basis.

Country DK = <u>Denmark</u>	Extra judicial conciliation procedures	Summary procedures	Legal proceedings	Peculiarities/ Comments	Assumption of costs	Sanctions
<p>Legal bases: Transposition Law: Law No. 371 of 22nd May 1996 on the European works council Legal action: no details possible due to lack of information Capacity to sue and legal capacity The law contains no regulations. Deducing from the general laws, it can therefore only be assumed that the EWC as a body has the capacity to sue and take legal action, while this can be presumed for individual members only in the case of a breach of the confidentiality obligation. If Art. 13 agreements are deemed civil law agreements, only the individual members have capacity to sue and appear in court.</p>	<p>The law does not make the institution of a conciliation procedure mandatory. However, the parties may voluntarily agree on a conciliation procedure to settle conflicts. They must then reach agreement on all the details re the course of the procedure, the duration of the procedure and the choice of the conciliator. The conciliator's decision is binding (see however under legal proceedings). The trade union makes an expert available to the EWC.</p>	<p>No, not possible.</p>	<p>1) The arbitral award may be contested through the courts. 2) Moreover, it is possible to institute legal proceedings. However, it depends on the wording of the EWC agreement. In principle, EWC agreements are viewed as collective agreements, for which the Industrial Tribunal ("Industrial Court") is competent. The proceedings take approx. 6 months. However, some Art. 13 agreements and Art. 6 agreements may¹, because of their wording, be considered civil law agreements. This means that disputes arising from them would have to be dealt with before the civil court. The proceedings may take several years.</p>	<p>For Art. 6 agreements, the following applies: if the employer's side violates the rights of the EWC, the EWC has to report it to the police; if the employer's side denies the violation, then the case comes before the civil court.</p>	<p>If the lawsuit affects the EWC members individually and they are also members of the trade union, then the trade union assumes the costs of the proceedings. If they are not trade union members, they have to bear the costs themselves. Moreover, the fact that the employer has to bear all the costs of the EWC probably means that he also has to pay the costs for the court proceedings of the EWC body.²</p>	<p>Chapter 8 of the Transposing Law, particularly § 37 provides for a fine, among other things, where the undertaking violates the rights of a legally established EWC (according to subsidiary prescriptions). If the undertaking contravenes an EWC agreement, the law does not provide for a fine, unless the agreement is considered a collective agreement: a violation could then lead to a penalty being imposed on the undertaking.</p>

Country overview Denmark, October 2002

¹ There is no experience in this regard yet.

² This is an inference drawn by the national expert. It was not possible to clarify whether or not there is a legally specified obligation to assume the costs.

Country D = <u>Germany</u>	Extra judicial conciliation procedures	Summary procedures	Legal proceedings	Peculiarities/ Comments	Assumption of costs	Sanctions
<p>Legal bases: Transposition Law: Law on European works councils (Europäische Betriebsräte-Gesetz - EBRG) of 28.10.1996 Legal action: Arbeitsgerichtsgesetz (§§ 2 a, 10, 80 ff.) Capacity to sue and take legal action The EWC is entitled to sue and take legal action as a body.</p>	<p>No, a conciliation procedure is not prescribed by law. The parties may, however, agree on the establishment of a conciliation arbitration procedure to settle conflicts.</p>	<p>Yes, it is possible to institute a summary procedure (injunction). Aim: tolerance of, refraining from or carrying out of actions (§ 85 II Arbeitsgerichtsgesetz), thus e.g. the provision of information. The institution of injunction proceedings presupposes the need for urgency, which exists when, without such proceedings, there would be a danger that the claim could no longer be asserted or could be so only with great difficulty. This would be the case e.g. with a factory closure decided at short notice without prior consultation of the EWC.</p>	<p>Yes, this involves a so-called "Beschlussverfahren" (decision-making procedure), which can be instituted for all disputes between an EWC and an undertaking (§ 82 Arbeitsgerichtsgesetz). In the first instance, the Labour Court is competent both for the EWC establishment by law and for the EWC under Art. 6 agreements and Art. 13 agreements. For Art. 6 agreements, the Labour Court in whose district the dominating undertaking has its head office is competent locally. For Art. 13 agreements, the industrial tribunal in whose district the contracting undertaking has its head office is competent locally. Labour Court decisions can be contested before the next higher court, the Regional Labour Court.</p>	<p>None.</p>	<p>Within the Framework of the § 30 EBRG, the undertaking must reimburse the EWC establishment by law with the costs of necessary legal proceedings. This also covers the costs of the EWC's lawyer. The law gives no express ruling regarding an EWC by virtue of agreement (Art. 6, 13). Following on the general regulations for works councils in Germany, however, it is assumed that the undertaking must also bear the costs of the EWC by virtue of agreement, insofar as legal proceedings are deemed necessary¹. Both the amount of the court costs and of the lawyer's fees depends on the so-called amount in dispute, which the court lays down.</p>	<p>The EBRG contains rules on fines, see §§ 42-45 EBRG. Under § 42, it is, among other things, prohibited to impede the establishment of a European works councils, to inflict or threaten disadvantages or to exert influence by promising advantages. § 44 EBRG contains financial penalties or prison sentences for such cases. Under § 45 EBRG, a fine of up to 15,000 euros is considered, if the EWC is not informed, not correctly or fully informed, not informed in the prescribed manner or not informed in due time.</p>

