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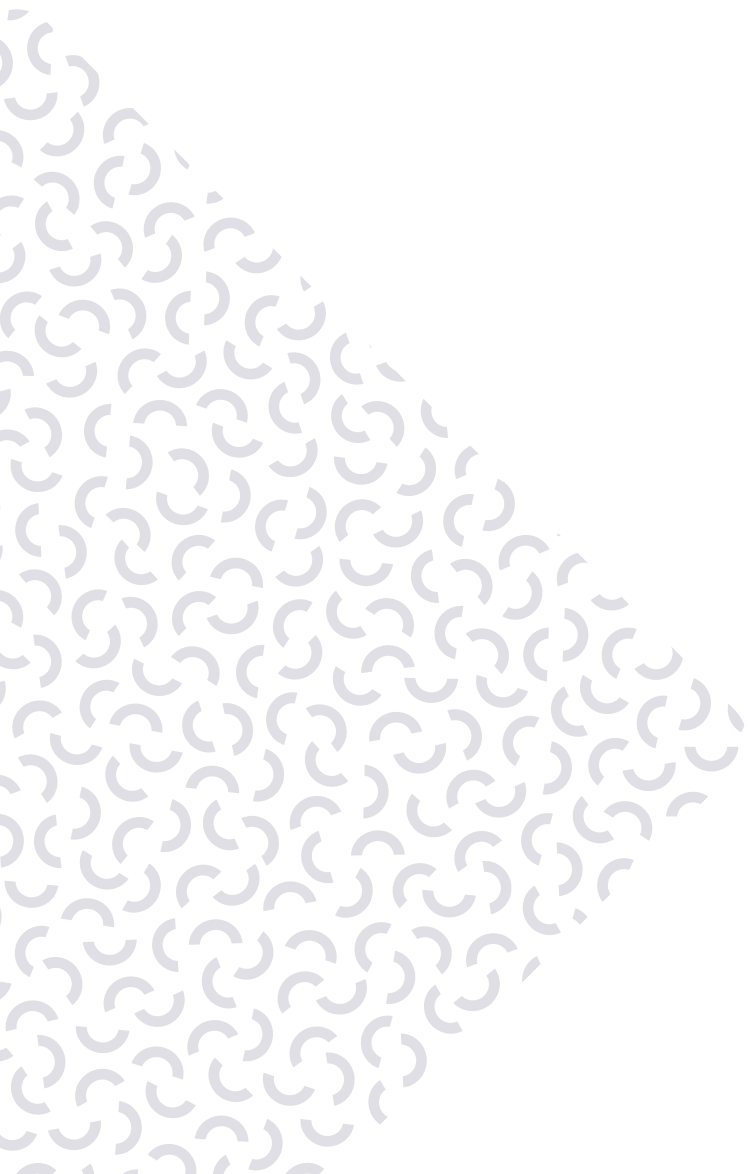


LABOUR
LAW

THE SOCIAL DIALOGUE IN COMPANIES



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Chambre des salariés
18 rue Auguste Lumière
L-1950 Luxembourg
B.P. 1263
L-1012 Luxembourg
T +352 27 494 200
F +352 27 494 250
www.csl.lu
csl@csl.lu

Nora Back, President
Sylvain Hoffmann, Director



Nora BACK
*President of the
Chamber of Employees*

PREFACE

Dear readers,

Social dialogue in companies is an important element of governance for the sustainable development of our economy and society.

By social dialogue we mean the interaction and cooperation between employees via their elected representatives on the one hand and their employers on the other, within the framework of the economic and social activity of the company.

It is a pillar of our social model, guaranteeing social peace in our country. It is also a driving force for well-being in terms of the social climate in companies and it contributes to the longevity of national companies.

The legal framework of this social dialogue was overhauled in 2015 by an amended law of 23 July 2015¹ on the reform of social dialogue within companies.

This law modernised the rules within which social dialogue must take place within companies.

At the time, some of the legal changes provided for by the 2015 law came into force on 1st January 2016. Others only came into force from on the social elections in 2019.

With a view to the social elections of 2024, the CSL has decided to re-issue this publication, which is a practical work that aims to provide information that is as complete as possible.

It includes in introduction, an overview of the structure of social dialogue and as well as a practical guide to the provisions applicable.

A pleasant reading.

