

The background of the entire page is a low-angle, upward-looking shot of several modern skyscrapers. Overlaid on this image is a complex network of white dots connected by thin white lines, resembling a digital or financial network. The overall color palette is a mix of deep blues and greys from the buildings, with bright white highlights from the network lines and a soft, hazy light in the sky.

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Guidance to Early Neutral Evaluation in the Field of Financial Services

June 2025

ENE Landed in Luxembourg

ENE has reached the borders of Luxembourg, marking a transformative milestone in the sphere of dispute resolution for investment funds and the financial service industry.

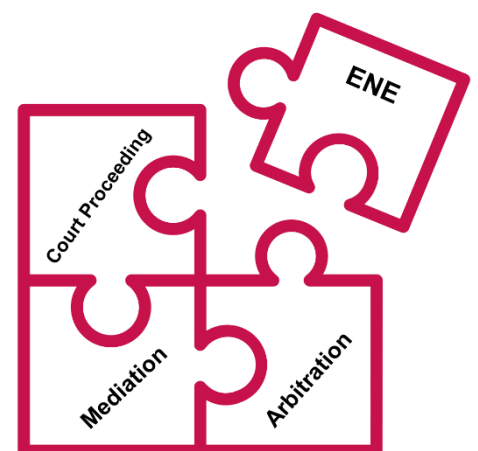
When it comes to launching new investment funds, Luxembourg is a first choice for promoters and investors. The sector is constantly evolving to meet regulatory requirements and those of market participants. In recent years, we witnessed a surge in litigations and disputes in the financial service industry. Recognizing the need for a more efficient and collaborative approach to resolving disputes in the industry, the introduction of Early Neutral Evaluation (ENE) in Luxembourg signifies a pivotal step towards harmonizing relationships, optimizing processes, and fostering efficient solutions in the financial services industry.

ENE serves as a proactive and strategic tool for early dispute resolution, offering a structured and non-adversarial process that promotes mutual understanding and resolution. It is a voluntary dispute resolution process that involves an impartial third party, known as the neutral evaluator, providing an early assessment of the merits of a case to assist the parties in reaching a resolution. The evaluator, typically an experienced legal professional or subject matter expert, offers an objective evaluation of the strengths and weaknesses of each party's position, guiding them towards a mutually agreeable settlement.

Alternative Dispute Resolution (ADR)

In the spectrum of Alternative Dispute Resolution (ADR) methods, Early Neutral Evaluation completes the offering in Luxembourg. ENE occupies a unique position due to its proactive and evaluative nature. Unlike mediation or arbitration, which focus on facilitation or adjudication of disputes, ENE emphasizes early intervention and assessment.

In the landscape of ADR, Early Neutral Evaluation emerges as a strategic mechanism that seeks to streamline the resolution process, foster open communication, and empower parties to proactively address disputes. Its role in providing early guidance, promoting understanding, and facilitating informed decision-making positions ENE as a valuable tool for achieving efficient and amicable resolutions in complex legal matters within the financial services industry and beyond.



What is Early Neutral Evaluation (ENE) Exactly?

ENE offers parties with diverging interest to present their perspectives to an experienced, impartial evaluator. The parties are master of the process and may decide which kind of outcome they wish to receive from the neutral evaluator. The evaluator might provide (i) a non-binding assessment of the strengths and weaknesses of each side's arguments, as well as an indication of how the case

might be resolved in court or arbitration and/or (ii) a recommendation on how the dispute could be settled.

ENE has a transformative power within the realm of the financial services sector. As we navigate complex legal and regulatory landscapes and strive for harmonious outcomes, ENE is particularly well situated to financial services disputes.

The key advantages of ENE:

1. **Timely Resolution:** ENE provides a swift mechanism for resolving disputes before they escalate, enabling parties to address issues promptly and effectively.
2. **Cost Effective:** By facilitating early resolution, ENE helps in reducing the costs associated with lengthy litigations, thereby optimizing resources for all parties involved.
3. **Preservation of Relationships:** The collaborative nature of ENE fosters open communication and assists in preserving vital relationships between fund managers, promoters, and investors.
4. **Expert Guidance:** ENE sessions are led by trained neutrals who possess expertise in the financial services industry, providing informed assessments and recommendations for resolution.
5. **Confidentiality:** ENE proceedings offer a confidential setting for parties to discuss their concerns, encouraging a candid exchange of information without the risks associated with public court proceedings.
6. **Customized Solutions:** ENE allows for tailored solutions that address the specific needs and interests of the parties involved, promoting outcomes that are mutually beneficial.