Country overview Germany, October 2002

¹ There is no case law on this yet. This assumption is, however, deduced from the fact that it is possible for all 3 types of EWC (Law, Art. 6, Art. 13) to institute legal proceedings.

Country FIN = Finland	Extra judicial conciliation procedures	Summary procedures	Legal proceedings	Peculiarities/ Comments	Assumption of costs	Sanctions
<p>Legal bases: Transposition Law: Law of 9th August 1996/614 on the amendment of the law on cooperation in undertakings. Legal action: Supplementary law on cooperation in undertakings of 22.9.1978/725 Capacity to sue and take legal action: The EWC as a body is not entitled to take action. Only those who have signed the agreement are entitled to take action¹.</p>	<p>The law does not prescribe the institution of a conciliation procedure as mandatory. However, the parties may voluntarily agree on a conciliation procedure to settle conflicts. There is a law on conciliation procedures (Law of 1992/967). However, its application is enacting and subsidiary in a case of conflict between an EWC and an undertaking. The EWC and the undertaking decide first on the content of the conciliation procedure and on the choice of the conciliator. Appealing against the conciliator's decision award is possible only in the case of serious technical or proceedings-related errors or contempt. As far as is known, there is, to date, no EWC agreement in Finland, which contains a conciliation clause.</p>	<p>Yes, this possibility does exist. The locally competent County Court is competent. Duration of proceedings: between 6 months and 1 year in the first instance; in the case of an appeal procedure, up to 3 years. It cannot be said whether or not a measure already introduced by the undertaking has to be suspended until the decision. There is no experience in the area under discussion here. Decisions issued in the summary procedure may be contested.</p>	<p>The institution of legal proceedings is possible. The locally competent Country Court is competent. These are civil proceedings that take about 1 year.</p>	<p>In Finland conflicts are solved first of all as follows: 1) The Labour Minister monitors implementation of / compliance with the EWC laws. He can express his opinion on individual points and make proposals. The parties are not bound by them. 2) In collective agreements, there are regulations on procedures for settling conflicts. 3) There are undertakings that apply the OECD guidelines for multinational undertakings.</p>	<p>1) Conciliation procedures: the costs of an arbitration procedure are very high. The party that loses the arbitration procedure pays. 2) If it comes to summary procedures or proper legal proceedings, the signatories to the agreement would also have to bear the costs of such proceedings.² In practice, however, trade union representatives will always have signed the agreement so the trade union will bear the costs.</p>	<p>For violation of certain legally-prescribed obligations to cooperate, a fine may be imposed (see Art. 16 of the Transposition Law).</p>

Country overview Finland, October 2002

¹ It was not possible to clarify what the situation is if a statutory European works council exists.