Luxembourg, December 2022

1 Mémoires A n° 144 from 27 July 2015

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In this publication, the masculine gender is used indiscriminately and only for the purpose of simplicity. It refers to all gender identities and thus covers both female and male persons, transgender persons, as well as persons who do not feel they belong to either sex or who feel they belong to both sexes

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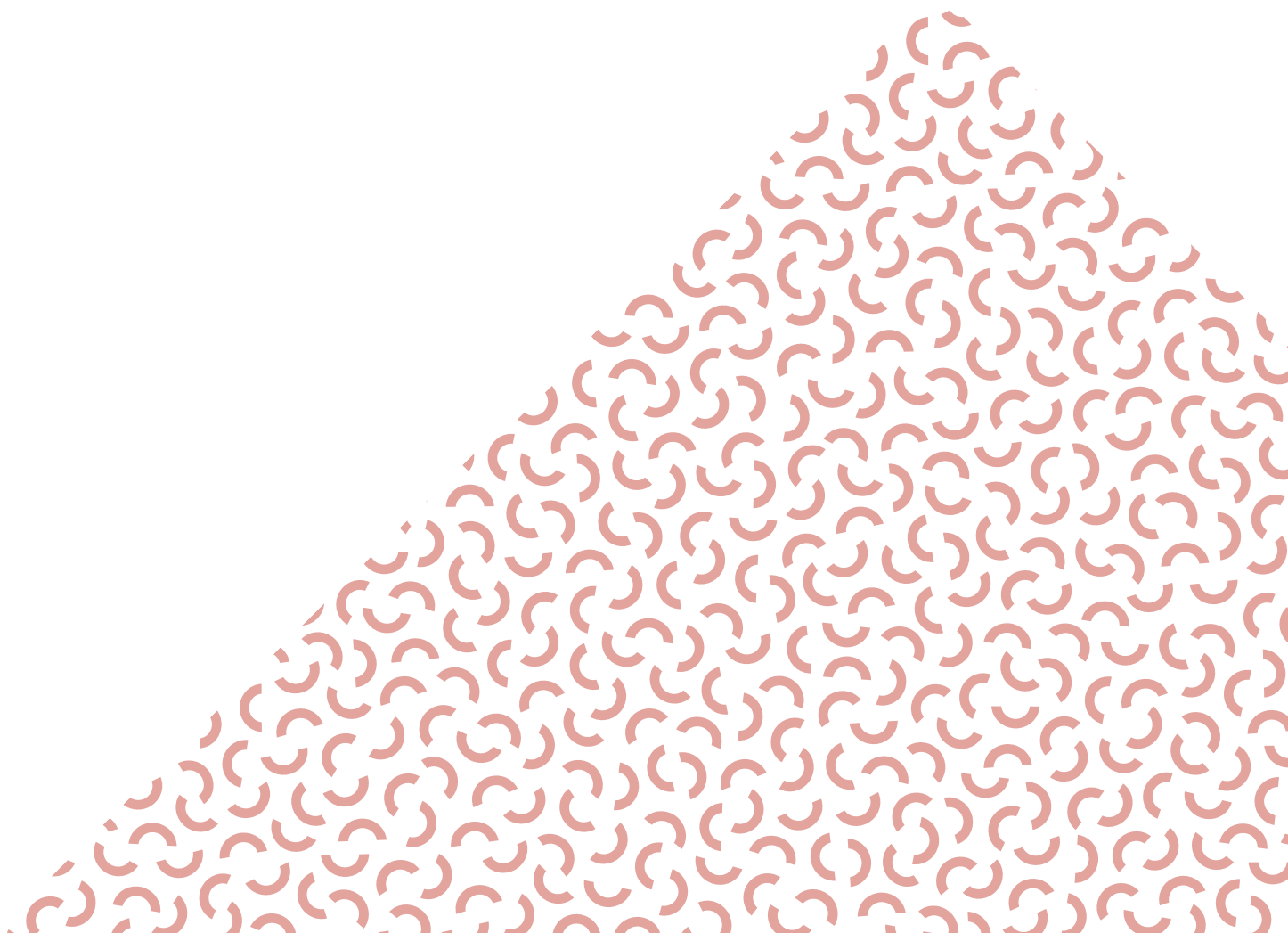
