

Name of the country: [France](#)

Transposition Act = Consolidated legislation - Title IV Comité d'entreprise européen

**1. Presence of legally based administrative or judicial conflict solving procedures for:**

		No	Yes	Unclear	brief explanation
A	SNB (including the pre-SNB phase, i.e. requesting the necessary information about the company, staff distribution, etc.)		Yes		Appointment of SNB members <sup>1</sup> , right to training <sup>2</sup> , setting up an SNB <sup>3</sup> , etc.
B	EWC based on Art. 6 agreements		Yes		
C	EWC based on art. 13 agreement			No mention	
D	EWC based on subsidiary requirements		Yes		

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

		No	Yes	Which authority (e.g., court) is competent <sup>4</sup>
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		Yes, but: no specific reference to the general principle that information and consultation must be effective and enable companies to take decisions effectively	

<sup>1</sup> Article L2344-7 "Disputes relating to the appointment of members of the special negotiating body and of representatives to the European works council of employees of establishments or undertakings located in France shall be brought before the courts."

<sup>2</sup> Article L2344-9

<sup>3</sup> Article L2346-1

<sup>4</sup> Material and geographical competence.



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C	Challenging management on the use of confidentiality and secrecy/withholding information)			
E	Individual rights of the SNB/EWC members under national EWC legislation		Yes	
F	(Others to be filled in)	The central management which launches a takeover bid on the capital of another undertaking shall not be required to refer the matter to the EWC prior to the launch of such a bid; he/she shall convene the EWC as quickly as possible following the publication of the bid, thereby ensuring the actual presence of its members, with a view to providing them with precise information in writing on the content of the bid and on its likely consequences in terms of employment Article 2 (Article L. 2341-11) (2011)		

### 3. Capacity to act in court

		Brief explanation/ differences for 2A-2F above)
1	Who/which body can start a judicial procedure?	EWC
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)?	Legal personality <sup>5</sup> , but a legitimate interest is required to initiate litigation <sup>6</sup>  Special negotiating body can initiate a mediation procedure <sup>7</sup>

<sup>5</sup> Article L2343-7 (Modified by Order n°2011-1328 of 20 October 2011 - art. 3) "The European Works Council shall have legal personality."

<sup>6</sup> Art 31 code procédure civile

<sup>7</sup> European Commission 2018: 58



4	In case of lacking capacity to act in court: how can it be circumvented (think of representation by trade unions)?	It is not necessary, as EWCs have legal capacity. However, trade unions can participate in court proceedings as organisations with an interest in the legitimate operation of a European Works Council.
5	Who represents the EWC in law?	EWC has legal personality
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?	Joint type is a de iure default EWC composition <sup>8</sup>

#### 4. Starting a procedure and timelines

		Brief explanation
	Which court is competent?	General courts (Tribunal de Grande Instance) in general matters, but in specific matters also specialised courts are relevant: e.g. employee representatives can refer to the Employment Tribunal (Conseil de Prud'hommes) for disputes related to disciplinary sanctions
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?	Yes, it is possible and has been applied in courts.

#### 5. Costs

		Brief explanation
1	What are the court fees for a judicial procedure?	No court fees for EWCs required. In France, as a rule no charges are payable to the State for

<sup>8</sup> Article L2343-5



		<p>procedural acts, except that in Commercial Courts there is a scale of registry charges .<sup>9</sup></p> <p>Moreover, according to the Law no 91-647 of July 10, 1991, legal aid can be exceptionally and conditionally granted to the non-profit France-based legal entities, which lack sufficient resources</p>
2	Is legal representation by a lawyer required in a judicial procedure?	<p>In Actions brought in a French Regional Court the parties must generally be represented by an advocate.</p> <ul style="list-style-type: none"> <li>• Exception: Cases concerning commercial leases, injunctions or actions for withdrawal of parental authority.</li> <li>• In a District Court as a court of lower instance, representation by an advocate is not mandatory in the majority of the cases, as well as in the Commercial Courts, the Family and Social Courts and the Juvenile Court.</li> <li>• Legal aid entitles the recipient to free assistance from an advocate or other legal practitioner and to a waiver of court costs.</li> </ul>
3	Who pays the costs for:	<p>General statement on coverage of operational expenses, however the Courts provide for the obligation for the employer to bear the legal expenses of entities that do not have a budget enabling them to function, such as the Health and Safety Committee (CHSCT) (Cass. Soc., 12 janv. 1999, no 97-12.794 ; Cass. Soc., 25 juin 2002, no 00-13.375 Cass. Soc., 2 déc. 2009, no 08-18.409).<sup>10</sup></p>
	- Legal expert	Yes
	- Court fees	
	- Other costs (travel/interpretation)	Yes: travel and interpretation. Also: time-off for EWC work <sup>11</sup>