² It was not possible to conclusively clarify whether or not this applies only to those cases in which the members lose the case.

Country F = <u>France</u> ¹	Extra judicial conciliation procedures	Summary procedures	Legal proceedings	Peculiarities/ Comments	Assumption of costs	Sanctions
<p>Legal bases: Transposition Law: Law No. 96-985 of 12.11.1996 in conj. with the Labour Law Capacity to sue and take legal action: European works council as a body has the capacity to sue and take legal action, as do the trade union organisations, which can also act together with the EWC.</p>	<p>There is no conciliation procedure for disputes within the framework of French EWC law. In labour law, however, there is a mediation procedure. With the consent of the parties, the judge handling the case can instruct a mediator to resolve the conflict. In the context of European works councils, however, very little use is made of this option as the mediation procedure takes a very long time, while EWCs need fast decisions.</p>	<p>If the rights of an EWC according to agreement or law are infringed, a summary procedure can be instituted. To date, little use has been made of this option. Renault was the first case. Within the framework of a summary procedure, the EWC can ask for the undertaking's decision to be deferred until the EWC has been sufficiently consulted. The procedure takes between 15 days and 3 weeks². In the case of a particular need for urgency, which must be proven, the decision may be issued from "one hour to the next". The procedure may be conducted orally but written preparation, etc. is customary. Representation by a lawyer is not essential but, because of the complexity, is customary. If the judge is of the view that a summary procedure is not admissible for lack of need for urgency, he can order the institution of legal proceedings within a given period, if the EWC, to assist its special application, has requested a decision in legal proceedings.</p>	<p>The District Court is competent for legal proceedings through the courts. A case, in which e.g. legal proceedings were instituted, would be a different interpretation of the agreement. The proceedings must be prepared in writing. A lawyer must be brought in. The amount of the fees is laid down.</p>	<p>In appeal proceedings, an "avoué" (solicitor) always appears along with the lawyer. This is a ministry representative who supports the lawyer. The lawyer prepares the legal documents, the "avoué" checks whether all formalities have been observed. Only the lawyer is entitled to plead, not the "avoué". The lawyer must start the legal proceedings via the "avoué" before the appeal court. Independently of the above-mentioned court proceedings, the Factory Inspectorate may be brought in. This prepares a record of the infringements.</p>	<p>1) Summary procedures: The court costs are approx. 500 FF = approx. 75 euros. If a lawyer is instructed to represent, he is free to negotiate his fees. In practice, if the EWC wins the proceedings, the employer is ordered to bear the court costs and to pay a claim for compensation, which makes up part of the legal expenses.³ 2) Legal proceedings: re assumption of costs see above under 1; the legal expenses are, however, laid down in these proceedings. In the appeal proceedings, the "avoués" costs must be added to these. 3) Criminal proceedings: It is not essential to bring in lawyer, but it is done because of the complexity. Re assumption of costs see above under 1. Comment: In France, the national works councils are given a budget based on the wage total of the undertaking. European works councils subject to French law do not receive a budget, however. But it is possible, in agreement with the management, to use the budget of works councils' under certain circumstances also to cover the costs of European works councils.</p>	<p>If the information and consultation process is violated, the legally created EWC can institute criminal proceedings. The penalty may be 1 year imprisonment and/or a 25,000 F (approx. 3,570 euros) fine; see Art. 4 of the Transposition Law. In the event of repetition, both the prison sentence and the fine may be doubled. It is irrelevant to the criminal proceedings. whether or not the employer has acted with intent. It is sufficient that the infringement of the law is objectively given. This means that it is not necessary to prove any (subjective) intention to break the law.</p>

Country overview France, October 2002

¹ I would like to particularly thank my colleague, Maitre Brihi, who helped to ensure that this overview could be produced in this form.

² In the Renault case, the summary procedure took from 19.3. to 4.4.1997; on 7.5.1997, the appeal court ruled against the summary procedure via the employer's appeal.

³ In the Renault case, the EWC received 15,000 FF = approx. 2,300 euros as claim for compensation for legal expenses.