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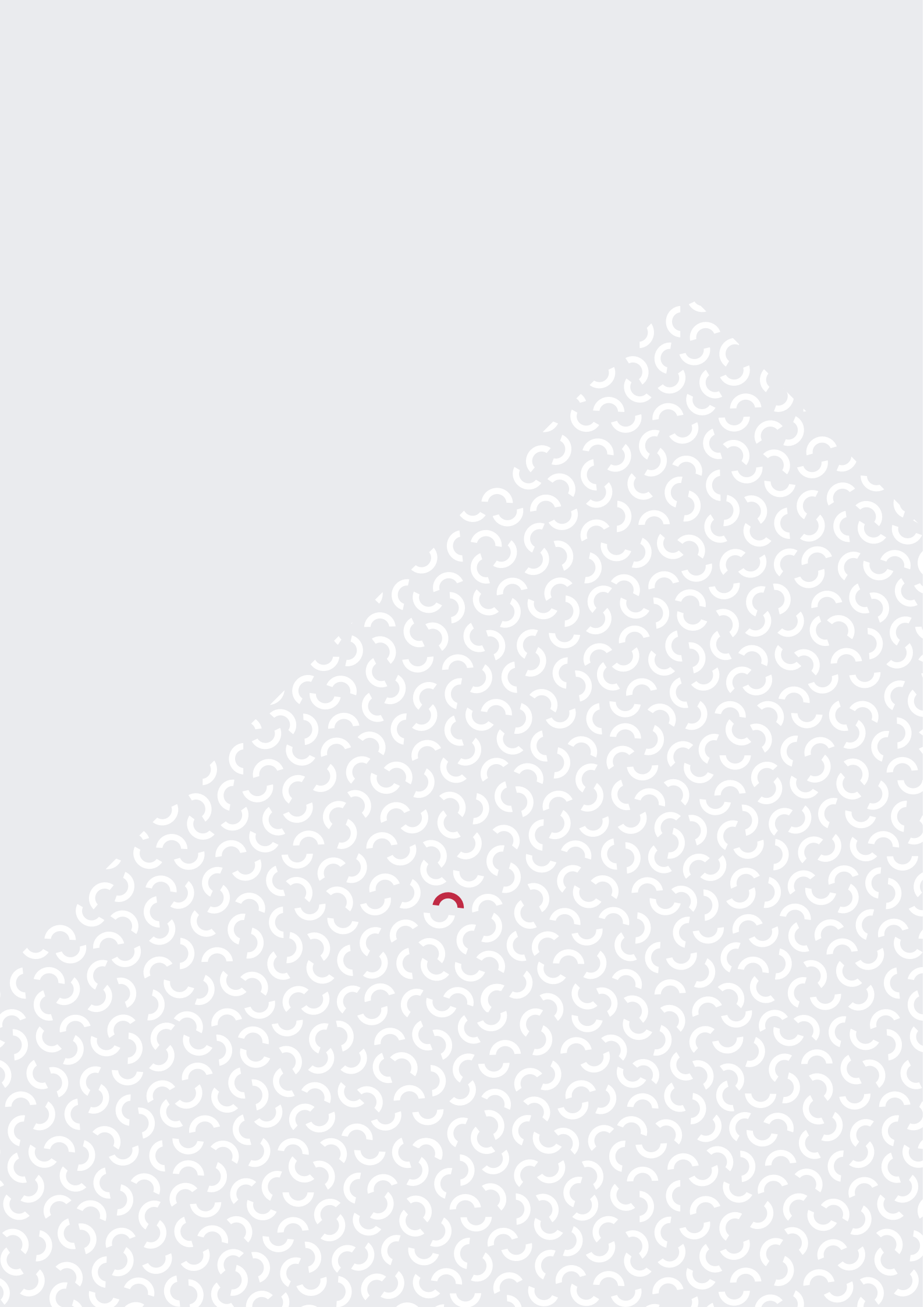
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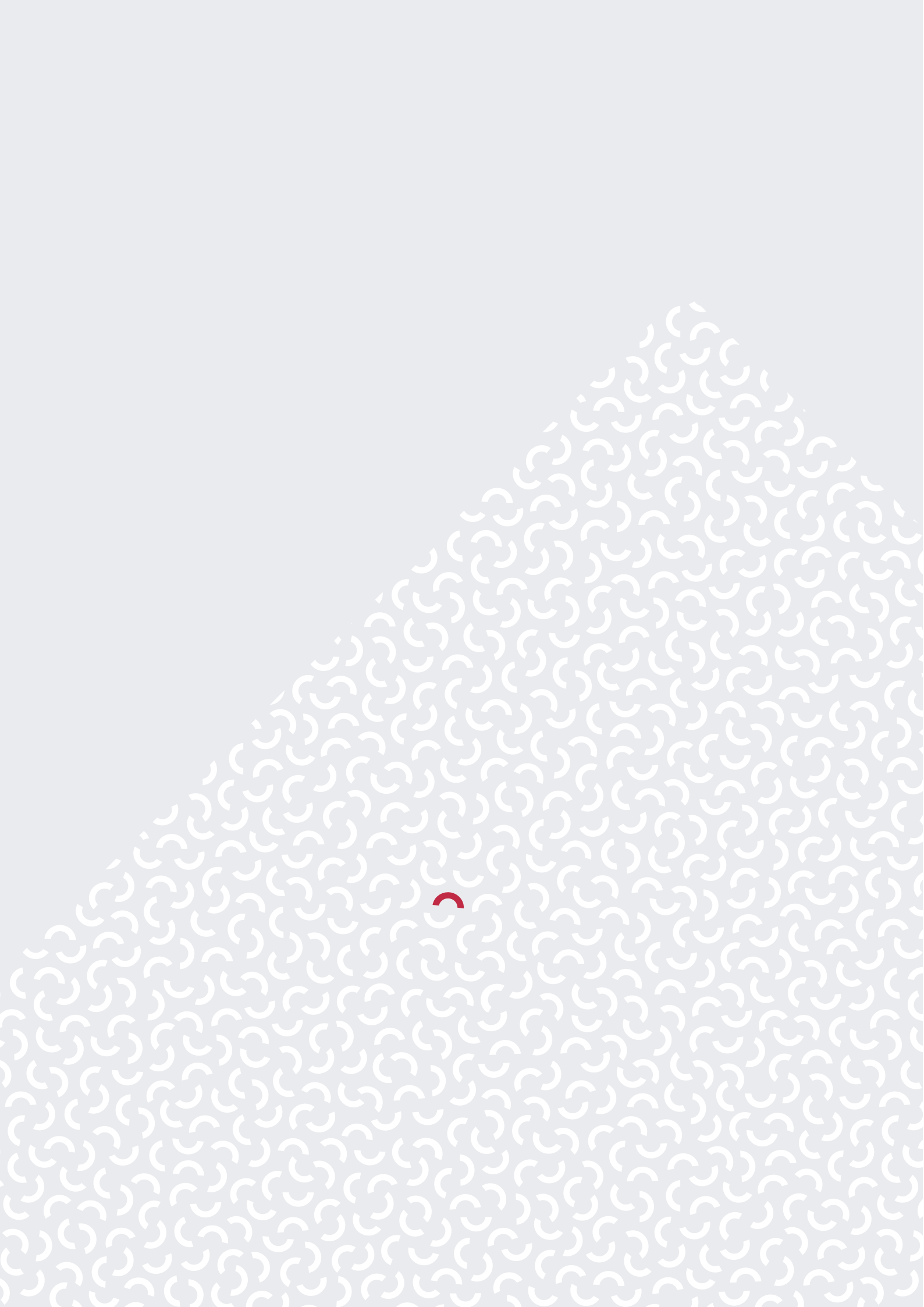
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I. OVERVIEW OF THE STRUCTURE OF THE SOCIAL DIALOGUE





