

Name of the country: **Austria**

National expert: Sophia Reisecker, GPA Union, Head of Department for European and International Affairs

EWC Act = Consolidated version ArbVG (Labour Code)

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

		No	Yes	Unclear	brief explanation	Article in national law
A	SNB (including the pre-SNB phase, i.e. requesting the necessary information about the company, staff distribution, etc.)		Yes		Both the management of each undertaking belonging to a group and the central management shall be responsible for collecting the information required to commence negotiations and for forwarding that information to the parties to which the Directive applies	Article 28 (2010) + Article 177 (1996) ¹
B	EWC based on Art. 6 agreements		Yes			
C	EWC based on art. 13 agreement	No			Excluded from penal provisions of the ArbVG (Act on EWCs)	
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	Article

¹ The persons entitled to make an application under subsection 1 shall have the right, in connection with the examination whether such an application can be made at all (section 171(1)), to demand from the central management or the local management the disclosure of the number of employees in the establishments or undertakings. They also have the right to request information from the central management or the local management as to whether an application for the establishment of a special negotiating body has already been made. The local management is obliged to obtain the necessary information and documents from the central management.

² Material and geographical competence.



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	district administrative authority	
B	Operation of the EWC: breaches and compliance with the law (statutes), agreement or Subsidiary Requirements		Yes	district administrative authority	
C	Challenging management on the use of confidentiality and secrecy/withholding information) ³	No			
E	Individual rights of the SNB/EWC members under national EWC legislation		Yes	district administrative authority	
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?	For breaches of specific rights it is required that only specific rights' holders are entitled to launch proceedings: employee representatives body (EWC), employees or employee representatives or SNB ⁴
2	What legal status (ius standi) is a requirement to start a judicial procedure? (legal personality, capacity to act in courts, other forms?)	To start a judicial procedure in courts you need legal personality (in German: Parteifähigkeit).
3	What is the legal status of the EWC (legal personality or other capacity to act in court)?	Full legal capacity ⁵ All legal bodies (besides some exceptions - in the law called by name) of workers have legal personality (§ 53 Absatz 1 Arbeits- und Sozialgerichtsgesetz [ASGG, in English: Labour and Social Courts Act]). The SNB and the EWC are legal bodies of workers (§ 40 Abs 4b Arbeitsverfassungsgesetz [ArbVG, in English: Labour Constitutional Act]). The SNB and the EWC are not called by name in § 53 Abs 1 ASGG (no exceptions) and therefore they have legal personality.
4	In case of lacking capacity to act in court: how can it be circumvented (think of representation by trade unions)?	It seems not possible as there is a closed catalogue of complainants who can start legal procedures.

³ In Austria the German model applies: (2) The obligation under subsection (1) shall not apply to local employee representatives if they are to be informed of the content of the information and the results of the hearings on the basis of an agreement (sections 189, 190) or under section 203.

⁴ Section 207 of the Labour Code.

⁵ Jagodzinski (2014) manuscript and European Commission (2018).



5	Who represents the EWC in law?	The representative of the European Works Council vis-à-vis the central management and externally shall be, unless otherwise stipulated in the rules of procedure (para. 3), the chairperson or, if he/she is prevented from doing so, the deputy chairperson. In individual cases, the European Works Council may also entrust other of its members with the external representation. (Section 194 (2) ArbVG). In court the chairman of the SNB or the EWC or a lawyer represents the SNB or the EWC.
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, but it may be determined in internal rules of procedure (in German: Geschäftsordnung) by the EWC. A Geschäftsordnung is mandatory for the EWC (§ 194 Absatz 3 ArbVG).
2	How does one file a case in court? (Who, format, steps)	The lawsuit can be filed in court by the chairman of the SNB or the EWC or (usually in practice) by a lawyer that represents the SNB or the EWC. Written claims must be sent to the court's address for correspondence. If one of the parties would like to file a claim at the court themselves, they must deliver it to the reception area of the court or post it in the inbox provided by the court. As a rule, every claim may be accompanied by any documents (exhibits) which support the claim (to be filed in the same number of copies as the claim itself). Any written agreements on the place of jurisdiction or domestic forum (jurisdiction agreements) may be enclosed with the claim. ⁶
3	What is the deadline to start a judicial procedure?	In theory you have normally thirty years, but in practice it's usually different. For example, if you want to stop the