Country GR = <u>Greece</u>	Extra judicial conciliation procedures	Summary procedures	Legal proceedings	Peculiarities/ Comments	Assumption of costs	Sanctions
<p>Legal bases: Transposition Law: Presidential decree on the right of employees in community-scale undertakings and groups of undertakings to information and consultation in accordance with Directive 94/45/EC of 22nd September 1994</p> <p>Legal action: Law No. 2224794, Law 1767/88, Law 1876/90</p> <p>Capacity to sue and take legal action: The EWC as a body probably has the capacity to sue and take legal action.¹</p>	<p>For disputes between an already existing EWC and the management, a statutory arbitration procedure is not provided for.²</p>	<p>No details provided.</p>	<p>Legal disputes about the interpretation and application of an EWC agreement are conducted either before the civil courts or the Factory Inspectorate.³</p>	<p>No details provided.</p>	<p>No details provided.</p>	<p>The imposition of a fine or ordering of a prison sentence is possible for infringements of obligations laid down in the decree, see Art. 21 of . the Transposition Law = Presidential decree</p>

Country overview Greece, October 2002

¹ This is assumed by the author on the basis of the general context of the answers given by the national expert.

² A legally prescribed arbitration procedure exists on l y if the special negotiating body and the management cannot reach consensus on the text of an agreement.

³ It can only be assumed, according to the available information, that the Labour Inspectorate plays more the role of a conciliation board with decision-making powers

Country I = <u>Italy</u>	Extra judicial conciliation procedures	Summary procedures	Legal proceedings	Peculiarities/ Comments	Assumption of costs	Sanctions
<p>Legal bases: Transposition Law:¹ Law No.74 of 2nd April 2002, which entered into force on 9.5.2002. Capacity to sue and take legal action: The European works council has the capacity to sue and take legal action when it declares that it is suing on behalf of a trade union (Art. 39 Cost., principe de liberté syndicale).²</p>	<p>1) Art. 11 of Law 74/2002 provides for a mediation committee in cases in which there are differences of opinion on the question of confidential information. This committee decides within 14 days. 2) If there is an infringement of the information and consultations rights contained in an Art. 6 agreement, an arbitration committee is set up, consisting of the parties and of a President selected by them. If the parties cannot reach agreement within 30 days, the Labour and Social Ministry is brought in. It examines whether an infringement exists. If so, conditions are imposed to fulfil the obligations. In other cases, the law (codice di procedura civile) provides for the possibility of a voluntary arbitration procedure.</p>	<p>Yes there are summary procedures for cases in which trade union rights are infringed. This can also include the violation of information and/or consultation rights. The local civil court is competent. If the court establishes a violation of trade union rights the undertaking's decision must be stopped.</p>	<p>1) Conciliation procedures: The conciliation award may be contested within 90 days before the appeal court. 2) Summary procedures: The decision issued in the summary procedure may be contested only within 15 days. The decision delivered for this case in legal proceedings is final. 3) Instituting legal proceedings through the courts is always possible. The labour court is competent.</p>	<p>Law No. 74/2002 contains, in Art. 15, protection for the continued existence of "Article 13 agreements". If this is not extended, a EWC by law is set up.</p>	<p>1) The costs of an conciliation procedure are approx. 3,500 to 4.000 € (7 -8 million lire). 2) The costs of a summary procedure are approx. 1,500 € (approx. 3 million lire). 3) The costs of legal proceedings through the courts are approx. 1,500 € (approx. 3 million lire). The EWC s costs are always borne by the undertaking irrespective of whether or not the EWC wins or loses.</p>	<p>If there is a violation against Art. 11 of Law No. 74/2002, after hearing the parties and assessing the work of the mediation committee, a fine of between 1.033 and 6.198 € can be imposed. If the conditions of the Labour and Social Ministry (see conciliation procedures) are not met within 30 days, a fine of between 5.165 and 30.988 € is imposed.</p>

Country overview Italy, October 2002

¹ The Transposition Law is almost identical to the interprofessional agreement on the ratification of Directive 94/45/EEC of 6th November 1996.