1. THE FRAMEWORK OF THE SOCIAL DIALOGUE AS IT IS SET OUT IN THE LAW OF 23 JULY 2015 ON THE REFORM OF SOCIAL DIALOGUE IN COMPANIES

The law of 23 July 2015 has significantly changed the framework of the social dialogue.

a. Implementation of the employee delegation at company level, i.e. at the level of the legal entity that hired the employees, and no longer at the level of a company's establishment

As from the 2019 social elections, employee delegations are established in all companies or institutions at the level of the legal entity that hired the employees. There is no longer any delegation at the level of an institution.

Thus, the employee delegation is at the company level, regardless of the nature of its business, sector or legal form. The company concerned must employ at least 15 persons under an employment contract during the 12 months preceding the 1st day of the month in which the social elections are announced.

These same rules apply to an employer organised under public law who, over the same reference period, employs persons under private law status and who are therefore bound by a private law employment contract with that employer.

b. Abolition of central delegations, divisional delegations, young workers' delegations and joint works councils as from the March 2019 social elections and the new possibility of setting up a delegation at the level of the economic and social entity

The incorporation of the delegation at company level is linked to the creation of a new delegation at the level of the economic and social entity and also to the abolition of:

- the delegation at divisional level;
- the central delegation;
- the young workers' delegation.

As from the 2019 elections, works councils ceased to exist, and their powers were fully transferred to the employee delegation in any company or institution with 150 or more employees (see Part II, Section 5).

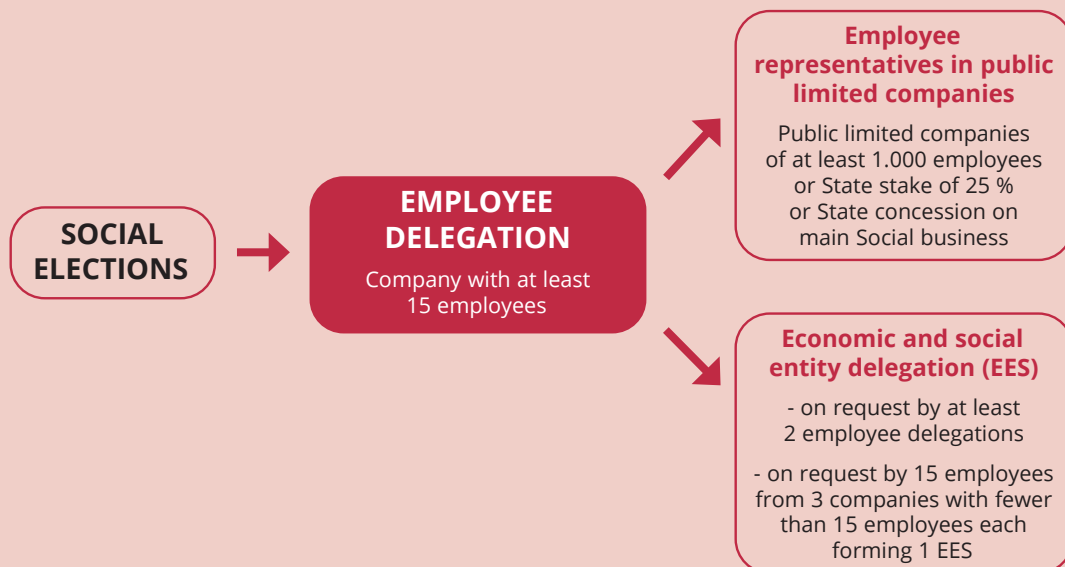
As from the 2019 social elections, the employee representation entities are as follows:

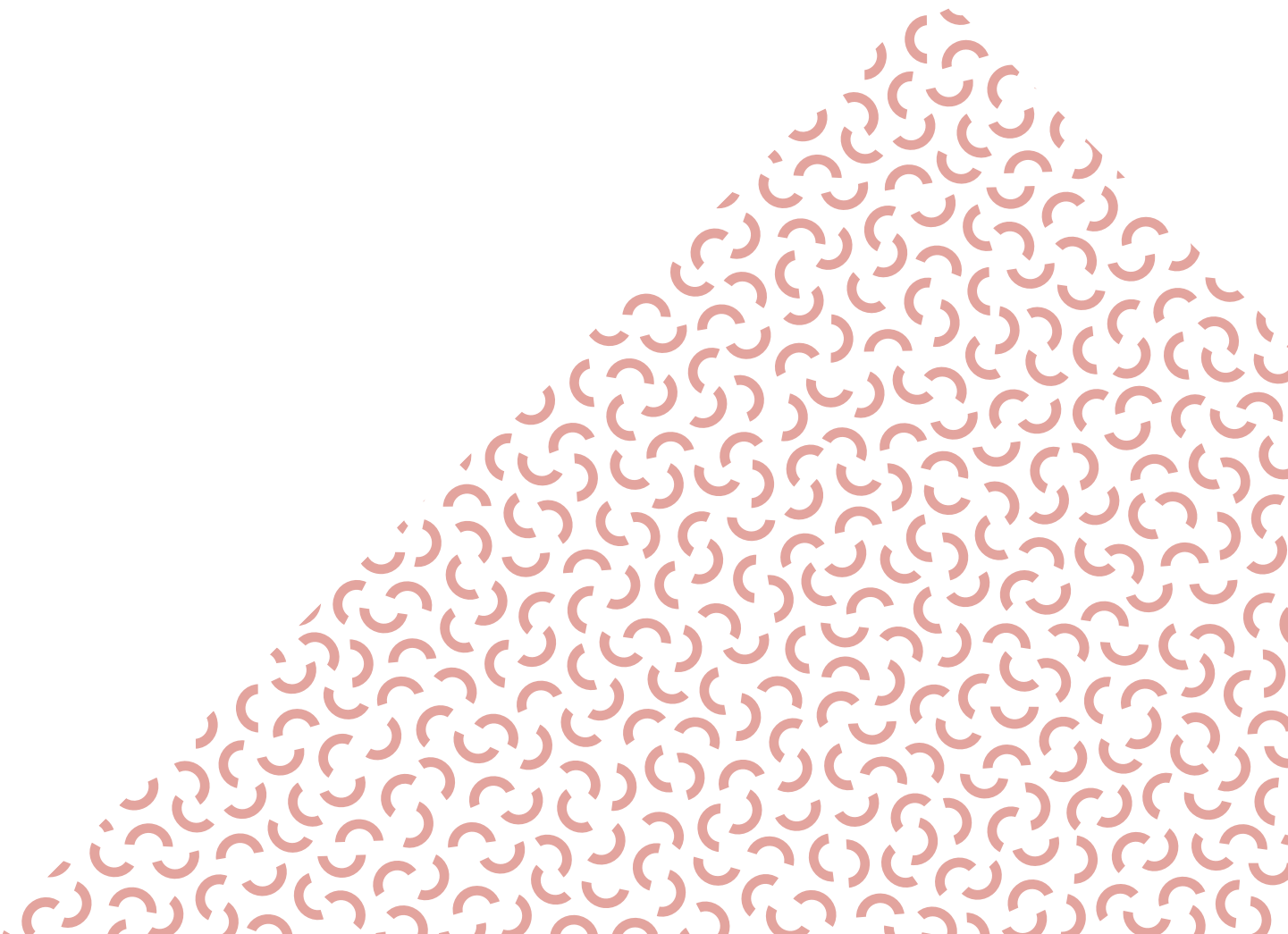
- employee delegations in companies which, during the 12 months preceding the 1st day of the month in which the elections are announced, have employed at least 15 persons (see Part II);
- delegations at the level of the economic and social entity in cases where several companies constitute an economic and social entity, as defined in article L. 161-2 of the Labour Code (see Part III);

Pursuant to article L. 161-2 of the Labour Code, "A company constituting an economic and social entity is understood to be a group of entities, even with autonomous and/or distinct legal personalities, and even operating under a franchise system, which present one or more elements allowing to conclude that they are not independent and/or autonomous units, but reveal a concentration of management powers and identical and complementary businesses, respectively a community of employees linked by identical, similar or complementary interests, with a comparable social status. In assessing the existence of an economic and social entity, all available information will be taken into account, such as the fact of having common or complementary structures or infrastructures; of having a common, complementary or coordinated strategy; of having one or more totally or partially identical, complementary or interrelated economic beneficiaries; to report to a common, complementary or related management or shareholder structure, or management, management or control entities composed in whole or in part of the same persons or persons representing the same organisations; to have a community of employees linked by common or complementary interests or having a similar or related corporate status. Several establishments operating under the same or substantially similar brand name, including under a franchise regime, are presumed to form an economic and social entity within the meaning of this article."

- members of the board of directors or of the supervisory board representing employees in public limited companies (sociétés anonymes) with at least 1,000 employees or in public limited companies (sociétés anonymes) with a State shareholding of at least 25% or in public limited companies (sociétés anonymes) operating with a State concession covering the main business activity (see Part IV).

AS FROM 2019 SOCIAL ELECTIONS







II. EMPLOYEE DELEGATION AT COMPANY LEVEL

The law of 23 July 2015 on the reform of social dialogue within companies introduced * a significant number of new rules to govern social dialogue in companies.

Some of the legal amendments came into force on 1st January 2016.

Others entered into force with the March 2019 social elections.

The following text aims to provide a global overview of the rules governing the social dialogue as from the 2019 social elections.