⁶ [European e-Justice Portal - How to bring a case to court \(europa.eu\)](https://e-justice.europa.eu)



		beginning of planned substantial changes of the company ⁷ because there was no proper information and consultation process you will be well advised to act before the substantial change starts. It will be very difficult (nearly impossible) to reverse the change if it already happened.
4	Are there other relevant deadlines in the judicial procedure?	Deadlines in the judicial procedure will be determined by the judge. If there is a decision the period for appeal is usually 4 weeks.
5	What is the role of out of court settlements once a case has been filed?	Usually at the beginning of the proceedings the judge tries to motivate the parties to find a consensual solution. Besides - although a case has been filed the parties can of course decide for a mediation. ⁸
6	How long does a judicial procedure typically take?	Usually it takes 2 to 3 years.
7	Is an injunction or a summary procedure possible?	Yes, a preliminary injunction is possible. More precisely: There is no decision yet from the courts that a preliminary injunction is possible, but there is a well argued opinion of a recognized expert ⁹ . This opinion was published years ago in a journal for labour law ¹⁰ and there was no critique or different opinion published yet.

5. Costs

		Brief explanation
1	What are the court fees for a judicial procedure?	Labour law issues are exempted from court fees below EUR 2 500
2	Is legal representation by a lawyer required in a judicial procedure?	In civil and commercial cases to be settled through the courts, claims filed at the District Courts (<i>Bezirksgerichte</i>), which as a rule have jurisdiction for amounts in dispute of EUR 15 000 or less, must be signed by a lawyer if the amount in dispute is over EUR 5 000. Where legal representation before the District Courts is not compulsory, anyone can file a written claim or application initiating proceedings with the court.

⁷ Concerning organisation, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, collective redundancies...

⁸ *Zivilrechtsmediationsgesetz*, ZivMediatG transposing mediation directive 2008/52.

⁹ Univ. Prof. Dr. Georg E. Kodek.

¹⁰ Kodek, *Einstweilige Verfügungen zur Sicherung des Informationsanspruchs nach §§ 108, 199 ArbVG bei beabsichtigten Betriebsänderungen*, *Das Recht der Arbeit (Österreich)*, 2011, 517 – 526.



ETUC
Project
'Democracy
at work'

Romuald Jagodziński
Labour SUREAL
rjagodzinski@labour-sureal.eu



Funded by
the European Union

		In civil and commercial cases to be brought before the courts, claims filed with the Regional Courts (Landesgerichte) must normally always be signed by a lawyer. The Regional Courts have jurisdiction for all claims for which the District Courts do not have jurisdiction, irrespective of the amount in dispute, such as disputes concerning industrial property law, unfair competition and action for injunctions brought by consumer protection associations. ¹¹
3	Who pays the costs for:	Just the General Clause (Section 203(2) of the EWC Act): The resources required for the fulfilment of its tasks pursuant to para. 1 shall be made available to the European Works Council by the central management. ¹²
	- Legal expert	Management covers costs of at least Costs of at least one expert (based on the general clause)
	- Court fees	
	- Other costs (travel/interpretation)	Based on the general clause.
4	Does a EWC normally have an independent budget and/or an own bank account under a given national legislation?	No dedicated budget but costs related to the activities of EWC and select committees are borne by central management ¹³
5	Can the EWC be sentenced to pay the costs of the other party in the judicial procedure?	<i>The Austrian Code of Civil Procedure (Zivilprozessordnung – ZPO) and the Scales of Legal Fees Act (Rechtsanwaltstarifgesetz) provide that in civil proceedings the court must determine, in the decision on costs, the share of the costs that the losing party must reimburse to the successful party. These costs are based on the value of the dispute and the duration and nature of the service provided.</i> <i>In criminal proceedings the general rule is that any person who has hired a lawyer to act on their behalf (a defendant, a party bringing a private prosecution, or a victim asking that a civil claim be joined to the criminal proceedings) must bear the resulting costs. This is also the case where defence counsel was appointed by the court, unless the conditions for the granting of legal aid are satisfied.</i> ¹⁴
6	Can the EWC members be sentenced to pay the costs of the other party in the judicial procedure?	No, not the members. In disputes under works constitution law, costs are only reimbursed in the last instance, i.e. in proceedings before the Supreme Court. If the works

¹¹ [European e-Justice Portal - How to bring a case to court \(europa.eu\)](https://e-justice.europa.eu)

¹² Like in many other EU countries there is an obligation to determine financial and material resources to be allocated to the EWC in the agreement.