² According to the information provided, it should be sufficient if the EWC declares that it is suing on behalf of the trade union. It requires no written proof.

Country L = <u>Louembourg</u>	Extra judicial conciliation procedures	Summary procedures	Legal proceedings	Peculiarities/ Comments	Assumption of costs	Sanctions
<p>Legal bases: Transposition Law: Law of 28.07.2000 on establishing a European works council or a procedure for informing and consulting the employees in community-scale undertakings and groups of undertakings</p> <p>Capacity to sue and take legal action: The law contains no references to whether the European works council as a body or only the individual members have the capacity to sue and take legal action.</p>	<p>The Transposition Law provides for a voluntary conciliation procedure for disputes concerning the confidentiality of information (Art. 58). The conciliation board consists of one representative each of the management and employees. The Chairman is the Factory or Mine Inspector¹ or his representative. The conciliation award is binding and cannot be contested. As there is no experience² with this procedure yet, no statement can be made about the sequence of events or duration.</p>	<p>In principle, summary procedures are possible. Measures introduced by the undertaking cannot be stopped however. The summary procedure takes between 1 and 2 months. The labour court is competent.</p>	<p>1) Summary proceedings: Decisions issued in the summary procedure may be contested as part of the court proceedings. The labour court is competent. The duration of the proceedings is essentially determined by the parties, especially the plaintiff.</p> <p>2) Ordinary legal proceedings through the courts can always be instituted. The labour court is competent, Art. 63 transposition law.</p>		<p>1) Summary procedures: The costs are between 497 -619 euros (20,000 -25,000 LUF) according to choice of lawyer.</p> <p>2) Ordinary legal proceedings: No statement can be made regarding the amount of the costs as this depends on the choice of lawyer and his fee requirements.</p> <p>Within the framework of Article 6 agreements, § 50 of the Transposition Law contains a general duty for the undertaking to bear the EWCs costs. It is not clear whether this also includes court costs and legal expenses, as the law contains no regulations in this respect.³</p>	<p>Chapter 5 Art. 61 of the Transposition Law provides for a fine of between 10,001 and 150,000 LUF (approx. between 250 and 3750 €) among other things for impeding the work of European works council.</p>

Country overview Luxembourg, October 2002

¹ This is an institution within the Labour Ministry, which is responsible for checking compliance with the laws.

² To April 2002

³ It was not possible to provide any information re Art. 13 agreements.

Country NL = <u>Netherlands</u>	Extra judicial conciliation procedures	Summary procedures	Legal proceedings	Peculiarities/ Comments	Assumption of costs	Sanctions
<p>Legal bases: Law of 23rd January 1997 on the application of European Union Council Directive 94/45/EEC of 22nd September 1994 on the establishment of a European works council or a procedure for informing and consulting the employees in Community-scale undertakings and groups of undertakings (Dutch Law on European works councils=WEOR).</p>	<p>A statutory conciliation procedure is not prescribed. The parties may, however, provide for a voluntary conciliation procedure in the agreement.</p>	<p>Under Article 5 of the Transposition Law, any "interested person"¹ can ask the appeal court's chamber for business questions to implement the law in the summary procedure, with the exception of Art. 4 clause 1 - 8, Art. 11 ("Art 6 Agreement")f Art. 24 ("Art. 13 Agreements"). The summary procedure is no fast-case procedure in the proper term. It is rather a written procedure on a trial basis, that may be treated as urgent.</p>	<p>Under Article 5 of the Transposition Law, any "interested person" can ask the appeal court's chamber for business questions to implement the law, with the exception of Art. 4 clause 1 -8, Art. 11 ("Art. 6 Agreement"), Art. 24 ("Art. 13 Agreements").</p>	<p>No details provided.</p>	<p>Art. 5 of the Transposition Law specifies that, among other things, the European works council established by virtue of law cannot be fined to the detriment of this procedure. That obviously means that the above-mentioned do not have to bear any costs that arise for court proceedings. It follows from Art. 5 in conjunction with Art. 12 of the Transposition Law that a works council that has been established on the basis of an agreement does not have to bear any costs either.²</p>	<p>No indication possible</p>

Country overview Netherlands, October 2002

¹ An interested person may be: individual employees, individual employees' representatives, the EWC as a body or individual EWC members.