It consists of 3 parts:

- the first one is focused on the employee delegation at company level;
- the second on the employee delegation at the level of the economic and social entity;
- the third one is focused on members of the board of directors or of the supervisory board representing employees in public limited companies.

* Mémorial A144 from 27 July 2015



1. INCORPORATION OF THE EMPLOYEE DELEGATION²

Employee delegation is currently established at company level, i.e. at the level of the legal entity that hired the employees, and no longer at the level of the company's establishment.

The rules applicable to its incorporation are as follows.

1.1. Private sector employers

Any company, whatever the nature of its business, legal form and sector, is required to have appointed employee delegates if it employs at least 15 persons bound by employment contract during the 12 months preceding the 1st day of the month in which the elections are announced.

1.2. Public sector employers

The same applies to any public sector employer who, during the 12 months preceding the 1st day of the month in which the elections are announced employed at least 15 persons bound by employment contract who are other than those whose work relations are regulated by a special status not under private law, in particular by a public law or equivalent status, including government and public employees.

1.3. Transfer of a company

It should be noted that employees who have joined a company by virtue of a transfer of a company, establishment or part of a company or establishment within the meaning of Book I, Title II, Chapter VII of the Labour Code, are deemed to have been part of that company since the date of the beginning of their employment with the initial employer.

1.4. The employees taken into account to determine the company's workforce

1.4.1. Full-time employees

With the exception of apprentices, all company employees bound by an employment contract are taken into account for the calculation of the number of persons employed in the company.

1.4.2. Part-time employees

Part-time employees whose working hours are equal to or greater than 16 hours per week are fully taken into account when calculating the number of persons employed in the company.

For employees whose working hours are less than 16 hours per week, the number of employees is calculated by dividing the total number of hours indicated in their employment contracts by the statutory working time or the contractual working time.

² Article L. 4111-1 of the Labour Code

1.4.3. Employees with fixed-term contracts, temporary and seconded employees

Employees working under fixed-term contracts, temporary and seconded employees are taken into account for the calculation of the company's workforce on a pro rata basis of the time they are present in a given company during the 12 months preceding the mandatory date for submitting electoral lists.

However, employees with fixed-term contracts, temporary and seconded employees are excluded from the staff count when they replace an absent employee or an employee whose employment contract is suspended.

1.4.4. Temporary work agency³

For the calculation of the staff employed by the temporary work agency, are be taken into account, on the one hand, the permanent employees of that company and, on the other hand, employees who have been bound to it by term contracts for a total period of at least 10 months during the year preceding the calculation date.

2. COMPOSITION OF THE EMPLOYEE DELEGATION⁴

The numerical composition of the employee delegation depends on the number of employees it represents:

- 1 full member, when the number of employees is between 15 and 25;
- 2 full members, when the number of employees is between 26 and 50;
- 3 full members, when the number of employees is between 51 and 75;
- 4 full members, when the number of employees is between 76 and 100;
- 5 full members, when the number of employees is between 101 and 200;
- 6 full members, when the number of employees is between 201 and 300;
- 7 full members, when the number of employees is between 301 and 400;
- 8 full members, when the number of employees is between 401 and 500;
- 9 full members, when the number of employees is between 501 and 600;
- 10 full members, when the number of employees is between 601 and 700;
- 11 full members, when the number of employees is between 701 and 800;
- 12 full members, when the number of employees is between 801 and 900;
- 13 full members, when the number of employees is between 901 and 1,000;
- 14 full members, when the number of employees is between 1,001 and 1,100;
- 15 full members, when the number of employees is between 1,101 and 1,500;
- 16 full members, when the number of employees is between 1,501 and 1,900;
- 17 full members, when the number of employees is between 1,901 and 2,300;
- 18 full members, when the number of employees is between 2,301 and 2,700;
- 19 full members, when the number of employees is between 2,701 and 3,100;
- 20 full members, when the number of employees is between 3,101 and 3,500;
- 21 full members, when the number of employees is between 3,501 and 3,900;
- 22 full members, when the number of employees is between 3,901 and 4,300;

³ Article L. 411-2 of the Labour Code

⁴ Article L. 412-1 of the Labour Code

- 23 full members, when the number of employees is between 4,301 and 4,700;
- 24 full members, when the number of employees is between 4,701 and 5,100;
- 25 full members, when the number of employees is between 5,101 and 5,500;
- 1 additional full member per full 500 employees, when the number of employees exceeds 5,500.

