

Name of the country: [Belgium](#)

Transposition act = Consolidated legislation - transposition law 2009/38/EC 26 JANUARI 2012. - Wet tot wijziging van de wet van 23 april 1998 houdende diverse bepalingen met betrekking tot de instelling van een Europese ondernemingsraad of van een procedure in ondernemingen met een communautaire dimensie of in concerns met een communautaire dimensie ter informatie en raadpleging van de werknemers Loi modifiant la loi du 23 avril 1998 portant des mesures d'accompagnement en ce qui concerne l'institution d'un comité d'entreprise européen ou d'une procédure dans les entreprises de dimension communautaire et les groupes d'entreprises de dimension communautaire en vue d'informer et de consulter les travailleurs

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.)			Unclear, the EWC Act only speaks of EWC or procedure for I&C according to the EWC Directives = are SNBs excluded? ¹	No exclusion = yes?
B	EWC based on Art. 6 agreements		Yes		
C	EWC based on art. 13 agreement		yes		There seems to be no differentiation between Art. 6 and 13 Agreements
D	EWC based on subsidiary requirements				No exclusion = yes?

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			Unclear, possibly no.

¹ Art.2. This Act shall apply to European Works Councils and to processes for informing and consulting employees set up by virtue of Council Directive 94/45/EC of 22 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 European Works Councils and the procedures for informing and consulting employees set up by Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 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, and on their establishment

² Material and geographical competence.



B	Operation of the EWC: breaches and compliance with the law (statutes), agreement or Subsidiary Requirements	Yes		
C	Challenging management on the use of confidentiality and secrecy/withholding information)	No		
E	Individual rights of the SNB/EWC members under national EWC legislation	Yes ³		
F	(Others to be filled in)			State supervision: Social Inspectors can supervise application of the EWC law (Art. 23 ff. of the Social Penal Code)

3. Capacity to act in court

		Brief explanation/ differences for 2A-2F above)
1	Who/which body can start a judicial procedure?	only EWC members or trade unions have the capacity to act in justice an action on EWC matters ⁴
2	What legal status (ius standi) is a requirement to start a judicial procedure in courts as a collective body? (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 has no legal capacity, only individual EWC members (how should they be mandated? According to what rules?) or trade unions.
4	In case of lacking capacity to act in court: how can it be circumvented (think of representation by trade unions)?	Via trade unions
5	Who represents the EWC in law?	Individuals ⁵ or trade unions
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?	None, EWCs have no court capacity.

4. Starting a procedure and timelines

	Brief explanation
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³ Art. 9 of the EWC Act 1998.

⁴ In line with Art. 4 of the Law of 23 April 1998 setting out various measures for the establishment of an EWC or an information consultation procedure provides that the representative workers' organisation within the meaning of the Works Councils Constitution Act may bring an action before the Labour Courts. For more on the issue see Dorssemont 2010: 128 ff.

⁵ In the known court cases these were individuals acting as representatives of EWC: e.g. "Ms. X in her capacity of chairperson of the European Works Council of defending parties and member of the EWC for UK"



	What court	Labour courts (deal with labour law and social security law) ⁶ .
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?	
6	How long does a judicial procedure typically take?	
7	Is an injunction or a summary procedure possible?	Theoretically Social Inspectors can issue orders/injunctions, but it is unclear if those can be issued in EWC cases? However: the Labour Inspectorate has only a monitoring function in Belgium and the normal judicial channel (the courts) is competent to adjudicate in EWC disputes (Article 10 of the Law of 23 April 1998 laying down accompanying measures: 'Without prejudice to the powers of officers of the judicial police, the officials appointed by the King shall supervise compliance with the provisions relating to European Works Councils as well as to procedures of information and consultation which, as the case may be, have been set up instead of a European Works Council. These officials shall exercise this surveillance in accordance with the provisions of the law of 16 November 1972 on labour inspection.'

⁶ 27. Which party has the burden of proof in a trial and at what standard is this burden met?