² As inferred by the national expert; unfortunately, the Employment Ministry has not yet sent its promised position statement.

Country S = <u>Sweden</u>	Extra judicial conciliation procedures	Summary procedures	Legal proceedings	Peculiarities/ Comments	Assumption of costs	Sanctions
<p>Legal bases: Transposition Law: Law No. 539 of 9th May 1996 on European works councils Legal action: Law SFS 1974/371 on disputes within the framework of industrial law Capacity to sue and take legal action: The EWC has the capacity to sue and take legal action as a body. This obviously also applies to EWCs based on an Art. 13 agreement; see Art. 40 of the Transposition Law.</p>	<p>Instituting a conciliation procedure is not legally prescribed.</p> <p>If there are differences of opinion between the EWC and the management, an attempt is made to find a solution by negotiation between the parties, as is customary in Sweden (see also under "Peculiarities").</p>	<p>No, there is no possibility for EWCs to institute a summary procedure.</p>	<p>Yes, the normal legal means through the courts can be used; the Labour Court in Stockholm is competent. If the conflict cannot be resolved by means of negotiation (see under conciliation procedures and peculiarities), the plaintiff must file a statement of claim with the industrial tribunal within 8 months of the end of the negotiations at the latest. The proceedings take approx. 8- 10 months.</p>	<p>In the event of a conflict, one party has the option of opening negotiations to solve the conflict, within 4 months after learning of the infringement of rights. If the conflict cannot be solved within 4 months in this way, legal proceedings must be instituted (see legal proceedings).</p> <p>Irrespective of the knowledge or ignorance of the infringement of rights, the limitation period is 2 years from the time the rights were actually infringed.¹</p> <p>For EWCs based on an Art. 13 agreement, Articles 39-41 of the Transposition Law apply exclusively.</p>	<p>The costs of legal proceedings are between 70,000 and 100,000 SEK. The party that loses the case has to pay all the costs of the proceedings. If the parties enlisted the service of the industrial tribunal, then no costs would be incurred. However, no legal advisers or lawyers are included in this service. If the EWC loses the lawsuit, it must bear all the costs. Whether the fact that, under Art. 35 of the Transposing Law², the undertaking has to bear all the costs of the EWC in general, also applies to trial costs, is at least uncertain. When the bill was tabled, the Swedish government, in any case, said that the EWC could ask either the employees or the trade union for financial support.</p>	<p>Article 39 -41 of the Transposition Law contains compensation provisions for the case of infringement of the law or of an agreement.</p>

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¹ Assuming the EWC were to learn that the undertaking had e.g. violated its duty to inform, 21/2 years previously, then the EWC could institute neither an arbitration procedure nor legal proceedings, because the matter would come under the statute of limitations.

² N. B. : Art. 13 EWCs are, in any case, exempted from this; see under Peculiarities.

