

Name of the country: [the Netherlands](#)

Transposition act = Consolidated legislation - Wet op de Europese ondernemingsraden (WEOR)

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.)		X		
B	EWC based on Art. 6 agreements		X		
C	EWC based on art. 13 agreement			X	
D	EWC based on subsidiary requirements		X		

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

		No	Yes	Which authority (e.g., court) is competent ¹
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		X	Enterprise Chamber of Amsterdam Court
B	Operation of the EWC: breaches and compliance with the law (statutes), agreement or Subsidiary Requirements		X	Enterprise Chamber of Amsterdam Court
C	Challenging management on the use of confidentiality and secrecy/withholding information)		X	Enterprise Chamber of Amsterdam Court
E	Individual rights of the SNB/EWC members under national EWC legislation		X	Civil Court
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?	2A and 2B Interested party (<i>Belanghebbende</i>) 2C: The SNB, its members or the EWC 2 E: the employee
2	What legal status (ius standi) is a requirement to start a judicial procedure? (legal personality,	No specific requirements in the Dutch EWC Act (DEWCA)

¹ Material and geographical competence.



	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)?	An SNB or EWC does not have a legal personality but can act in court on the base of Art. 5 DEWCA
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?	No binding rules. In the subsidiary requirements art. 18(1) it is the chairperson of the EWC, or in his absence, the vice-chairperson.,
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?	See The only capacity problem would lie with art. 5(2) DEWCA, confidentiality/withholding information (2C): the legal capacity is limited to the SNB, its members or the EWC. This means that in the case of a joint EWC (composed by both management and the employees' reps), the employees reps' of the EWC might not be able to take legal action against in the Netherlands management. Joint bodies are, however, not common, so this is not a very probable scenario.

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)	Enterprise Chamber of the Amsterdam Court: mandatory representation by a solicitor. The solicitor files the case. Form: a written petition. Civil court: the claimant, who can be represented by a solicitor. Form: a written petition.
3	What is the deadline to start a judicial procedure?	There is no deadline in the DEWCA.
4	Are there other relevant deadlines in the judicial procedure?	In case of an appeal against a court decision: 3 months. In case of a summary procedure: 4 weeks
5	What is the role of out of court settlements once a case has been filed?	For EWC cases there is no information, but generally there is an important role for out of court settlements. Example: Only 27% of all cases filed by Dutch Works Councils on the right of advice lead to



		a court decision. The other 73% of the cases are withdrawn.
6	How long does a judicial procedure typically take?	When receiving a petition, the Enterprise Chamber of the Amsterdam Court will normally plan a hearing after 6 to 8 weeks. The decision will follow after 6 to 8 weeks.
7	Is an injunction or a summary procedure possible?	Yes, it is possible to request an urgent procedure Enterprise Chamber of the Amsterdam Court. The procedure will be the same, but the terms are shortened. An alternative would be to request the civil court to issue a provisional ruling in a summary procedure.

5. Costs

		Brief explanation
1	What are the court fees for a judicial procedure?	Enterprise Chamber of the Amsterdam Court: € 783 for legal persons, € 343 for natural persons (the SNB or the EWC are neither). Civil court: € 676 for legal persons, € 314 for natural persons
2	Is legal representation by a lawyer required in a judicial procedure?	Enterprise Chamber of the Amsterdam Court: Yes Civil court: No
3	Who pays the costs for:	SNB: all covered by art. 12 DEWCA
	- Legal expert	EWC:
	- Court fees	• no rules.
	- Other costs (travel/interpretation)	• only to be found in the subsidiary requirements, art. 20 DEWCA.
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?	Not in general procedures (2A and 2B) - on the base of art. 5(1) DEWCA For confidentiality/withholding information procedures (2C): no rule in DEWCA art. 5(2), but supposedly, art. 5(1) DEWCA would then also apply.
6	Can the EWC <i>members</i> be sentenced to pay the costs of the other party in the judicial procedure?	General procedure (2A and 2B): The SNB, its members or the EWC can not be sentenced to pay the costs of the other party. Stays open what would happen the case of the EWC members in the case of a joint body.



	Confidentiality or withholding information (2C): no rules, so in theory: yes – though it is not expected that the Enterprise Chamber of the Amsterdam Court would do such a thing. Civil court (2E): Yes
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6. Sanctions

		Brief explanation
	How is a breach of law classified?	
1	What are the sanctions for breaches of EWC laws?	<p>The DEWCA does not provide for sanctions in the event of a request for compliance.</p> <p>The Enterprise Chamber can reinforce a compliance order with a periodic penalty payment, in case its order is not followed up by the company. A periodic penalty payment is not a sanction as such – it is a payment to the counter part in the conflict, that has to be paid when after a specific period the other part is still not compliant. If central management forfeits a penalty payment to the EWC, the amount will accrue to the company itself, as the EWC does not have a bank account or an independently managed budget.</p> <p>In the case of legal disputes concerning the EWC's right to information and consultation, the periodic penalty payment is not be applicable. If a decision is taken or implemented without informing and consulting the EWC, it is too late for a compliance order and there is therefore no possibility of imposing a periodic penalty payment. All that remains is a declaratory judgment on the defect in the procedure. This means that there is no possibility of sanctions in these cases.</p>
2	Can the court rule to stop or reverse the companies' decision-making?	<p>No, this is not foreseen in the DEWCA.</p> <p>The Dutch Works Council Act, however, does have such a provision and for Dutch Works Councils, reversing or stopping decision making has become common practice.</p> <p>In the two out of the total of three EWC court cases that have been held in NL, the EWC requested the court to stop the companies decision making, even if the DEWCA does not foresee this. In both cases, the court declared the EWC inadmissible in its request, so it never came to light if, in case the request of the EWC would have been admissible, the court would have stopped the companies'</p>



		decision making even without a clear legal basis, for example by applying the Dutch Works Council Act parallel to the EWC.
3	Whom should fines be paid to?	The Dutch EWC Act does not have any fines.
4	Can a member of management be held personally liable (personal vs. corporate liability)	No.
5	Can individual EWC members be sentenced to pay fines or be subject to other sanctions?	No.
6	Can the EWC collectively be sentenced to pay fines or be subject to other sanctions?	No.

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>Collective agreements can set out specific bodies of conciliation and mediation (for specific branches of industry or for certain enterprises) before which violations of the collective agreement may be brought. The Dutch Code on Civil Procedure provides for regulations on arbitration, but it is not a very current practice in the Netherlands to use it in labour dispute cases.</p> <p>For the EWC, there are no law-based alternative conflict resolutions, though it is possible to have an own tailor-made arbitration clause in the EWC agreement (seldom in Dutch EWC agreements).</p> <p>Once a case has been filed, it can still be withdrawn. A reason for withdrawal can (and will often) be that the parties have found a solution themselves.</p>

8. Resources for EWCs

		Brief explanation
1.	Can unions provide legal support or financing for litigation?	This would be possible, but would be unusual in the Dutch legal context, in which there is a long and lively tradition of Dutch Works Councils taking legal action paid for by the company (which is a right allocated to the Dutch Works Council in the Dutch Works Council Act).



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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)	Non existent
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