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The Settlement of (Collective) Labour Disputes in the Grand Duchy of Luxembourg
National Report

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Labour relations in the Grand Duchy of Luxembourg

Introduction

The Grand Duchy of Luxembourg has a complicated constitutional status and history. The most important facts for the purpose of this report are that France under Napoleon occupied the territory at the beginning of the 19th century, that the territory became semi-independent from the Netherlands in 1839, and fully independent in 1890.[1]

The emergence of labour law in Luxembourg began in the second half of the 19th century.

Luxembourg labour law is not codified. The main sources of labour law are international conventions and treaties, national laws, grand ducal or ministerial decree regulations, and collective agreements. At present, approximately 250 to 300 collective labour agreements are in force in Luxembourg. The average duration of a collective agreement is 1 year.

A *contrat collectif* (collective agreement) is concluded between one or more manual workers' or white-collar workers' organizations on the one hand, and, on the other either an individual employer or a sectoral or occupational association of employers. Only national trade unions may conclude such agreements. A collective agreement is valid if it is signed by the contracting parties or their representatives and submitted in writing for registration with the *Inspection du Travail et des Mines* (Labour and Mines Inspectorate).

[1] A. de Roo & R. Jagtenberg, Settling Labour Disputes in Europe, Kluwer Law & Taxation: Deventer/Boston, p. 330ff, 1994.

Luxembourg has a well-established tradition of industrial peace. However, if the parties fail to settle their differences amongst themselves they may call upon the assistance of the *Office National de Conciliation (ONC)* (National Conciliation Office).

In Luxembourg, the right to strike is based on a judicial interpretation of the Supreme Court of 1952 of the concept of freedom of collective industrial organization as laid down in Art. 11, 5 of the Constitution. The right to initiate strike action is subject tot the observance of preliminary conciliation procedures. The legitimacy of strikes in the public service is conditional on the failure of a compulsory conciliation procedure before a conciliation commission.

Trade Unions

In Luxembourg, trade unionism first started in the second half of the 19th century, initially based in traditional crafts, later followed by the establishment of trade unions in the industrial, educational, and public sector.

Until the First World War the level of organisation was low and also fragmented. This only changed with the growth of trade unionism in the industrial sectors, and the polarisation of catholic and socialist trade unions.[2]

From 1944 onwards there were initiatives to establish a unified movement. However, this was upheld by separation of the communist and catholic trade unions.

In 1948 a general occupationally based federation was established; the communist trade union re-joined the socialists in 1960.

In conclusion, between 1960 and 1990 there was a continuous regrouping of trade unions.

At present, there are two main national trade union confederations for blue- and white-collar staff. The *Onofhängege Gewerkschafts-Bond Lëtzebuerg (OGB-L)* (Independent Trade Union Confederation of Luxembourg), socialist in origin, encompasses 14 sectoral federations with both manual and white-collar membership. The *Lëtzebuerger Chrëstleche Gewerkschafts-Bond (LCGB)* (Luxembourg Confederation of Christian Trade Unions) has 13 federations in industry and other economic sectors and is very much in favour of trade union pluralism.

The *Fédération des Emloyés Privés/Fédération Indépendante des Travailleurs et Cadres (FEP/FITC)* (Federation of Private-Sector Staffs/Independent Federation of Workers and Managers) covers the private-sector white-collar staff.

Apart from these main trade union federations there is a variety of trade unions representing specific sectors of the economy, of which the *Association Luxembourgeoise*

[2] G. Tunsch, Luxembourg: An Island of Stability, in: Industrial Relations in the New Europe, Blackwell: Oxford, 1992.

des Employés de Banques et d'Assurances (ALEBA) (Luxembourg Banking and Insurance Employees' Union), founded in 1918, is most influential.

Today, the level of union membership in Luxembourg is 60%.

Employers' organisations
The main employers' association, the *Fédération des Industriels Luxembourgeois (FEDIL)* (Federation of Luxembourg Industrialists), was founded in 1917. FEDIL unites 11 sectoral employers' associations and is a member of UNICE.
Other main employers' associations are the *Fédération des Artisans* (Federation of Small and Medium-Sized Enterprises), the *Confédération du Commerce Luxembourgeois* (Confederation of Luxembourg Commerce), and the *Association des Banques et Banquiers Luxembourg (ABBL)* (Luxembourg Bankers Association).

