

Name of the country: [Denmark](#)¹

Act = Consolidated legislation - Promulgation of the Act on European Works Councils (Bekendtgørelse af lov om europæiske samarbejdsudvalg)

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	
B	EWC based on Art. 6 agreements			Unclear	
C	EWC based on art. 13 agreement			Unclear, but possibly yes (civil courts are deemed competent). Although the 2000 Implementation report (European Commission 2000) denied that Art. 13 are enforceable ²	
D	EWC based on subsidiary requirements			Unclear	

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

		No	Yes	Which authority (e.g., court) is competent ³
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	
B	Operation of the EWC: breaches and compliance with the law (statutes), agreement or Subsidiary Requirements		Partially: not all breaches of all provisions are enforced by a fine ⁴	

¹ To conclude, in most of the Member States covered by the Recast Directive, national legislation is generally compliant with the Directive by transferring the text of the Directive verbatim or by adopting a very similar wording. Only in three Member States does the national legislation not seem fully compliant with the minimum standards set out in key substantive provisions²⁵ and in 11 Member States for other provisions. Denmark, Iceland, Greece. (European Commission 2018: 14)

² 'Not all countries specify how these penalties are to be applied in the case of infringement of obligations entered into under an earlier agreement, and so it may be assumed that they also apply in this case, except in Denmark and Sweden, where agreements already in force are not covered by the system of penalties'

³ Material and geographical competence.

⁴ § 37. Violation of § 9, § 10, para. 1, § 11, para. 1, §§ 16, 17 a, 20 and 23, § 24, para. 1, 2 and 4, and § 28 is punishable by a fine.



C	Challenging management on the use of confidentiality and secrecy/withholding information)			
E	Individual rights of the SNB/EWC members under national EWC legislation			
F	(Others to be filled in)			

3. Capacity to act in court

		Brief explanation/ differences for 2A-2F above)
	Which court is competent?	In Denmark (as in Austria) the competence of courts differs according to the type of EWC agreement: in the case of Article 6 agreements, the labour tribunal is competent to treat cases, whereas for Article 13 agreements civil courts have the power to adjudicate (Büggel 2002). In cases of confidentiality disputes: In Denmark in the case of infringement of EWC law suffered by company management proceedings initiated by the latter are before the civil court (ibid.).
1	Who/which body can start a judicial procedure?	
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)?	No legal status of EWC to act in ordinary court. Special negotiating body and social partners can act in labour courts ⁵
4	In case of lacking capacity to act in court: how can it be circumvented (think of representation by trade unions)?	
5	Who represents the EWC in law?	
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?	

4. Starting a procedure and timelines

		Brief explanation

PCS. (2) In rules issued pursuant to sections 29, 34 and 35, a fine may be imposed.

PCS. 3. If the infringement is committed by a company, an association, a self-governing institution, a foundation or the like, a fine may be imposed on the legal person as such.

⁵ European Commission 2018: 58



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Romuald Jagodziński
Labour SUREAL
rjagodzinski@labour-sureal.eu



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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?	No

5. Costs

		Brief explanation
1	What are the court fees for a judicial procedure?	<p>“Fixed court costs for parties to civil proceedings</p> <p>Danish law requires the claimant to pay a court fee for submitting the claim. As a starting point, the fee is set at DKK 500. Where the sum claimed is more than DKK 50 000, the fee is DKK 750, plus 1.2% of the amount by which the sum claimed exceeds DKK 50 000.</p> <p>Where the sum claimed is more than DKK 50 000, an additional hearing fee is payable for the court hearing. This fee is the same as the fee paid when the claim is submitted. For the court hearing too, therefore, the claimant must pay DKK 750 plus 1.2% of the amount by which the sum claimed exceeds DKK 50 000.</p> <p>An upper limit of DKK 75 000 is set for each of the two types of court fee (the fee for submission of the claim and that for the court hearing). In some cases (for example, those relating to the exercise of public authority), the upper limit is only DKK 2 000.</p> <p>In some types of civil case, including those involving family law, there are no fees payable to the court.</p> <p>Stage of the civil proceedings at which the parties must pay fixed costs</p> <p>As noted above, the claimant must pay a court fee on submitting the claim.</p> <p>The fee for the court hearing must be paid by the time the date of the hearing is set, but at the earliest three months before the hearing.”⁶</p>