Early Neutral Evaluation (ENE) in the Field of Financial Services - Exemplary Fields of Application

As we navigate an increasingly complex regulatory landscape and heightened scrutiny in the financial services industry, the implementation of ENE represents a progressive step towards efficient and amicable dispute resolution. Through its collaborative approach and focus on early intervention, ENE empowers stakeholders to swiftly address disputes, mitigate risks, and uphold the integrity of the investment funds market in Luxembourg. Exemplary fields where an ENE procedure might be considered are:

1. **Disputes over Redemption Rights and Gate Provisions:** Conflicts between investors and fund managers relating to suspension of redemptions, imposition of gates, or side-pocketing of illiquid assets during market stress.
2. **Side Letter Disputes with Institutional Investors:** Disagreements about the interpretation or enforceability of preferential terms granted through side letters, especially where there may be inconsistency with fund documentation.

3. **Cross-Border Disputes:** Disputes with investors who are themselves subject to regulation in their home jurisdictions and due to a breach of the fund documentation in conflict with these regulations.
4. **Conflicts Between General Partners (GPs) and Limited Partners (LPs):** Disputes over capital calls, fee structures, carried interest calculations, or the exercise of key-man or no-fault divorce clauses in private equity or real estate funds.
5. **Valuation of Illiquid or Hard-to-Value Assets:** Contentious issues involving the fair valuation of private equity, real estate, or structured credit holdings, particularly in NAV reporting and performance fee calculations.
6. **Fund Re-domiciliation or Restructuring Conflicts:** Disputes arising when a fund is migrating to a different jurisdiction, converting legal structure (e.g., from SIF to RAIF), or merging/sub-funding with investor objection or uncertainty.
7. **Delegation and Oversight Disputes:** Concerns about breaches of regulatory duties by delegated portfolio managers, investment advisors, or other third-party service providers under UCITS and AIFMD frameworks.
8. **Alleged Breach of Investment Restrictions or ESG Mandates:** Investor claims that a fund failed to adhere to stated investment guidelines, such as sector caps, leverage limits, or sustainable investment principles (e.g., SFDR compliance).
9. **Service Provider Disputes (Depositaries, Administrators, Auditors):** Disputes over errors or delays in NAV calculation, asset safekeeping, financial reporting, or regulatory filing by third-party service providers.
10. **AML/CFT Compliance Failures:** Pre-litigation disputes or internal disagreements over regulatory breaches in anti-money laundering and counter-terrorist financing obligations.
11. **Disputes Over Loan Agreements or Security Packages:** Contentious issues surrounding loan defaults, restructuring negotiations, or enforcement of security, especially in syndicated loan arrangements.
12. **Termination and Wind-Up Disputes:** Disagreements on the fair distribution of proceeds, timing, or liabilities during the liquidation of funds, particularly in distressed or underperforming funds.

What does an Early Neutral Evaluation (ENE) Process look like?

While not yet formally institutionalized under Luxembourg law, ENE could be implemented either contractually (by party agreement) or through institutional frameworks (e.g. *Centre de Médiation Civile et Commerciale in Luxembourg*, [CMCC](#)). The specific phases may vary depending on the needs of the parties or the agreement between the parties, the typical ENE process generally follows the following phases:



Phase 1: Preliminary phase

In a preliminary phase, the parties agree to submit their case to Early Neutral Evaluation. This can be done voluntarily, often as part of a contractual dispute resolution

clause, or by mutual consent after a dispute arises. Sometimes, courts or arbitration panels may recommend ENE to help parties resolve issues early.



It is recommended that the initiating party is contacting an institutional centre (such as the CMCC) to assist with communicating and inviting the other parties to the process.

Phase 2: Agreement with respect to ENE Process

The process begins when the disputing parties discuss on (i) the scope of the issues to be evaluated, (ii) the neutral evaluator with relevant subject-matter expertise, (iii) any relevant ENE process criteria (i.e. evaluation meetings, time, place, confidentiality, code of conduct for the parties), (iv) cost arrangement, and (v) the outcome the parties are seeking (i.e. an assessment of their dispute and/or a recommendation how to solve the dispute), etc. The agreements are set out in a written contract.



The centre assisting with the ENE process generally has a list of respective ENEs and might assist with the selection process.

Phase 3: Preliminary Submissions

Each party submits a concise statement outlining their position, key facts, legal arguments, and the issues in dispute. These submissions are less formal than writs in the scope of fully fledged court proceedings but provide the evaluator with sufficient information to understand the case.