Labour disputes and dispute resolution

Luxembourg labour law makes a distinction between individual and collective labour (rights) disputes. For individual and collective labour disputes there is separate settlement machinery available.
A *conflict collectif du travail* (industrial dispute) is defined as a dispute between the parties to collective bargaining. A collective dispute may not lead to industrial action until the conciliation procedures laid down by law have been exhausted.

Collective labour disputes arising at the time of conclusion, revision or renewal of a collective agreement constitute disputes over interests, unless it concerns a matter of interpreting existing law.
In practice, the NCO has the power to intervene in collective labour disputes, if the employer refuses to negotiate or if there is failure to agree on the basis of the collective agreement.

Luxembourg labour law allows worker's representatives to present any complaint to the employer. These workers' representatives have the function to prevent and smoothen any differences arising between the employer and his personnel concerning individual or collective disputes.

The *Tribunal du Travail* (Labour Tribunal) has competence in disputes over the application of a collective agreement in the individual relation between the employer and the worker.

For the resolution of collective labour disputes over rights there is special, ad hoc conciliation and arbitration settlement machinery.

(Extra)-judicial means for the resolution of labour disputes

Luxembourg has effective conciliation, mediation and arbitration procedures, which are frequently used and which are relatively successful.

The first institutions with a responsibility to settle disputes were the *Conseils de Prud'hommes* (Councils of Prudent Men), introduced in 1810, and the *Tribunal Arbitral* (Arbitral Tribunal), introduced by the Act of 31 October 1919 on the contract of service of salaried employees. The working area of both institutions was individual labour disputes. The *Conseils de Prud'hommes* dealt with blue collars workers exclusively and the *Tribunal Arbitral* with white-collar workers. This distinction between individual labour disputes involving blue collar and white-collar workers has continued to exist in Luxembourg for a longer time than anywhere else in Europe, that is until 1989.

Tribunal du Travail
The Act of 6 December 1989 on labour jurisdiction finally merged the two jurisdictions and established a single *Tribunal du Travail* competent to hear all cases arising from any employment contract.
The rules of procedure applicable to ordinary magistrates' court are followed. All judgments are automatically enforceable. *Tribunaux du Travail* are courts of last instance for small claims. In all other cases, there is provision for appeal against their rulings.

If the claim exceeds a fixed, preset amount, appeal against the decision of the *Tribunaux du Travail* may be brought before the Court of Appeal. The Luxembourg Court of Appeal has two chambers specialising in labour law disputes.[3] Notice of appeal and the investigation and judgment of the case are governed by the Code of Civil Procedure.

The *Tribunaux du Travail* are composed of one magistrate acting as a chairman and one representative from the employers and employees respectively. The magistrate chairing

[3] An appeal must be lodged within an extinctive time limit of 40 days from notification of the decision, if it was delivered after hearing both parties or, if it was delivered in default, 40 days from expiry of the time limit for bringing an application to set it aside.

the *Tribunal* chooses the employee-assessor. The Minister of Justice, on the advice of the Minister of Labour, appoints assessors for a term of office of four years. For each *Tribunal du Travail* there are in total two accredited and six alternate employer-assessors and one accredited and three alternate employee-assessors for each category of employees.[4] They are chosen from a list of candidates submitted by the Chamber of Labour and Trade concerned. Their office is renewable.

The *Tribunaux du Travail* adjudicate disputes through a largely written procedure. It is possible for parties to opt for a *référé* (summary procedure), if certain conditions are satisfied. This summary procedure was introduced under the Law of 6 December 1989. In addition, the presiding magistrate of a *Tribunal du Travail* has been granted special powers under the Law of 24 May 1989 on the contract of employment. These allow urgent rulings on nullity of dismissal and orders for reinstatement.[5]

Office National de Conciliation

In the area of collective labour dispute settlement in the private sector, the year 1936 marks the establishment of the *Conseil National du Travail* (National Labour Council), a government committee responsible for arbitrating disputes arising from deadlocked negotiations over collective agreements. The *Conseil National du Travail* was the successor of the Chambers of Labour and Trade, which were introduced as conciliation and arbitration bodies in 1924.

