

Name of the country: **SWEDEN**

Transposition act = Consolidated legislation - Law on European Works Councils (Lag (2011:427) om europeiska företagsråd) as amended by Law 2017:365

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		
B	EWC based on Art. 6 agreements		yes		
C	EWC based on art. 13 agreement	No			
D	EWC based on subsidiary requirements		yes		
	Even if there is no EWC or SNB employees can still defend their rights under this act:				EWC Act: "Section 60 If there is no European Works Council or a negotiating delegation for the employees who can bring an action under this Act, what is prescribed for damages shall instead apply to the relevant employee organizations."

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		yes	Labour Court (as first instance) ² .
B	Operation of the EWC: breaches and compliance with the law (statutes), agreement or Subsidiary Requirements		yes	As a general rule, a case must be brought where the defendant is resident (company registered headquarters), however, in labour law disputes in front of the Labour Court ('Arbetsdomstolen') the case cannot be brought before the general court in the defendant's place of residence. ³
C	Challenging management on the use of confidentiality and		yes ⁴ + may be	

¹ Material and geographical competence.

² Section 61. In accordance with Act (1974: 371) on the proceedings in labour disputes.

³ https://e-justice.europa.eu/85/EN/which_country_s_court_is_responsible?SWEDEN&member=1

⁴ "Cases concerning the permissibility of professional secrecy must be dealt with expeditiously" (Section 61 of the EWC Act).



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	secrecy/withholding information)		passed on ⁵
E	Individual rights of the SNB/EWC members under national EWC legislation		yes
F			

3. Capacity to act in court

		Brief explanation/ differences for 2A-2F above)
1	Who/which body can start a judicial procedure?	“In any dispute relating to a collective bargaining agreement, the organisation by which the agreement was concluded may institute and conduct proceedings before the Labour Court on behalf of any person who is or has been a member of such organisation. In any other labour dispute referred to in Chapter 2, Section 1, an employers' or employees' organisation referred to in Section 6 of the Employment (Co-determination in the Workplace) Act (1976:580) may institute and conduct proceedings before the Labour Court on behalf of any of its members.” ⁶
2	What legal status (ius standi) is a requirement to start a judicial procedure? (legal personality, capacity to act in courts, other forms?)	Any person
3	What is the legal status of the EWC (legal personality or other capacity to act in court)?	Legal personality ⁷ / Legal capacity to act in court (collective and for individual EWC members) ⁸
4	In case of lacking capacity to act in court: how can it be circumvented (think of representation by trade unions)?	

⁵ Confidential information may be passed on to other workers' representatives: Section 58 of the EWC Act “Anyone who, according to the first paragraph, has received information under a duty of confidentiality may, despite the duty of confidentiality, pass the information on to other employee members or experts in the same body. The right to pass on the information only applies if the informant notifies the recipient of the duty of confidentiality. In such a case, the duty of confidentiality also applies to the recipient.”

⁶ Chapter 4 Section 5 of the Labor Disputes Act 1974.

⁷ van Hoek A. and Hendrickx F. (2009) International private law aspects and dispute settlement related to transnational company agreements. Study undertaken on behalf of the European Commission Contract number VC/2009/0157 Final report 20 October 2009.

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewiH-cOXydr6AhWJulsKHdO_DBsQFnoECA0QAQ&url=https%3A%2F%2Fec.europa.eu%2Fsocial%2FblobServlet%3FdocId%3D4815%26langId%3Den&usg=AOvVaw2pd2oJ4fVOrQUfxMuTukSB

⁸ Section 53 EWC Act: “Section 53 The employees' bargaining delegation and a European Works Council may acquire rights and assume obligations as well as bring an action before courts and other authorities. (...)”.