Parties may also exchange relevant documents to support their positions.

Phase 4: Evaluation Meeting (optional)

In many ENE processes, the evaluator convenes separate sessions with each party or a joint session with the parties and their legal representatives. This meeting allows the evaluator to ask questions, clarify issues, and better understand each side's arguments.



The ENE process might also be combined with a mediation and a joint session with the parties provides an opportunity for the parties to discuss settlement possibilities in a structured environment guided by the evaluator's input and the mediator's help in communicating.

Phase 5: Neutral Evaluation Report

Following review and any meeting(s), the evaluator prepares a non-binding evaluation report. This report outlines the evaluator's assessment of the strengths and

weaknesses of each party's case, legal risks, likely outcomes, and potential avenues for settlement.

The evaluator may highlight evidentiary issues, jurisdictional challenges, or procedural risks, helping parties grasp the realistic prospects of litigation. Additionally or alternatively, the evaluator may issue a recommendation on how to settle the dispute.

Phase 6: Post-Evaluation Negotiations

Armed with the evaluator's insights, parties are often better positioned to negotiate settlements. The objective, expert feedback can encourage realistic expectations and facilitate compromise.

If parties reach an agreement, either based on their negotiations or the recommendation of the ENE, they can formalize it and avoid further costly proceedings.

Phase 7: If No Settlement, Proceed to Litigation or Arbitration

If settlement is not achieved, parties retain their full rights to continue with litigation or arbitration. Importantly in combination with the mediation process as foreseen in the Luxembourg law, nothing said or presented during ENE is admissible in subsequent proceedings, preserving confidentiality and encouraging candid dialogue during the evaluation. The combination with the mediation process also brings another advantage, the enforceability of the agreement reached between the parties.

Recommendations for Market Participants: Preparing for Disputes and ENE

As financial markets evolve in complexity and regulatory scrutiny continues to intensify, market participants should proactively reconsider how they manage legal and commercial disputes. Early Neutral Evaluation (ENE) as well as other dispute resolution methods may lead to quicker, more cost-effective, and confidential resolutions.

Market participants should pro-actively consider dispute resolution strategies:

1. Conduct Dispute Risk Mapping ("Dispute Design"):

- Identify likely pressure points within investment structures, service provider relationships, and investor communications that may give rise to disputes.
- Evaluate whether those disputes involve issues (valuation, regulatory interpretation, fiduciary standards) that are suitable for neutral assessment and what might be the best approach/timing to assess disputes.
- Consider a dispute escalation procedure and identifying several dispute resolution mechanisms (such as board intervention, mediation, ENE, arbitration, regulator intervention).

2. Review / Adapt Dispute Resolution Clauses:

Consider including ENE or other alternative dispute resolution mechanism as a tier in multi-step dispute resolution clauses in contracts — particularly in fund documentation (LPA, PPM), ISDA schedules, shareholder agreements, and service provider contracts.

3. Engage with Legal and Compliance Teams Proactively:

- Train legal and compliance teams to identify suitable cases for ENE early — before costs escalate or formal proceedings are launched.
- Develop internal checklists or triggers for when to propose ENE, including factors such as market sensitivity, regulatory exposure, or cross-border complexity.

Conclusion

Luxembourg's legal and financial ecosystem is well-positioned to integrate ENE as a best-practice tool in its broader dispute resolution landscape. As institutions seek faster, more expert-driven, and confidential alternatives to litigation or arbitration, ENE provides a compelling option — particularly in a jurisdiction known for legal certainty and cross-border finance. Market participants should act now to be in an active driver seat of choosing the appropriate dispute resolution method.

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Dispute Toolbox in Luxembourg

				Alternative Dispute Resolution (ADR)		
State Procedure				Arbitration	Early Neutral Evaluation (ENE)	Mediation
GENERAL	Confidentiality	Public process		Confidential process	Confidential process	Confidential process
	Costs	High costs		Very high costs	Low costs	Low costs
	Time	Might take several years		Time efficient	Time efficient	Time efficient
PROCEDURE	Judge/ Neutral Third Party	Judge		Arbitrator	Evaluator	Mediator
	Specific expertise	No		Yes	Yes	No
	Flexibility in procedure	No		No	Yes	Yes
OUTCOME	Outcome	Court decision		Arbitral award	Recommendation or analyses	Agreement between parties
	Binding	Yes		Yes	Only, if recommendation is signed by parties	Only, if agreement is signed by parties
	Control of outcome	No		No	Yes	Yes

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