In 1945, the *Conseil National du Travail* was replaced by the *Office National de Conciliation* (National Conciliation Office), abbreviated *ONC*. The Decree of 6 October 1945 establishing the ONC described the task of the Office as "[…] to prevent or to settle collective (industrial) labour disputes, which are not settled through conciliation otherwise […] and gave the 'interested parties' the right to bring a "[…] collective disagreement relating to working conditions in one or several enterprises […]" before the NCO.[6] The NCO consists of a *commission paritaire* (joint conciliation committee) and an administrative service. The *commission paritaire* has permanent members.
The ONC has to perform its task in close co-operation with the *Inspection du Travail et des Mines*.[7]

Although the ONC is often referred to as an equitable institution, its composition is essentially tri-partite. Three representatives from the unions and employer's associations

[4] White-collar and manual workers.
[5] The presiding magistrate may also render an interim award of entitlement to unemployment benefit pending a final ruling on a claim against dismissal for grave cause.
[6] S. 6, Arrêté grand-ducal du 6 octobre 1945 ayant pour objet l'institution, les attributions et le fonctionnement d'un Office National de Conciliation.
[7] S. 7, Arrêté grand-ducal du 6 octobre 1945.

respectively are presided over by the Minister of Labour or his deputy. These are the seven permanent members of the ONC and are appointed for a period of two years.
In each dispute, however, *ad hoc* conciliators from the plant or profession concerned are appointed in addition. The *commission paritaire* may enlist the services of other experts in an advisory capacity.

All collective labour disputes over interests must be referred to the ONC. Strikes called without prior submission of the dispute to the ONC are unlawful.[8] The law stipulates that the ONC-conciliation procedure is mandatory. Therefore, initiating a collective stoppage without the matter having first referred to the ONC, refusing to comply with a conciliation request of the ONC without legitimate grounds, or hindering the representatives of the parties in performing their function in the conciliation procedure. The law declares it a punishable offence for employers and employees not to fulfill the obligations resulting from (settlement) agreements reached under the auspices of the ONC.

In addition, the law on collective labour agreements of 12 June 1965 permits referral to the NCO in case an employer refuses to negotiate for the conclusion of a collective agreement or if during the negotiations the parties are unable to reach agreement on one or several fundamental points within the collective agreement.

Disputes arising form a disagreement between the group of employers's representatives and that of staff representatives forming the mixed works council on the subject of one of the measures falling under the decision-making scope of the mixed works council may also lead to the conciliation or arbitration procedure before the NCO.[9]

If the parties fail to take the initiative, the ONC may step into a dispute on its own motion.

The representatives from both sides of industry discuss the dispute separately and jointly, and may ask the president of the Office to assist the meetings. Settlement proposals are based on an absolute majority. Voting is at the close of a conciliation session or in the course of session when interim measures are decided. The president has a casting vote.[10] No distinction is made between conciliation and mediation.[11]

[8] S. 9 and s. 25, Arrêté grand-ducal du 6 octobre 1945.
[9] Art. 16, para. 2 of the law of 6 May 1974 instituting mixed councils in private sector companies and organising employee representation in limited companies.
[10] S. 15, Arrêté grand-ducal du 6 octobre 1945.
[11] G. Tunsch (1998), Luxembourg, in: Changing Industrial Relations in the New Europe, A. Ferner and R. Hyman eds., Blackwell: Oxford.

Not attending the conciliation session or hindering the parties' representatives is also regarded as unlawful.[12]
The conciliated settlement binds the parties to a collective agreement and be declared *erga omnes*. Failure to comply with a conciliatory settlement constitutes a penal offence.[13]

The Decree of 1945 stipulated that parties may have recourse to arbitration, if conciliation is not successful (if conciliation has failed, this is recorded in a memorandum). The Decree lays down that arbitration is to be conducted by a *Conseil d'Arbitrage* (Arbitration Panel) composed of a president appointed by the government and two arbitrators, each of which represents one side of industry. These representatives are to be appointed by the parties. The Decree further provides that the ONC sends a report of non-conciliation, providing the arbitration tribunal with background materials concerning the dispute.[14]

This procedure is not arbitration in the strict sense, since the arbitral award is not binding on the parties.[15] As a consequence, parties may still opt to take industrial action. However, if the decision of the arbitration panel is accepted by the parties, its legal status is equivalent to the conclusion of a collective agreement.
The disputing parties may refuse to accept the arbitration decision. If, however, the arbitral award is not accepted, it may be published if it is believed to be in the public interest or from the point of view resolving the dispute at hand.