⁶ [European e-Justice Portal - Costs \(europa.eu\)](https://e-justice.europa.eu)



		Point 16.8 of the Code of Conduct of the Danish Bar and Law Society (Advokatsamfundets advokatetiske regler) states: 'A lawyer shall make every effort to find a solution to the client's case at the lowest possible cost, taking into account the client's wishes and instructions.'
2	Is legal representation by a lawyer required in a judicial procedure?	In Denmark, the regional and higher court may set the obligation of legal representation to secure an effective court proceeding. Anecdotal evidence suggests, however, that parties are often represented [by a lawyer] ⁷
3	Who pays the costs for:	<ul style="list-style-type: none"> The EWC or the select committee may be assisted by experts chosen by its members Article 27 (1996) Limited to one expert (unless agreed otherwise). It is supposed⁸ that, by analogy, the fact that the employer has to cover all the EWC's expenses probably means that it also has to meet the costs of judicial proceedings conducted by the EWC collectively as a body. Since there were no incidents of legal disputes in Danish courts under the transposition of Directive 94/45/EC this could not be verified; however, under the now extended provisions of Article 10(1) of the recast Directive 2009/38/EC there should be no further doubts about assuming litigation costs incurred by the EWC collectively.
	- 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 ⁹ . An agreement on the establishment of a European works council shall determine the financial and material resources to be made available to the EWC

⁷ [Representation in Court Proceedings \(paperzz.com\)](http://paperzz.com)

⁸ Conclusion reached by the national expert in Büggel's (2002) report. It was not possible to clarify whether the employer has a statutory duty to pay these costs.

⁹ § 28. The operating costs of the European Cooperation Committee shall be borne by the central management. PCS. 2. The central management must make sufficient funds available to members of the European Works Council to enable them to perform their duties in an appropriate manner. In this context, members must receive training without loss of pay, if necessary, in order to be able to carry out their representative duties in an international environment. The central management shall ensure that the members of the European Works Council and the Executive Committee do not suffer any loss of pay as a result of their participation in the work of the Committee.

PCS. 3. The central management shall bear the costs of organizing meetings and interpretation of those, living and traveling expenses of members of the European Works Council and the Executive Committee as well as a special expert, unless otherwise agreed.

§ 29. The Minister for Employment may lay down budget rules for the operation of the European Cooperation Committee.



5	Can the EWC be sentenced to pay the costs of the other party in the judicial procedure?	“The rules on compensation of costs in civil cases are contained in Chapter 30 of the Administration of Justice Act (retsplejeloven).
6	Can the EWC <i>members</i> be sentenced to pay the costs of the other party in the judicial procedure?	<p>As a general rule, the losing party must pay the winning party's costs. However, if special circumstances so require, the court may decide that the losing party need not pay the winning party's costs, or must pay only a proportion of such costs.</p> <p>Only costs necessary for the proper handling of the case can be awarded.</p> <p>Experts' fees The claimant is responsible for paying an expert's fee if he or she has requested the expert's opinion on a specific matter.</p> <p>When a case has ended, the court decides whether or not the defendant should pay the costs of the expert. This depends on the outcome of the case.”¹⁰</p>

6. Sanctions

		Brief explanation
	How is a breach of law classified?	Violation (Art. 37) / Infringement (Art. 37) OR: Administrative offence, fines ¹¹
1	What are the sanctions for breaches of EWC laws?	Fine, the amount is not defined / determined in court by the judge (presumably ¹²).
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. ¹³
5	Can individual EWC members be sentenced to pay fines or be subject to other sanctions?	Yes, at least in confidentiality breaches: Chapter 8 Sanctions § 36. A fine shall be imposed on a person who discloses information which, pursuant to §§ 30 and 32, has been

¹⁰ [European e-Justice Portal - Costs \(europa.eu\)](https://e-justice.europa.eu)

¹¹ European Commission 2018: 57

¹² In Denmark the transposition of the recast Directive does not define the sanctions. It merely stipulates that violation of certain provisions ‘shall be punishable by a fine’. It has not been possible, however, to establish what were the amounts of those fines applicable in the case of breach of the law. Neither was any indication provided by the previous act transposing the Directive 94/45/EC into Danish law (Act No 371 of 22 May 1996).

