

Name of the country: Lithuania

Transposition Act = Summary version as of 10-10-2017

### 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 <sup>1</sup>		Management should notify also branches of company about the creation of the SNB <sup>2</sup>
B	EWC based on Art. 6 agreements		In limited aspects <sup>3</sup> (provision of information, confidentiality)		
C	EWC based on art. 13 agreement		Yes, Art. 13 agreements seem covered by the EWC Act (no exclusion present)		
D	EWC based on subsidiary requirements			Unclear	

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

<sup>1</sup> Lithuanian 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: "the total number of employees in the Member States of the European Union undertaking or group of European Union undertakings;

2) the number of employees in each Member State in which a branch of the European Union undertaking operates or an undertaking of the group of undertakings of the European Union has its head office;

3) the number of employees in each branch of the European Union undertaking operating in a Member State and/or in each undertaking" (Art. 12 para 1)

<sup>2</sup> Art. 14 para 3: "3. The central management shall, within 15 days, notify in writing all the branches of the European Union undertaking or the undertakings of the group of undertakings of the European Union located in the Member States, as well as the representatives of the employees of the European Union undertaking or of the holding company of the group of undertakings of the European Union, and the European trade union and employers' organisations recognised as competent, either of the initiative taken or of the statement referred to in paragraph 2 of this Article received by it."

<sup>3</sup> In the event of refusal to provide the necessary information (by the employer on the grounds that the information is confidential) (Article 11(5) of the LEWC).



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		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 <sup>5</sup>	
B	Operation of the EWC: breaches and compliance with the law (statutes), agreement or Subsidiary Requirements		Partially	
C	Challenging management on the use of confidentiality and secrecy/withholding information)		Yes <sup>6</sup>  Access to State, official and professional secrets and liability for the disclosure or unlawful use thereof shall be regulated by special laws. (Art. 11.6)	
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)
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?)	Court/legal capacity
3	What is the legal status of the EWC (legal personality or other capacity to act in court)?	The EWC law speaks of employee representatives as entitled to bring in a dispute (e.g. on confidentiality <sup>7</sup> ). According to the definition of Art. 3 para 2 of the EWC Act

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

<sup>5</sup> Art. 11 para 5 of the EWC Act.

<sup>6</sup> Art. 12 of the EWC Act para 6: 6. In the event of a refusal by the central management or the next level of management to provide the information referred to in this Article, or in the event of a dispute as to the correctness of the information provided, the representatives of the staff members may bring an action before the courts within 30 days of the date on which the information was received or of the expiry of the time limit within which it was due to have been provided. If the court finds that the refusal to provide information is unjustified or that incorrect information has been provided, the central management or the next level of management which refused to provide the information or which provided the incorrect information shall be obliged to provide the correct information within a reasonable period.

<sup>7</sup> EWC Act, Art. 12 para 3.



		this comprises: “The European Works Council, the Committee of the European Works Council, the Special Negotiating Committee, as well as other persons representing the employees shall also be considered as representatives of the employees in the event that a European Works Council is not set up, but procedures for informing and consulting the employees are drawn up.”
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?	European Works Council, a committee of the European Works Council (or a special negotiating committee, where applicable) <sup>8</sup>
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?	No mention in law

#### 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)	Contact the labour inspectorate <sup>9</sup> (?)
3	What is the deadline to start a judicial procedure?	In confidentiality cases: Art. 12 para 6. In the event of a refusal by the central management or the next level of management to provide the information referred to in this Article, or in the event of a dispute as to the correctness of the information provided, the representatives of the staff members may bring an action before the courts <b>within 30 days of the date on which the information was</b>

<sup>8</sup> Art. 11 para 5 of the EWC Act.

<sup>9</sup> 1. The contact data of the Labour Inspectorate, e-mail address, web page, phone and fax number  
The State Labour Inspectorate of the Republic of Lithuania under the Ministry of Social Security and Labour: e-mail: info@vdi.lt; web page: www.vdi.lt; address: Algirdo str. 19, LT-03607 Vilnius, Lithuania; phone: (+3705) 265 0193 and fax: (+3705) 2139751.