Instead of using this arbitration procedure of the 1945 Decree, parties to a collective agreement may decide to nominate one or more arbitrators of their own choice in accordance with the Code of Civil Procedure. This implies that the names and official capacities of the arbitrators, the subject of arbitration and the procedure to be followed must be set out in writing.[16] This possibility is laid down explicitly in the Act of 12 June 1965 on Collective Agreements.[17]

In Luxembourg a substantial role, at least on paper, is reserved for labour arbitration.

Also, mention is made of the role of the Labour Inspectors. Labour Inspectors are placed under the authority of the Ministry of Labour. The inspectors ensure application of all regulations on working conditions and protection of the workers. To this end they may

[12] S. 25, Arrêté grand-ducal du 6 octobre 1945.
[13] S. 26, Arrêté grand-ducal du 6 octobre 1945.
[14] S. 18, Arrêté grand-ducal du 6 octobere 1945.
[15] The arbitral award must be rendered with eight days.
[16] Art. 1033 of the Code of Civil Procedure.
[17] S. 17, Loi du 12 juin 1965 concernant les Conventions Collectives du Travail.

supply information and advice to employers and employees, and they may freely enter relevant places and investigate books and personnel. Apart from this task, the Inspection has a general task to prevent and smoothen labour conflicts before referring them to a Labour Tribunal or the ONC.[18]

As such there is no special statutory settlement machinery in Luxembourg available for the resolution of collective labour disputes in the public sector. However, in March 1998 the president of the *Tribunal d'Arrondissement* (Civil Court of First Instance) was asked to act as a conciliator in the public sector pensions dispute between the Minister responsible for the public sector and the *Confédération Générale de la Fonction Publique* (General Public Sector Confederation).

Assessment of extra-judicial means for the resolution of labour disputes

Increasingly, the ONC is criticised by the social partners for slow performance. This criticism has urged the present Minister of Labour, Mr. François Biltgen, to propose a new law for the improvement of the industrial relations system, the furtherance of the regulation of collective labour disputes, and the professionalisation of the NCO.

This proposal was presented on 30 October 2001 as the *Projet de loi concernant les relations collectives de travail, le règlement des conflits collectives de travail et l'Office national de conciliation*.[19]
The second part of this newly proposed law is fully dedicated to the improvement and the speeding up of the operation of the NCO.

In the new law, the president of the NCO is envisaged as a professional, a *conciliateur professionnel*, who must have a degree in law.[20] The *conciliateur professionel* will be appointed as an independent civil servant from the Ministry of Labour. Currently, civil servants on an honorary basis carry out the presidency of NCO.

[18] The structure and functions of the Labour Inspection are laid down in the Act on the Labour Inspection of 4 April 1974.
[19] In addition, a new structure, the Commission de Négociation (Bargaining Commission) may be introduced into the legal procedure for negotiating collective labour agreements. This commission will be composed of trade unions with national or sectoral representatives status, which could, by a unanimous vote, agree to allow other unions to take part in the negotiations. In the event of a dispute, or a non-unanimous decision, the NCO will hear the case.
[20] Artt. 30 and 31, Project de loi concernant les relations collectives de travail, le règlement des conflits collectives de travail et l'Office.

The *commission paritaire* will consist of two sections composed of assessors competent to deal with collective disputes over interests related to blue and white-collar workers respectively. The term of office of the assessors will be extended to three years.[21] So-called special members may complement each section.

Art. 35 of the new law clearly states which requirements have to be met to bring the dispute before the ONC to better structure the conciliation procedure. When parties have decided to invoke the ONC, they have to put in writing the subject and history of the dispute, points of agreement, points of difference, and the reasons explaining why the parties could not settle their disagreements amongst themselves.
Under the present law there are no such requirements.

Alternative labour settlement machinery has a well-established footing in the Luxembourg industrial relations systems. Today, the focus is on further professionalisation of the ONC

[21] Ibid, art. 31.