¹³ § 37. PCS. 3. If the infringement is committed by a company, an association, a self-governing institution, a foundation or the like, a fine may be imposed on the legal person as such.



		given as confidential, unless a higher penalty is due under other legislation.
6	Can the EWC collectively be sentenced to pay fines or be subject to other sanctions?	Yes, possibly: § 37. <i>PCS. 3.</i> If the infringement is committed by a company, an association, a self-governing institution, a foundation or the like, a fine may be imposed on the legal person as such.

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>“A key feature of the Danish conflict resolution system is that none of the parties can refuse to participate in meetings with the aim of settling a conflict, whether it be a matter of dispute of interest or right. This is stated in ‘The rules for the Hearing of Industrial Disputes’ adopted by the Employers’ Confederation and the Danish Federation of Trade Unions and the Rules for the Hearing of Industrial Disputes’ also referred to as ‘the Norm’. The existence of the special negotiation procedure means that only a minor part of this type of conflicts are continued before judicial dispute-resolving bodies, and it would normally be regarded as a breach of agreement if a party fails to participate in conciliation (Limborg, Jørgen, Albertsen, & Navrbjerg, 2014).</p> <p>The first step in conflict resolution is to reach for a local agreement on the issue, through negotiations between the employee representative (union) and the management. The negotiations must be documented and of course the take their point of departure from any existing agreement. In the event of failure to settle the dispute by local negotiation, the allegedly injured party will submit a petition for conciliation specifying the subject of the dispute. The second step will then be the setting-up of a 52 H. J. Limborg et al. conciliation committee, normally each party (Union and employers’ association) to the agreement will appoint a member each. The conciliators need not be impartial, but they may not, however, have any personal interest in the matter to be considered. The discussions with the committee are rather informal and should take place on the firm’s premises. In this case, the employee representative and the manager are participating as observers. The organizations of the social partners or their appointed conciliators will lead the process. The result of</p>



		<p>the conciliation is forthwith committed to a minute book, and if the conciliators are unanimous the committee may settle the dispute once and for all at variance with the wishes of the parties directly involved. If the conciliation is ended without a result, the consideration of the dispute may be continued to the third step: a 'meeting of the organizations'. These meetings are usually attended by several representatives from each organization and, as in the case of the conciliation committee, the board of negotiators may decide the matter if unanimous. Most conflicts are resolved within these first three steps. An important element of the stepwise procedure—as it is described in “the norm”—is that all parties are committed to act as fast as possible. In situations where time is of the essence, it is even possible to use an alternative procedure, ‘the joint meetings’ where everybody, including representatives of the central organizations, participate at the same time.</p> <p>(...)In more complex cases where the mediation sought for in the first three steps is not reached, the case will be brought to ‘Industrial Arbitration’. The industrial arbitration tribunals are not covered by the general Arbitration Act but are governed by the Labour Court Act and provisions in the Rules for the Hearing of Industrial Disputes adopted by the Employers Confederation and the Federation of Trade Unions or similar general agreements as well as stipulations in the collective agreements in question. These are usually modelled after the Rules for the Hearing of Industrial Disputes. Usually the arbitration tribunals are set up for hearing a single, already existing case, in which case each party normally appoints 2 arbitrators and the President of the Labour Court one (or in some cases 3) umpire(s) (opmand). Anybody could be appointed as arbitrator if they have no personal interest in the matter. Most often the umpire is a judge with experience from labor disputes appointed from a small circle of legal professionals.</p> <p>(...)The industrial arbitration tribunals are concerned, first and foremost, with disputes over the interpretation of the collective agreements, which the parties have been unable to resolve, by negotiation in accordance with the agreement. It is considered as a breach of agreement, if a party fails to co-operate in the implementation of the arbitration proceedings. The industrial arbitration tribunal is presided over by the umpire, and the actual presentation to the tribunal is done verbally and in principle in the same manner as before the ordinary courts of law. However, the representatives of the parties are not always lawyers, and the hearing can be rather informal”¹⁴</p>
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¹⁴ Limborg H.J. e al. (2019): 59.



