

Name of the country: [Luxembourg](#)

Transposition Act = Labour Code, TITLE III - European Works Council or cross-border information and consultation procedure for "employees "

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, including procedure for information and consultation ¹		the legislation specifies a time limit for sending information, the categories of information to be provided, and establishes the possibility to bring a case before the courts in case the information is not provided
B	EWC based on Art. 6 agreements		Yes		
C	EWC based on art. 13 agreement			Unclear / no mention or	

¹ Art. 433-3 of the Labour Code: The collaboration between central management on the one hand, and the special negotiating body and the works councils, both conventional and legal, on the other, takes place in a spirit of cooperation and mutual trust and with respect for each other's rights and obligations. The same principle applies to the collaboration between the central management and the employees' representatives in the framework of the cross-border information and consultation procedure for employees established under Articles L. 432-21 and L. 432-22.

Acts, actions and omissions that prevent the functioning of the bodies referred to in the preceding paragraphs in accordance with the principles laid down therein are likely to constitute offences of obstruction of operation giving rise to the application of Article L. 433-8. This is notably the case of failure to transmit the information required under the terms of this title, or its late, incomplete or incorrect transmission, without prejudice to the provisions of Article L. 443-4



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				differentiation in law	
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 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		Yes	Generally, labour courts (if not provided otherwise). Labour-law matters: the labour court (tribunal du travail) has jurisdiction in EWC cases. There are three labour courts in the Grand Duchy of Luxembourg, one in Luxembourg, one in Esch-sur-Alzette and one in Diekirch, each with jurisdiction for a particular territory. In practice, the labour court sits within the premises of the justice of the peace court.
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)		Yes	In the event of a dispute, the matter may be referred to an arbitration committee composed of a representative of the central management, a representative of the workers involved in the information and consultation procedure under this Title and chaired by the Director of the Labour Inspectorate or his delegate. Its decision shall not be subject to appeal. ³ Also: Art. 433-8 “The provisions of the first subparagraph of this paragraph [defines the amount of fines for breaches] shall apply in particular to the unjustified refusal by central management to disclose, or to disclose in good time, non-confidential data to the special negotiating body, the works council, the select committee and the employees' representatives in cross-border information and consultation procedures, and to the unjustified refusal by the members of the special negotiating body, the statutory and conventional works councils and the employees' representatives in information and consultation procedures to disclose, or to disclose in good time, the results of the proceedings to the local employees' representatives.

² Material and geographical competence.

³ Art. 433-3 Labour Code.



				The provisions of this Article shall also apply where the central management, the special negotiating body, the works council, the select committee or the information and consultation procedure is established or operates abroad.”
E	Individual rights of the SNB/EWC members under national EWC legislation		Yes	Labour court ⁴
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?	Unclear
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)?	Unclear. According to the European Commission (2018: 58) ⁵ : only an individual worker representative can act
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?	Individual EWC members (?)
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
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,...	
1.a	Does the law contain any requirements on the internal rules concerning question 1?	
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?	

⁴ Art. 433-8.

⁵ Based on: ECE Data November 2017 — see annex 5.



6	How long does a judicial procedure typically take?	
7	Is an injunction or a summary procedure possible?	

5. Costs

		Brief explanation
1	What are the court fees for a judicial procedure?	The costs are also required in the case of summary (fast-track) court procedures, as has been the case in Luxembourg where in 2002 they amounted to approximately EUR 497-619 (LUF 20 000-25 000, depending on the lawyer appointed; Büggel 2002).
2	Is legal representation by a lawyer required in a judicial procedure?	
3	Who pays the costs for:	Only a general clause on costs to be covered by management ⁶
	- Legal expert	Management: expert costs limited to costs directly related to the expert's participation in a meeting.
	- Court fees	
	- Other costs (travel/interpretation)	Management, yes ⁷
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?	
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	Note
	How is a breach of law classified?	?? According to the European Commission (2018: 35): criminal offence	
1	What are the sanctions for	A fine of 251 to 3,750 euros.	For breaches of SE and SCE provisions much more severe sanctions are present ⁹ : fine up

⁶ the central management shall provide the necessary premises and material resources to the extent necessary to enable the European Works Council and, where appropriate, the select committee to function properly. (Art. 432-43).

⁷ . The central management shall bear the travel and subsistence expenses of the members of the European Works Council and, where appropriate, of the select committee, to the extent necessary to enable it to function properly. (Art. 432-43)

⁹ Art. L. 444-6.



	breaches of EWC laws?	In case of repeated offence within 4 years the fine can be doubled + up to 8 days of imprisonment. ⁸ For managerial violations of confidentiality provisions: a fine of 251 to 1,250 euros. In the event of a repeat offence within four years of a final conviction, the penalties provided for in the preceding paragraph shall be increased to twice the maximum; in addition, a term of imprisonment of eight days to one month may be imposed.	to 10 000 EUR + Criminal sanctions (Penal Code). Also: the respective laws punishing national labour law breaches are stronger than those applying to breaches of EWC provisions are ¹⁰
2	Can the court rule to stop or reverse the companies' decision-making?		the intended dismissal of workers may be set aside (declared null and void) by local courts if the legal conditions – notably concerning the period of notice, but also the quality of the information provided – have not been respected. ¹¹
3	Whom should fines be paid to?		

