

Name of the country: **Romania**

Transposition act = LAW (A) 217 05/07/2005

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		Yes		The law makes no differentiation for Art. 13 agreements
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 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	Courts of appeal, tribunals or, as appropriate, district courts have specialised sections or panels for cases related to labour disputes ² .
B	Operation of the EWC:breaches and compliance with the law (statutes), agreement or Subsidiary Requirements		Yes	Applications for the resolution of individual labour disputes shall be lodged with the tribunal in whose area the applicant's domicile/place of work is located (Article 269 of Law No 53/2003 – Labour Code).
C	Challenging management on the use of confidentiality and secrecy/withholding information)		Yes ³	
E	Individual rights of the SNB/EWC members under national EWC legislation		Yes	
F	(Others to be filled in)			Territorial jurisdiction is regulated according to general criteria (defendant's domicile/ office)

3. Capacity to act in court

	Brief explanation/ differences for 2A-2F above)
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¹ Material and geographical competence.

² https://e-justice.europa.eu/85/EN/which_country_s_court_is_responsible?ROMANIA&member=1

³ The central management in Romania is obliged to motivate in writing the refusal to provide information.



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1	Who/which body can start a judicial procedure?	Any person who has a claim against another person must lodge an application with the court of law that has jurisdiction over the matter in question. The matter may be referred to the court only after a prior procedure has been completed, if the law expressly provides it. The proof of the completion of the prior procedure must be attached to the application. ⁴
2	What legal status (ius standi) is a requirement to start a judicial procedure? (legal personality, capacity to act in courts, other forms?)	See above.
3	What is the legal status of the EWC (legal personality or other capacity to act in court)?	According to the EWC Law: Capacity to act in courts for the EWC collectively and individual EWC members (at least in confidentiality cases) BUT: 1. According to earlier research: In Romania, EWCs are recognised as bodies collectively representing interests of employees on a par with trade unions, and hence enjoy the same legal guarantees as trade unions in courts, i.e. are exempted from fees ⁵ 2. According to the Commission (2018: 34): full legal personality
4	In case of lacking capacity to act in court: how can it be circumvented (think of representation by trade unions)?	n/a
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?	No mention/differentiation 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	No

⁴ https://e-justice.europa.eu/85/EN/which_country_s_court_is_responsible?ROMANIA&member=1

⁵ Jagodzinski (unpublished manuscript, 2014) and Buggel (2002)



	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)	<i>The application is registered and attributed a specific date by applying the entry stamp. After registration, the application and accompanying documents, together with, where appropriate, evidence of how they have been forwarded to the court, are handed over to the President of the court or the person designated by the latter, who will take immediate steps to randomly establish a judicial panel, pursuant to law (Article 199 of the Code of Civil Procedure).⁶</i>
3	What is the deadline to start a judicial procedure?	For confidentiality disputes a challenge of managerial decision to impose confidentiality: within 30 days ⁷ . Contraventions by employer: 30 days to report to court.
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?	A party to a dispute may also rely on alternative means of dispute resolution. Mediation is optional before going to court. During legal proceedings, the judicial authorities are required to inform the parties of the option and advantages of mediation. Mediation may occur in disputes relating to insurance, consumer protection, family law, professional liability cases, labour disputes and civil disputes with a value below RON 50 000. The parties to a dispute may also resort to arbitration, which is a private alternative jurisdiction. Persons with full capacity to act may agree to resolve disputes by arbitration, except for those relating to civil status, capacity of persons, succession proceedings, family relations and rights that cannot be decided by the parties. The parties to a dispute may also resort to arbitration, which is a private alternative jurisdiction. Persons with full capacity to act may agree to resolve disputes by

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⁷ Article 52 of the EWC Act: "The request coming from the central management to respect the confidentiality, respectively the decision of the central management not to disclose the information provided in art. 51 may be challenged by the European Works Council or by the employees' representatives in the competent courts within 30 days."



		arbitration, except for those relating to civil status, capacity of persons, succession proceedings, family relations and rights that cannot be decided by the parties. ⁸
6	How long does a judicial procedure typically take?	
7	Is an injunction or a summary procedure possible?	Summary procedure possible according to Büggel (2002).

5. Costs

		Brief explanation
1	What are the court fees for a judicial procedure?	EWCs are exempted from court fees.
2	Is legal representation by a lawyer required in a judicial procedure?	<p><i>Parties may bring a court action personally or through a representative, and such representation may be subject to the law, an agreement or judiciary. Natural persons who do not have the capacity to act will be represented by a legal representative. The parties may be represented by a representative of their choice, under the law, unless the law requires their appearance in person before the court of law.</i></p> <p><i>At first instance and during appeals, natural persons may be represented by a lawyer or another proxy. If a person other than a lawyer acts as representative, the proxy can only make submissions as to procedural exceptions and the substance of the case through a lawyer, both in the stage of inquiry and during the presentation of arguments. With a view to drafting the application and setting out the grounds for appeal and to lodging and arguing the appeal, natural persons shall be assisted and represented, under the penalty of nullity, only by a lawyer.</i></p> <p><i>Legal persons may be represented before courts of law under an agreement only by a legal advisor or lawyer. With a view to drafting the application and setting out the grounds for appeal and to lodging and arguing the appeal, legal persons shall be assisted and, as applicable, represented, under the penalty of nullity, only by a lawyer or legal advisor. The provisions mentioned above shall apply accordingly to associations, companies or other entities without legal personality.⁹</i></p>

⁸ https://e-justice.europa.eu/85/EN/which_country_s_court_is_responsible?ROMANIA&member=1

⁹ https://e-justice.europa.eu/85/EN/which_country_s_court_is_responsible?ROMANIA&member=1