¹³ Art 197 of the labour constitution Act.

¹⁴ [European e-Justice Portal - Costs \(europa.eu\)](https://e-justice.europa.eu)



	council then loses, the works council fund would be liable for these costs.
--	---

6. Sanctions

		Brief explanation
	How is a breach classified	administrative offence or criminal offence ¹⁵
1	What are the sanctions for breaches of EWC laws?	A fine up to 20 000 EUR or up to 40 000 EUR for repeated offence
2	Can the court rule to stop or reverse the companies' decision-making?	In the view of the before mentioned opinion regarding the <u>preliminary injunction</u> the court can rule to stop the decision. Due to this opinion the courts can also reverse the companies decision, but this is legally not likewise clear and in practice this would be very difficult anyway. Regarding an action <u>without a preliminary injunction</u> the decision of the court will be too late anyway to stop the companies' decisionmaking. A reverse of the decision-making is not provided.
3	Whom should fines be paid to?	If the preliminary injunction is successful and the employer breaches the injunction a court can impose a fine (>Beugestrafe<; a fine in order to fulfil the decision of the court). This fine will be paid to the budget of the state. Besides this fine imposed by court there is also a provision in the Austrian law (§ 207 ArbVG) that in some cases a fine (>Verwaltungsstrafe<) can be imposed by the administrative authority. This fines are paid to the local community.
4	Can a member of management be held personally liable (personal vs. corporate liability)	Not if there is an action by court. If there are proceedings and a fine (>Verwaltungsstrafe<) by the administrative authority (§ 207 ArbVG) the management will be held personal liable (§ 9 Verwaltungsstrafgesetz [VStG, in English: administrative fines act]). The fines are in theory up to 20.000 €. In practice the fines are usually much lower.
5	Can individual EWC members be sentenced to pay fines or be subject to other sanctions?	Yes, if there is a breach of confidelity. If there is a breach of confidelity EWC members can be -sentenced to pay fines (§ 207 Abs 2 Z 5 ArbVG iVm § 204 Abs 1 ArbVG) and -in some cases (industrial espionage) even sentenced by court to pay a fine or to serve a sentence in prison (§ 122 Strafgesetzbuch [StGB; in English: criminal law act] -or he has to pay compensation.

¹⁵ Section 56(2) to (4) of the Administrative Offences Act 1991, Federal Law Gazette No 52, shall apply to the criminal proceedings.



6	Can the EWC collectively be sentenced to pay fines or be subject to other sanctions?	No.
---	--	-----

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>Mediation is an option. The Federal Ministry of Justice keeps a list of registered mediators. All the mediators included in this list have followed specific training. There is no central authority with responsibility for mediation services. There are professional and non-professional associations offering mediation services and a few non-governmental organisations offering support to mediators. Mediation is not generally free of charge. The mediation fees are agreed by the private mediator and the parties to the dispute.</p> <p>This kind of mediation never happened between an EWC and the management as far as we know.</p> <p>Besides this there is a type of governmental mediation regulated by law (§ 112 ArbVG) if</p> <ul style="list-style-type: none"> - there is a substantial change in the company, - the company has more than 400 employees and - the case is significant for the national economy. <p>This kind of mediation happens sometimes (roughly one case every three years).</p>

8. Resources for EWCs

		Brief explanation
1.	Can unions provide legal support or financing for litigation?	Yes
2.	What other resources are available in terms of legal support to EWCs and/or EWC members in your country (e.g., Arbeiterkammer,	<p>Ministry of Justice info-pages: Gerichtssuche (justiz.gv.at)</p> <p>Arbeiterkammer – counseling, information and interest representation https://www.arbeiterkammer.at/beratung/arbeitundrecht/index.html</p> <p>www.betriebsraete.at - EU-Betriebsrat</p>



ETUC
Project
'Democracy
at work'

Romuald Jagodziński
Labour SUREAL
rjagodzinski@labour-sureal.eu



Funded by
the European Union

	legal support centres)	
--	------------------------	--



ETUC
Project
'Democracy
at work'

Romuald Jagodziński
Labour SUREAL
rjagodzinski@labour-sureal.eu



Funded by
the European Union