	Cooperation committee at company level ¹⁵
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8. Resources for EWCs

		Brief explanation
1.	Can unions provide legal support or financing for litigation?	In Denmark the practical solution has been for trade unions to support individuals in legal disputes, if they are members. If the legal dispute concerns individual EWC members who are members of a trade union, therefore, the union will assume the costs of the litigation at court. If they are not union members, they will have to meet the costs themselves (Büggel 2002).
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)	<p>“The Co-operation Board</p> <p>The secretariat supports management and local employee representatives (union) in all matters of co-operation. The board consists of 7 members that represent employers and employees. The following duties summarizes the work of the board (Samarbejdsnævnet, 2006): 1. Provide information, guidance and development for promoting workplace cooperation 2. Assist in establishing co-operation committees and guiding them in their activities 3. Constitute a forum for conflict resolution and mediation in cases of disputes. When meeting with local Co-operation committees the board secretariat is represented by co-operate consultants from both the employer and employee side.</p> <p>Co-operation Committees</p> <p>In companies with more than 35 employees or more, the day-to-day co-operation should be promoted and observed by a co-operation committee composed of representatives from management and employees. In accordance with ‘The Co-operation Agreement’, the co-operation committee should consider and determine how the committee can promote and coordinate co-operation between management and employees at all levels of the organization.</p> <p>Co-operation Consulting Units</p> <p>The joint initiative offered by The Confederation of Danish Industry (DI) and Central Unions from—Industry and Food, and Allied Workers’ Union (CO-I and NNF) to help companies improve the daily co-operation between management and employees and resolve collective conflicts at the workplace level. A unique possibility, within the co-operative structure of DI and CO-I, is the opportunity for employers and employees to call for the</p>

¹⁵ European Commission 2018: 58



	co-operation unit in cases of dispute or conflict resolution at the workplace. 18 consultants work in co-operative units and are trained to visit companies and provide advice on the establishment of co-operation committees, dispute resolution and cooperative development in association with the introduction of new technology or improving psychosocial working environment.” ¹⁶
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Annexe 1

4.2.8 The Co-operation Agreement

One of the more formalised institutions used for systematic co-operation between employers and employees at all levels is the ‘The Co-operation Agreement’ between DA (the Confederation of Danish Employers) and LO (the Danish Confederation of Trade Unions). ‘The Co-operation Agreement’ was first concluded in 1947 and has since been modernized on a continuous basis and, most recently, in the current agreement which dates to 2006.

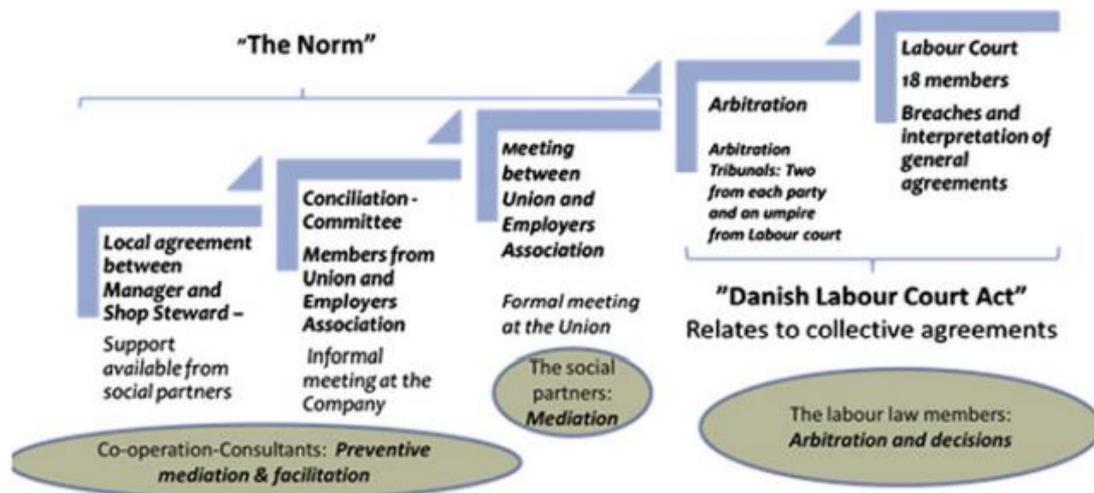


Fig. 4.1 The ladder of conflict resolution on the lowest possible level between agreements

Source: Limborg, Hans & Gensby, Ulrik & Viemose, Søren. (2019). Mediation and Conciliation in Collective Labor Conflicts in Denmark. 10.1007/978-3-319-92531-8_4.

¹⁶ Limborg H.J. e al. (2019): 59.



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Romuald Jagodziński
Labour SUREAL
rjagodzinski@labour-sureal.eu



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