Country E = <u>Spain</u>	Extra judicial conciliation procedures	Summary procedures	Legal proceedings	Peculiarities/ Comments	Assumption of costs	Sanctions
<p>Legal bases: Transposition Law: Law of 10th April 1997 on the right of employees in community-scale undertakings to information and consultation. Legal action: Law on industrial procedures and Section III Chapter II of the Transposition Law (Art. 35 -41) Entitlement to take legal action and legal competence: Art. 37 of the Transposition Law lays down, among other things, that the European works council is entitled to take legal action and has legal competence; trade unions in certain cases. See however also under Peculiarities/ Comments.</p>	<p>The law does not make the institution of a conciliation procedure mandatory. The parties may, however, agree on a conciliation procedure to settle conflicts. There is an agreement (acuerdo interconfederal of 31.1.2001), that lays down the course of a conciliation procedure. The parties jointly select the conciliator. If no agreement can be reached on the conciliator, no conciliation procedure takes place. If it comes to a conciliation procedure, it usually takes 10 days. A conciliation award can be contested before the labour court if the decision either lies outside the area of competence of the conciliation board, there is a breach of the procedural rules, the time for the decision to be pronounced is exceeded, or there is an infringement of basic rights. Duration of procedure: 45 days to 1 year, depending on whether or not an appeal is made. In other cases the conciliation award is binding. No costs arise for the existing public conciliation procedure. If the parties choose a conciliation procedure other than the public one, then they must bear their own costs.</p>	<p>Yes, it is possible to institute a summary procedure if the freedom of the trade union right is concerned or a dispute of collective law is involved. The labour court is competent. The procedure takes approx. 2 -3 weeks. Within the framework of the summary procedure, the undertaking can be ordered to cease the contentious but already introduced measures until it has fulfilled its duties in accordance with the regulations. Decisions issued in the summary procedure may be contested. In view of the very restrictive requirements according to which a summary procedure can be instituted, summary procedures will rarely be considered for European works councils.</p>	<p>An EWC can always assert its right to information and consultation. The social courts are competent (see Art. 35 of the Transposition Law). Duration: between 6 months and 2 years, depending on whether or not an appeal is made. Court costs are not incurred; otherwise see under assumption of costs.</p>	<p>It was not possible to clarify whether and what differences exist between the assertions in court of claims arising from an "Art. 13 agreement" and an "Art. 6 agreement". The additional provisions of the Transposition Law indicate that, in the case of an Art. 13 agreement. Only the individual EWC members can sue.</p>	<p>Summary procedures and legal proceedings in court: in principle, an EWC is represented by the legal service of the trade union, so that no costs arise. If, however, an EWC arranges to be represented by a lawyer outside of the legal service of the trade unions, then the EWC must bear the costs.</p>	<p>1) There is a royal decree 5/200, which provides for a fine of between 3,005.00 and 90,151.00 euros (500,001 and 15,000,000 Ptas) in the event of the undertaking failing to respect the rights of the employees' representatives to information and consultation. The Factory Inspectorate is competent. 2) Section III of the Transposing Law governs infringements and suspicion of them (Chapter I Art. 30 to 34)</p>

UK

Country UK = <u>United Kingdom</u>	Extra judicial conciliation procedures	Summary procedures	Legal proceedings	Peculiarities/ Comments	Assumption of costs	Sanctions
<p>Transposition Law: Statutory Instrument 1999 No.3323 The Transnational Information and Consultation of Employees Regulations 1999¹</p> <p>Legal action: Part V , VI, VIII of the Transposition Laws see in conj. with Employment Tribunal Act 1996</p> <p>The EWC has the capacity to sue and take legal action as a body (see Regulation 21 (3).</p> <p>In the case P & O before the Employment Appeal Tribunal, London, the judge has had doubt if only the workers side of an EWC are the "relevant applicant" if the EWC is composed by members from employers and workers representatives</p>	<p>In principle, the extra judicial conciliation procedure is possible only on a voluntary basis unless the Employment Appeal Tribunal (EAT) refers the case to the conciliation board (ACAC =Advisory, Conciliation and Arbitration Service).²</p>	<p>There is no special summary procedure.</p>	<p>Yes, the Employment Appeal Tribunal is competent. The duration of proceedings before EAT is usually relatively brief.</p>	<p>Article 13 agreements are not "legally binding" in the UK. This means that they are not even deemed civil law contracts. They are considered more a type of "gentlemen's agreement". Claims arising from Article 13 agreements cannot therefore be legally enforced.</p>	<p>The existing law does not provide for any regulations on this.</p>	<p>Yes, a fine of up to £ 75,000 can be imposed; see Part V, Article 22, of the Transposing Law.</p>

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¹ Parts of the Transposition Law contain separate provisions for Great Britain and Northern Ireland.

² For the purposes of completeness, it should be pointed out that there is still the CAC = Central Arbitration Committee. In principle, the CAC becomes involved when it comes to the question of the applicability of the Transposing Law to undertakings or to questions of the formation of an EWC.