3	Who pays the costs for:	General formula: The EWC members of the EWC shall have the means required to apply the rights arising from the transposition.
	- Legal expert	Number of experts can be limited to one
	- Court fees	Public legal aid is available ¹⁰ <i>Public legal aid constitutes the form of assistance granted by the State with the purpose of providing for the right to a fair trial and of safeguarding equal access to the act of justice in order to ensure the exercise of certain rights or legitimate interests by judicial means, including for enforcement of court judgments or other enforceable titles.¹¹</i>

¹⁰ Articles 1 and 20 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented: Public legal aid may be provided in the following forms:

- a) payment of the fee for representation, legal assistance and, where applicable, defence by an appointed or selected lawyer in order to ensure the exercise or safeguarding of a right or legitimate interest in court or to prevent a dispute, hereinafter assistance by a lawyer;
- b) payment provided to the expert, translator or interpreter resorted to throughout the proceedings, with the approval of the court or judicial authority, if such payment is lawfully incumbent upon the person applying for public legal aid;
- c) payment of the bailiff's fee;
- d) exemptions from, reductions in, rescheduling or deferral of payment of legal costs, as provided for by the law, including those due at the enforcement stage.

Where public legal aid is provided to citizens of EU Member States or to other persons who are domiciled or habitually reside within the territory of a Member State, the approved public legal aid may also include:

- a) expenses for translation of the documents submitted by the recipient, which were requested by the court or by the judicial authority for the resolution of the case, and related requests and documents submitted or received are exempted from the legalisation formality or from any other equivalent formality.
- b) an interpreter's services in the proceedings conducted before the court/judicial authority;
- c) expenses incurred with travel that the recipient of the assistance or another person must undertake to Romania at the request of the court or judicial authority, or where the law requires the mandatory presence of either of these persons.

https://e-justice.europa.eu/37129/EN/legal_aid?ROMANIA&member=1

¹¹ Article 1 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented.



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		<p><i>Any natural person may apply for the public legal aid if they are unable to cope with the legal costs for certain proceedings, or with those arising from the reception of legal advice in order to safeguard a right or legitimate interest in court, without jeopardising their or their family's maintenance.</i></p> <p><i>Public legal aid may also be granted in other cases, proportionally with the applicant's needs, when the actual or estimated legal costs are likely to restrict that applicant's effective access to justice (...).¹²</i></p>
	- Other costs (travel/interpretation)	<p><i>The legal costs are judicial stamp duties, lawyers', experts' and specialists' fees, amounts owed to witnesses in relation to travelling and amounts lost as a result of the need to appear before the court, travelling and accommodation costs, as well as any other costs needed for the proper conduct of the proceedings. The party claiming legal costs must prove the costs and their amount at the latest by the end of the discussions on the substance of the case.¹³</i></p>
4	Does a EWC normally have an independent budget and/or an own bank account under a given national legislation?	The EWC should have its annual budget ¹⁴
5	Can the EWC be sentenced to pay the costs of the other party in the judicial procedure?	<p><i>The losing party will have to pay the winning party's legal costs, at the request of the latter. If the application has been allowed in part, the judges shall establish the extent to which each party may be ordered to pay the legal costs. If necessary, judges may order the offset of legal costs. The defendant who has acknowledged the claims made by the claimant at the first hearing to which the parties have been duly subpoenaed cannot be ordered to pay the legal costs¹⁵</i></p>
6	Can the EWC members be sentenced to pay the costs of the other party in the judicial procedure?	

6. Sanctions

¹² Articles 4, 5, 8, 81, 9, 10, 101, 2, 21 and 50 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented and https://e-justice.europa.eu/37129/EN/legal_aid?ROMANIA&member=1

¹³ https://e-justice.europa.eu/85/EN/which_country_s_court_is_responsible?ROMANIA&member=1

¹⁴ Art. 44 of the EWC Act: "Article 44

(1) The running costs of the European Works Council shall be borne by the central management located in Romania, which shall establish, in collaboration with the European Works Council, its annual budget."

¹⁵ https://e-justice.europa.eu/85/EN/which_country_s_court_is_responsible?ROMANIA&member=1



		Brief explanation
	How is a breach of law classified?	<p>Contraventions.</p> <p>Breaches are monitored/ascertained by the control bodies of the Ministry of Labor, Family and Social Protection or by other bodies which, according to the law, have the right to carry out control¹⁶</p> <p>Unclear/question: the EWC act does not provide for a procedure and/or the possibilities for an appeal from decisions of the Ministry of Labour control agencies.</p>
1	What are the sanctions for breaches of EWC laws?	fine from 2,000 lei (approximately 893 EUR) to 4,000 lei (approximately 893 euros) (including breaches of confidentiality by EWC members)
2	Can the court rule to stop or reverse the companies' decision-making?	According to Büggel (2002) summary proceedings are possible.
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?	
6	Can the EWC collectively be sentenced to pay fines or be subject to other sanctions?	

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?	<i>Recourses to mediation is voluntary. There is no obligation for parties to look for mediation services, and they may opt out of mediation at any stage. In other words, parties are free to seek other means of dispute resolution at any point: court proceedings, arbitration. Interested parties may contact a mediator before coming to court, and also during court proceedings.</i> ¹⁷

8. Resources for EWCs

¹⁶ Art. 54 of the EWC Act.

¹⁷ https://e-justice.europa.eu/85/EN/which_country_s_court_is_responsible?ROMANIA&member=1



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		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)	The Mediation Council, established by Law 192/2006 on mediation, is responsible for supervising mediation in Romania. It is an autonomous legal entity which acts in the public interest and has its headquarters in Bucharest.



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