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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?	Not mentioned

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 ⁹
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)	Any person wishing to institute proceedings before the Labour Court shall make an application in writing to the Court for a summons against the other party. In the absence of any reason to dismiss the application, the court shall issue a summons against the defendant to answer the claim. The defendant may be ordered to present his answer in writing in accordance with Chapter 42, Section 7 of the Code of Judicial Procedure, or a default judgment may otherwise be entered against him. ¹⁰
3	What is the deadline to start a judicial procedure?	In case of claiming damages = eight months ¹¹ In Sweden any party that wishes to claim remedy according to the EWC law is obliged to demand negotiations within four months of becoming aware of the circumstances to which the claim relates and not later

⁹ It does for other situations: "Voting rules. Section 31 For a decision to refrain from initiating negotiations or to suspend ongoing negotiations in accordance with section 29, votes from at least two-thirds of the members of the employees' bargaining delegation are required. In order for the negotiating delegation to conclude an agreement on a European Works Council or any other information and consultation procedure, more than half of the members must agree on it."

¹⁰ Chapter 4 Section 8 of the 1974 Labor Disputes Act.

¹¹ Section 62 of the EWC Act: "Section 62 When someone wishes to claim damages in accordance with this Act, sections 64, 65 and 68 of the Act (1976: 580) on co-determination in working life apply in applicable parts. For the purposes of section 64, a Community undertaking, a controlling undertaking in a group of undertakings, a European Works Council, the workers' bargaining delegation and other bodies for informing and consulting employees shall be deemed to have the right to bargain in accordance with section 10 of the Co-determination Act. The period according to section 65 within which the action must be brought at the latest shall, however, be eight months."



		than two years after the occurrence of such circumstances (Footnote 06 to Article 41 of the Swedish Act No 359 of 9 May 1996).
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?	<p>“According to the provisions of the Swedish Code of Judicial Procedure (‘rättegångsbalken’), the court should prepare a schedule for dealing with the case as quickly as possible. There may, however, be some cases where there is no point in preparing a schedule. In most cases, there is little basis for preparing a schedule until a statement of defence has been received.</p> <p>It is always possible to obtain information about the ongoing handling of the case through contact with the court, for example by telephone.”¹²</p>
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>According to Buggel (2002) EWCs are exempted from payment of court fees.</p> <p>Otherwise: “Fixed costs for litigants in civil proceedings</p> <p>For an application in a civil case, the applicant must pay a filing fee to the court. At present the filing fee is SEK 450 (approximately EUR 50).</p> <p>In cases where out of court settlement is permitted and the value of the claim obviously does not exceed half of the base amount prescribed in the National Insurance Act (the base amount for 2012 is SEK 44 000; i.e. half the base amount for 2012 is SEK 22 000), compensation for litigation costs may not include other expenses, except for:</p> <p>Costs arising from legal advice, which is restricted to one hour at a time for each matter dealt with; the</p>

¹² https://e-justice.europa.eu/34/EN/how_to_bring_a_case_to_court?SWEDEN&member=1



		<p>fee charged corresponds to the amount payable for one hour of legal advice under the Legal Aid Act (1996: 1619)</p> <p>The application fee</p> <p>Travel and subsistence costs incurred by the party or the party's legal representative in order to attend a court hearing or, if the party is not required to attend in person, the travel and subsistence costs incurred by the legal representative</p> <p>Expenses incurred by witnesses</p> <p>Translation costs.</p> <p>Compensation is granted only if the costs incurred were necessary in order to safeguard the interests of the party concerned.</p> <p>For other civil cases (i.e. where the value of the claim exceeds half of the base amount according to the National Insurance Act) no such limitations or fixed costs apply.</p> <p>Stage of the civil proceeding where fixed costs must be paid</p> <p>The filing fee must be paid to the court when the application is made. However, the Legal Aid Act states that if legal aid has been granted the party should pay a legal aid fee to the legal representative once the costs arise. This fee is principally based on the party's income."¹³</p>
2	Is legal representation by a lawyer required in a judicial procedure?	<p>"Individuals are permitted to bring a case to court on their own initiative. There is thus no requirement to be represented or to have a lawyer in Sweden. There is also no lawyers' monopoly in the sense that a legal representative or counsel must be a lawyer."¹⁴</p>
3	Who pays the costs for:	General statement: all costs to be carried by the company ¹⁵
	- Legal expert	
	- Court fees	
	- Other costs (travel/interpretation)	