In civil cases, evidence of a fact, hypothesis or allegation must be provided by the party invoking it. Whoever claims the performance of an obligation must prove it. Reciprocally, the person who claims to be released from the obligation must justify the payment or the event that extinguished the obligation. In a legal action, each of the parties is responsible for proving the facts that it alleges. It is then up to the other party to rebut the probative value of the facts, where possible and permissible. [Legal systems in Belgium: overview | Practical Law \(thomsonreuters.com\)](#)



ETUC
Project
'Democracy
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Romuald Jagodziński
Labour SUREAL
rjagodzinski@labour-sureal.eu



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5. Costs

		Brief explanation
1	What are the court fees for a judicial procedure?	
2	Is legal representation by a lawyer required in a judicial procedure?	
3	Who pays the costs for:	
	- 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?	<p>The protocol on cooperation (EWC-management) must fix budgetary rules (not equivalent to fixing an independent budget).</p> <p>The Coll Agreement guarantees only means to ensure reporting back⁷</p> <p>Narrow interpretation / literally copy from the EWC Directive: Collective Agreement No 101 of 21/12/2010 (Article 44) stipulates:</p> <p><i>'The operating expenses of the European Works Council shall be borne by the central management located in Belgium. This management shall provide the members of the European Works Council with such financial and material resources as enable them to perform their duties in an appropriate manner.'</i></p>
5	Can the EWC be sentenced to pay the costs of the other party in the judicial procedure?	Probably not, as EWCs have no court/legal capacity.
6	Can the EWC members be sentenced to pay the costs of the other party in the judicial procedure?	

6. Sanctions

		Brief explanation
	How is a breach of	Criminal offence ⁸

⁷ Article 47 of the 2011 Collective Agreement guarantees only means to enable reporting back from the EWC 'The necessary time and means shall be granted to the members of the European Works Council and the employees' representatives of the technical production units as a whole located in Belgium, which are covered by the scope of the European Works Council, to enable the members of the European Works Council to inform the employees' representatives of the technical production units as a whole of the content and outcome of the information and consultation procedure carried out within the European Works Council.

⁸ Violations of the provisions of this Law and of its implementing decrees shall be detected, established and punished in accordance with the Social Penal Code



	law classified?	<p>Book 2 of the Social Penal Code groups together all the incriminations of social penal law which are liable to be punished by the penal or administrative sanctions it provides. Breaches against EWC rights can be classified as:</p> <ol style="list-style-type: none"> 1. Offences against the person of the worker (examples: violence and moral or sexual harassment at work, health and safety at work, age of admission to work); 2. Offences concerning collective labour relations; <p>Infractions against these are considered level 1 infractions.</p>												
1	What are the sanctions for breaches of EWC laws?	<p>Since in Belgium the EWC Directive is applied by means of a social partners (collective) agreement, the sanctions laid down for employers who violate collective bargaining agreements that are rendered generally binding are stipulated in acts: The Parliamentary Act of 5 December 1968 with respect to Collective Bargaining Agreements and Joint Committees, Official Gazette, 15 January 1969, as further amended.</p> <p>Administrative fines (Art. 12 of the 1998 EWC act). Criminal Sanctions⁹ (for breaches against collective agreements) including imprisonment¹⁰.</p> <p>EWC breaches are sanctioned with level 1 sanctions, according to this scheme:</p> <table border="1" data-bbox="454 996 1401 1350"> <thead> <tr> <th colspan="2">Montants des amendes administratives AVANT application des décimes additionnels aux amendes:</th> </tr> <tr> <th>Niveau de sanction</th> <th>Montants</th> </tr> </thead> <tbody> <tr> <td>Sanction Niveau 1</td> <td>De 10 à 100 €</td> </tr> <tr> <td>Sanction Niveau 2</td> <td>De 25 à 250 €</td> </tr> <tr> <td>Sanction Niveau 3</td> <td>De 50 à 500 €</td> </tr> <tr> <td>Sanction Niveau 4</td> <td>De 300 à 3.000 €</td> </tr> </tbody> </table>	Montants des amendes administratives AVANT application des décimes additionnels aux amendes:		Niveau de sanction	Montants	Sanction Niveau 1	De 10 à 100 €	Sanction Niveau 2	De 25 à 250 €	Sanction Niveau 3	De 50 à 500 €	Sanction Niveau 4	De 300 à 3.000 €
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⁹ A criminal sanction (*sanction pénale*) can be imposed if the employer fails to comply with the deadlines in accordance with Art. 21 of the Act of 14 February 1961 (European Commission 1998). Criminal sanctions are also imposed based on the Code Pénal Social stipulating that a violation of a collective agreement (*La violation de la partie normative d'une convention collective*) is sanctioned by Art. 189: 'An employer will be punished by a level 1 sanction if, in breach of the law of 5 December 1968 on collective labour agreements and joint committees, it has committed an infringement of a collective labour agreement that has been made compulsory and that is not already sanctioned by another article of the present Code. With regard to the infringement referred to in the first paragraph, the fine will be multiplied by the number of workers concerned.' (For more information see: Dorssemont 2012).