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		<b>received</b> or of the expiry of the time limit within which it was due to have been provided.
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?	To some extent, in confidentiality cases <sup>10</sup>

## 5. Costs

		Brief explanation
1	What are the court fees for a judicial procedure?	EWC exempted from payment of court charges to start proceedings <sup>11</sup>
2	Is legal representation by a lawyer required in a judicial procedure?	
3	Who pays the costs for:	Only the general clause on covering expenses operational
	- Legal expert	Limited to one expert (unless agreed otherwise)
	- Court fees	
	- Other costs (travel/interpretation)	management
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 applicable
6	Can the EWC <i>members</i> be sentenced to pay the costs of the other party in the judicial procedure?	Not applicable

## 6. Sanctions

	Brief explanation
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<sup>10</sup> It should be pointed out that even if injunctions are available in a legal system they do not automatically guarantee swift summary proceedings or lead to immediate actions. A point in case here is the Lithuanian transposition law, providing a legal remedy against a management's refusal to provide information or in a dispute over the correctness of the information provided, in the form of the right of employee representatives to apply to court within 30 days (Article 12). The court would subsequently hear the case, but no mention is made of the time-limit for the issue of the ruling. In the case of a ruling that the 'refusal to provide information is unjustified or incorrect information has been provided, the central management or any other level of management in question shall be obligated to provide correct information within a reasonable period of time' (Article 11 and 12). In other words, even if an injunction is issued to provide information, the period in which the management must remedy its failure remains unspecified ('reasonable time'). This might diminish the impact of an injunction as a remedy, where the aim is to halt a violation or prevent damage.

<sup>11</sup> Jagodziński unpublished manuscript, based on <http://ec.europa.eu/civiljustice/>



	How is a breach of law classified?	It is not classified in the EWC Act <sup>12</sup> (termed 'breach of law' / 'violation of this law'  Elsewhere <sup>13</sup> : Administrative offence, sanctions applied by the Labour Inspectorate <sup>14</sup>
1	What are the sanctions for breaches of EWC laws?	Not defined in the EWC Act: "Persons who violate this Law, regardless of whether the central management is located in the Republic of Lithuania or in another Member State, shall be liable in accordance with the procedure established by the laws of the Republic of Lithuania".  Based on State Labour Inspection (SLI) legislation: SLI inspectors and courts impose administrative fines for violations of labour laws and OSH in Lithuania depending on the amount of the administrative penalties imposed by law. The maximum administrative penalty imposed by SLI inspectors is EUR 1448 <sup>15</sup> . The State Labour Inspector of the Republic of Lithuania defines only the basic criteria for the application of sanctions.  Inferred from other acts <sup>16</sup> :  According to the European Commission (2018): from Approximately 30 <sup>17</sup> euros to max approximately 3000 EUR <sup>18</sup>

<sup>12</sup> Art. 38 of the EWC law.

<sup>13</sup> Inferred from other acts regulating workers' representation other than implementation of EWC Directives.

<sup>14</sup> The State Labour Inspectorate is the national institution under the Ministry of Social Security and Labour responsible for the enforcement of labour legislation. Labour inspectors may give notice to employers requiring them to eliminate any identified violations within a specified period of time, stop work that endangers life or health of workers, write protocols of administrative law violations and assign fines. In all matters falling within the competence of SLI, the SLI Inspectorate is directly subordinated to the Ministry of Social Security and Labour of the Republic of Lithuania;

[https://www.ilo.org/labadmin/info/WCMS\\_209360/lang--en/index.htm](https://www.ilo.org/labadmin/info/WCMS_209360/lang--en/index.htm)

<sup>15</sup> <https://www.vdi.lt/PdfUploads/EngReportSLI2015.pdf>

<sup>16</sup> Under the act of 29/03/2001 transposing Directive 94/45/EC, administrative offences are governed by the Code of Administrative Offences of the Republic of Lithuania.

<sup>17</sup> Jagodzinski manuscript: „In Lithuania, for instance, the absence of adequate penalties for employers who fail to observe information and consultation procedures properly, if at all, is reportedly 'a serious practical problem' (Blažienė 2009), as employers not fulfilling their duty to inform and consult employees' representatives may be fined from LTL 500 to 5 000 (approx. EUR 145-1 450). Since these fines are not large, 'it may be easier and more beneficial for employers to pay the fines and continue non-performance of their duties, because there are no special regulations obliging employers to meet their information and consultation obligations after payment of a fine' (ibid). Therefore Blažienė concludes that 'it can be argued that information and consultation procedures are inadequately implemented in practice in Lithuania'. An even more gruesome conclusion confirming the present study's considerations on 'cynical' employers applying the strict cost-benefit logic is Blažienė's observation that 'it is arguably more attractive for employers to violate knowingly the legislation and pay fines instead of performing their duty to inform and consult'."

<sup>18</sup> European Commission 2018: 62



2	Can the court rule to stop or reverse the companies' decision-making?	Yes, e.g. in confidentiality cases, but also more generally labour inspectors may give notice to employers requiring them to eliminate any identified violations within a specified period of time or write protocols of administrative law violations and assign fines. <sup>19</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?	Probably

## 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 <sup>20</sup>

## 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)	

<sup>19</sup> [https://www.ilo.org/labadmin/info/WCMS\\_209360/lang--en/index.htm](https://www.ilo.org/labadmin/info/WCMS_209360/lang--en/index.htm)

<sup>20</sup> European Commission 2018: 59.