¹³ <https://e-justice.europa.eu/37/EN/costs?SWEDEN&member=1>

¹⁴ https://e-justice.europa.eu/34/EN/how_to_bring_a_case_to_court?SWEDEN&member=1

¹⁵ Section 32, EWC Act: All costs for the employees' bargaining delegation to be able to form and conduct their activities shall be borne by the Community company or the controlling company in a group of companies to the extent necessary for the bargaining delegation to be able to carry out its tasks in an appropriate manner. In some countries, including Sweden, it has been explicitly claimed that EWC cannot use a trade union's budget. Reportedly, in Sweden where, when the draft bill for the EWC act was tabled, the Swedish government stated that an EWC could not call on either the workers or a trade union for financial support (Büggel 2002).

4	Does a EWC normally have an independent budget and/or an own bank account under a given national legislation?	
5	Can the EWC be sentenced to pay the costs of the other party in the judicial procedure?	“each of the parties may be ordered to pay its own litigation costs if the losing party had reasonable cause to have the dispute tried.
6	Can the EWC <i>members</i> be sentenced to pay the costs of the other party in the judicial procedure?	Costs incurred in connection with such negotiations or discussions referred to in Chapter 4, Section 7 and based on the Employment (Co-determination in the Workplace) Act (1976:580), or by virtue of any collective bargaining agreement, shall not be recoverable as litigation costs. The liability of several associated parties to bear litigation costs in a case heard by the Labour Court as a court of first instance shall be apportioned among them in a reasonable manner, having regard to their position in relation to the subject matter of the case and to the judicial proceedings. (SFS 1982:88) “ (Chapter 5, Section 2, Labor Disputes Act 1974). = the court can order that the defendant’s costs for the legal proceedings (the company’s legal costs) be paid by the plaintiff (Büggel 2002).

6. Sanctions

		Brief explanation
	How is a breach of law classified?	(equivalent to) violation of collective agreements
1	What are the sanctions for breaches of EWC laws?	Reparation of damages ¹⁶
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)	
5	Can individual EWC members be sentenced to pay fines or be subject to other sanctions?	Yes, in case of breach of confidentiality ¹⁷
6	Can the EWC collectively be sentenced to pay fines or be subject to other sanctions?	

¹⁶ European Commission 2018: 63.

¹⁷ Section 59: „Section 59 Anyone who violates this Act, an agreement pursuant to this Act or a duty of confidentiality referred to in this Act shall compensate for damage incurred in accordance with Sections 55 and 56, Section 57, second paragraph, Section 60, first paragraph and Sections 61 and 62. § the law (1976: 580) on co-determination in working life.”



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>According to the European Commission (2018) only arbitration.</p> <p>In Sweden ADR proceeding in the Industrial Democracy Board are substantial, being estimated in 2002 at between SEK 70 000 and SEK 100 000 (equivalent to approx. EUR 8 150 to EUR 11 600). Moreover, the party that loses the case must pay all the costs of the proceedings (Bueggel 2002).</p> <p>According to the 1974 Labor Disputes Act other methods seem possible (conciliation, mediation).</p> <p>“Mediation is admissible in multiple areas, but most common in civil law matters.</p> <p>There is a possibility of recourse to a mediator within the court proceeding.</p> <p>Recourse to mediation is entirely voluntary. There are no specific regulations, such as codes of conduct for mediators.</p> <p>Mediation is not free of charge; payment is subject to an agreement between the private mediator and the parties. The cost of mediation is shared equally by the parties.”¹⁸</p>

8. Resources for EWCs

		Brief explanation
1.	Can unions provide legal support or financing 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)	

¹⁸ https://e-justice.europa.eu/64/EN/mediation_in_eu_countries?SWEDEN&member=1