¹⁰ Criminal penalties can be applied according to the law setting out support measures for the establishment of a European Works Council or a procedure in Community-Scale undertakings and groups of Community-Scale undertakings for the purposes of informing and consulting employees. [C – 2011/00140] Moniteur Belge — 23.03.2011 – Ed. 3 — Belgisch Staatsblad 18321, Chapter VI.

		<p>Le tableau ci-dessus mentionne les montants associés aux quatre niveaux de sanction avant l'application des décimes additionnels. Pour connaître le montant des minima et maxima des amendes qui peuvent réellement être infligés lors de l'application d'une amende administrative, il faut multiplier ces montants théoriques par les décimes additionnels applicables. Ces décimes additionnels varient en fonction du moment des faits.</p> <p>Ainsi, les décimes additionnels applicables correspondent aux coefficients suivants :</p> <table border="1"> <thead> <tr> <th>Moment des faits</th> <th>Coefficient applicable</th> </tr> </thead> <tbody> <tr> <td>Infractions commises entre le 01/01/2012 et le 31/12/2016</td> <td>6</td> </tr> <tr> <td>Infractions commises à partir du 01/01/2017</td> <td>8</td> </tr> </tbody> </table> <p>11 = 10 to 100 EUR?</p> <p>Unclear if criminal fines are available?¹²</p>	Moment des faits	Coefficient applicable	Infractions commises entre le 01/01/2012 et le 31/12/2016	6	Infractions commises à partir du 01/01/2017	8
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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)	<p>Yes¹³</p> <p>For the majority of offences under the Social Penal Code, the administrative fine is imposed on the employer. This is the person - natural or legal - (self-employed, company, non-profit organization,...) who employs the workers concerned.</p> <p>The administrative fine or conviction is only imposed on the offender, even if the offence was committed by an agent, e.g. the managing director, or an employee.¹⁴</p> <p>Penal sanction of imprisonment: 8 days to 1 month (Art. 56 of the 1968 Act on Collective Agreements) ??</p>						
5	Can individual EWC	<p>Yes, for breaches of confidentiality: Article 8 (Law of 1998)</p> <p>Sanction for disclosing confidential information: imprisonment from 8 days up to 6 months and a fine between 100 and 500 Euro (Art. 458 of the Penal Code)</p>						

¹¹ [Montants des amendes administratives - Service public fédéral Emploi, Travail et Concertation sociale \(belgique.be\)](#)

¹² Belgian criminal law offers a wide range of possible sentences for various crimes. The law regularly provides for a certain framework within which the court may exercise its discretion based on the particularities of the case at hand. This scope regularly ranges from a financial penalty to a term of imprisonment.

¹³ Based on Art. 5 of the Parliament Act of 5 December 1968 (with respect to Collective Bargaining Agreements and Joint Committees, Official Gazette, 15 January 1969, subsequently amended) which foresees criminal sanctions for employers violating provisions of collective bargaining agreements (transposition of the EWC directives in Belgium are executed via collective bargaining agreements).

¹⁴ [Personne passible d'une amende administrative - Service public fédéral Emploi, Travail et Concertation sociale \(belgique.be\)](#). See also: ([art.105 du Code pénal social](#)).



	members be sentenced to pay fines or be subject to other sanctions?	
6	Can the EWC collectively be sentenced to pay fines or be subject to other sanctions?	No, EWCs have no legal/court capacity.

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?	Employees' and employers' organisations as well as works councils, for that matter, do not have access to arbitration since they do not have legal personality. ¹⁵ The Belgian system provides for conciliation services. These services are organised by the government, under the authority of the Ministry of labour. Independent conciliators can be called upon in case of a conflict over interests. ¹⁶

8. Resources for EWCs

		Brief explanation
1.	Can unions provide legal support or financing for litigation?	Yes. resolved in practice by cooperation with trade union organisations that have the statutory right to represent EWCs in court proceedings and provide them with legal representation at their own expense.
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)	Social Inspectorate?

¹⁵ Van Hoek and HendrickX (2009): 96.

¹⁶ Ibid.