<sup>9</sup> In fast-track (summary) proceedings involving EWCs, court fees amount to approx. FRF 500 = approx. EUR 75 (Büggel 2002).

<sup>10</sup> Based on FR report on Confidentiality for the ETUI by L. Liakalupoulou (unpublished).

<sup>11</sup> Article L2343-15 “The employer shall allow the secretary and the officers of the European Works Council the time necessary for the performance of their duties up to a limit which, save in exceptional circumstances, may not exceed 120 hours per year for each of them. This time shall be considered as working time and paid at the normal time. The time spent by the secretary and the officers at committee meetings and bureau meetings shall not be deducted from the 120 hours. The employer who intends to contest the use made of the time thus allocated shall refer the matter to the judicial judge.”



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?	the court can award the costs of proceedings to one of the parties, corresponding to the amount incurred in conducting the proceedings
6	Can the EWC <i>members</i> be sentenced to pay the costs of the other party in the judicial procedure?	

## 6. Sanctions

		Brief explanation
	How is a breach of law classified?	administrative offence
1	What are the sanctions for breaches of EWC laws?	Criminal sanction and Fine. Sanction related to establishment of EWC: Imprisonment up to 1 year and fine up to EUR 7 500 Sanction related to operation of EWC: fine up to EUR 7 500. In case of repeated infringements 7,500 euros <sup>12</sup>
2	Can the court rule to stop or reverse the companies' decision-making?	Yes. In the event of manifestly unlawful disturbance affecting the information and consultation procedure, employee representatives may request provisional injunctions by instituting interim proceedings on the basis of Article 809 of the Code of Civil Procedure. Injunctions can be issued within hours even and can order the company to stop or reverse a decision <sup>13</sup> .
3	Whom should fines be paid to?	
4	Can a member of management be held personally liable (personal vs. corporate liability)	Yes
5	Can individual EWC members be sentenced to pay fines or be subject to other sanctions?	Yes
6	Can the EWC collectively be sentenced to pay fines or be subject to other sanctions?	Yes

## 7. Out of court settlements

		Brief explanation
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<sup>12</sup> Article L2346-1 of the French Labour Code.

<sup>13</sup> E.g. in confidentiality cases: In the absence of objective explanations from the employer, justifying the confidential nature of all the submitted documents to the CE, the Court can also order an information and consultation procedure to be resumed at its starting point. (Cass. Soc., 5 nov. 2014, no 13-17.270). Based on: Liakalopoulou "Mapping confidentiality in of national law concerning to workers' representation Country report: France", ETUI (unpublished).



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>Conciliation exists in the first stage of the procedure before employment tribunals. Judicial mediation is possible before all courts.</p> <p>Yes, in confidentiality cases: Tripartite arbitrage committee lead by Labour Inspection (Art. L 2342-10 (2011) Article L. 439-21 (1996).</p> <p>Also: Pursuant to Article L. 1411-1 LC, the Employment Tribunal's (Conseil de Prud'hommes) first mission is to reconcile the parties through a reconciliation procedure before the Employment Tribunal's Conciliation and Guidance Board. If this effort fails, the Tribunal adjudicates.</p> <p>No specific arbitration for labour law disputes.<sup>14</sup></p>
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## 8. Resources for EWCs

		Brief explanation
1.	Can unions provide legal support or financing for litigation?	Trade unions often provide expertise & technical support for litigation.
2.	What other resources are available in terms of legal support to EWCs and/or EWC members in your country (e.g., Arbeiterkammer, legal support centres)	Works councils that are equipped with a de iure budget and provide EWCs with financial aid/representation where needed.

<sup>14</sup> van Hoek & Hendrickx F. (2009): 97.