(1) The Labour and Mines Inspectorate shall be responsible for monitoring the application of the provisions of this Title.

(2) A fine of 251 to 10,000 euros shall be imposed on anyone who intentionally hinders the establishment, free appointment of members and proper functioning of a special negotiating body, a representative body and an agreement on an information and consultation procedure.

Any person who intentionally hinders the free appointment of employees' representatives to the administrative or supervisory body of an SE shall be liable to the same penalties.

The same shall apply to any person who, by reason of the task conferred on him in that capacity, favours or disadvantages a member or alternate member of a special negotiating body, a representative body or an employees' representative within the framework of an agreement on an information and consultation procedure.

(3) In the event of a repeat offence within four years of a final conviction, the penalties provided for in paragraph 2 shall be increased to twice the maximum; in addition, a term of imprisonment of 8 days to 3 months may be imposed.

(4) Book I of the Penal Code and Articles 130-1 to 132-1 of the Code of Criminal Procedure shall apply to the offences provided for in this Title.

⁸ Art. 433-8 para 2: (2) In the event of a repeat offence within four years of a final conviction, the penalties provided for in paragraph (1) shall be increased to twice the maximum; in addition, a term of imprisonment of between eight days and three months may be imposed.

¹⁰ European Commission 2018: 35.

¹¹ European Parliament, with regard to the implementation of the Collective Redundancies (Council Directive 98/59/EC) (Jagodzinski manuscript: European Parliament 2007: 12)



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4	Can a member of management be held personally liable (personal vs. corporate liability)	Yes ¹²	
5	Can individual EWC members be sentenced to pay fines or be subject to other sanctions?	Unclear	
6	Can the EWC collectively be sentenced to pay fines or be subject to other sanctions?	Probably not, since the EWC has no collective legal 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?	Conciliation ¹³ But rather more correctly: arbitration ¹⁴ Also, based on general rules mediation is available ¹⁵

¹² Art. L. 433-8. (1) A fine of 251 to 3,750 euros shall be imposed on anyone who intentionally obstructs the establishment, free appointment of members and proper functioning of a special negotiating body, a select committee, a European works council and an agreement on a cross-border information and consultation procedure. (...)

¹³ European Commission 2018: 59.

¹⁴ Art. 433-5. In the event of such a dispute an arbitration committee made up of a representative of the central management and a representative of the workers involved in the information and consultation procedure pursuant to this act and chaired by the Director of the Labour and Mines Inspectorate (Inspection du travail et des mines); an agency within the Ministry of Labour and Employment charged with monitoring compliance with legislation) should adjudicate a verdict binding on the parties.

Rulings given by the committee shall be final, i.e. no appeal is available.

¹⁵ Civil and commercial mediation is a consensual and confidential process conducted by an independent, impartial and competent mediator. It may relate to the whole dispute or just part of it. It comprises both mediation by agreement and court-referred mediation.

In mediation by agreement (médiation conventionnelle), either party may suggest to the other party/ies that they take the matter to mediation at any stage of the legal proceedings, independently of any court or arbitration procedure, as long as the pleadings have not ended. Agreements arising from civil and commercial mediation have the same probative value as a court decision. Regardless of whether such mediation agreements were reached in Luxembourg or in another European Union Member State, they are enforceable within the European Union under Directive 2008/52/EC. The approval of all or part of the agreement by the competent court confers enforceability.

The Directive is transposed by the Act of 24 February 2012, which places mediation on the same footing as existing judicial procedures. Mediation is often free. If a fee is charged, it will be clearly indicated.



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)	<p>Labour and Mines Inspectorate¹⁶</p> <p>here is no central body responsible for the regulation of mediators.</p> <p>In addition to mediation in specific sectors (banking, insurance, etc.) the following legal associations are engaged in mediation:</p> <p>the Luxembourg Association of Mediation and Approved Mediators (Association luxembourgeoise de la médiation et des médiateurs agréés – ALMA asbl);</p> <p>the Centre for Civil and Commercial Mediation (Centre de médiation civile et commerciale – CMCC);</p> <p>the Mediation Centre (Centre de médiation) (asbl);</p>

In the case of mediation by agreement, mediators' fees are set freely. The fees and costs are divided equally between the parties, unless they agree otherwise. Source: https://e-justice.europa.eu/64/EN/mediation_in_eu_countries?LUXEMBOURG&member=1

¹⁶ Art. L. 433-6. The Labour and Mines Inspectorate shall be responsible for monitoring the application of the provisions of this Title.



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