The employee delegation will also include an equal number of alternate members for each full member.

If the delegation consists of a single full member, the alternate delegate is fully authorized to attend meetings

3. APPOINTMENT OF EMPLOYEE DELEGATES

3.1. Terms of appointment⁵

3.1.1. Companies with 100 or more employees

The employee delegates and alternates are elected by the company's employees from lists of candidates presented:

- either by a trade union having general national representation;
- either by a trade union having sectoral representation in the sector where its representation is recognised;
- either by another trade union organisation representing the absolute majority of the members of the outgoing delegation;
- either by a number of company employees representing at least 5% of the total workforce, but not exceeding 100.

Voting will be submitted by secret ballot in ballot box, in accordance with the rules of proportional representation.

No list may contain more candidates than there exist full and alternate positions to be filled.

No candidate on a list will be elected unless the list receives at least 5% of the votes cast.

3.1.2. Companies with less than 100 employees

The employee delegates and alternates are elected by the company's employees from amongst the candidates submitted:

- either by a trade union having general national representation;
- or by a trade union having sectoral representation in the sector in which its representation is recognised;
- or by another trade union organisation representing the absolute majority of the members of the outgoing delegation;
- or by 5 voters.

Voting is carried out according to the relative majority system.

Voting rules and electoral disputes are the subject of a Granducal Regulation⁶.

⁵ Article L. 413-1 of the Labour Code

⁶ Granducal Regulation of 11 September 2018 on electoral operations for the appointment of employee delegates, Mémorial A838

3.2. Voting by post

At the request of the company director or the outgoing delegation, the Minister of Labour may authorise, under the conditions and in accordance with the procedures he determines, the postal voting of employees absent from the company on voting day because of work duties, illness, work accidents, maternity or annual leave.

3.3. Number of candidates identical to the positions to be filled

If the number of candidates submitted does not exceed the number of full and alternate delegates to be elected and if the candidates agree to designate the full and alternate delegate(s) and the order in which alternate(s) are called on to replace the full delegate(s), they will be declared automatically elected.

3.4. Lack of candidates

If no candidates are presented, the company director or his delegate will draw up a report which will be submitted, no later than the date fixed for the elections, to the Director of the Labour and Mines Inspectorate (Inspection du travail et des mines - ITM), who will carry out a survey within the company.

On recommendation of the Director of the Labour and Mines Inspectorate, the full delegates and, where applicable, the alternate delegates are then automatically appointed by order of the Minister of Labour from amongst the company's eligible employees, within 2 months following the elections.

3.5. Term of office of delegates ⁷

The members of the delegations are appointed for a period of 5 years and may be re-elected.

3.6. Renewal of the delegation ⁸

3.6.1. Standard circumstances

Delegations are completely renewed between 1st February and 31 March of each fifth calendar year on a date fixed for all renewals by the Minister of Labour and published in the Mémorial.

3.6.2. Unusual circumstances

- The Minister of Labour may, upon consultation of all trade unions having national general or sectoral representation and which are represented in the elected delegation, fully replace employee delegation outside the period referred to above, when there are insufficient numbers of full members and there are no replacement members available to sit on vacant seats.
- Similarly, elections must be held outside the above period when the company's personnel reaches the minimum required number to set up an employee delegation.

The term of office of the delegation established or renewed will expire with those of the delegations established under standard circumstances, unless the duration of its term of office is therefore less than one year; in the latter case, its term of office will be extended for a further period of 5 years.

The delegation established will continue to carry out its functions, until the expiry of its term of office, in the composition given to it by the elections, notwithstanding any change in the number of personnel.

⁷ Article L. 413-2 of the Labour Code

⁸ Article L. 413-2 of the Labour Code

3.7. Special circumstances involving transfer of a company⁹

In the case of a transfer of a company, establishment of part of a company or establishment within the meaning of Book I, Title II, Chapter VII, of the Labour Code, the status and function of the employee delegation will subsist to the extent that the establishment or transferred company retains its autonomy.

If the company, establishment, part of the company or the part of the establishment does not retain its autonomy, the members of the employee delegation will automatically become part of the employee delegation of the entity hosting the transferred employees.

The delegation thus extended will designate a president, vice-president, secretary and board within one month following the transfer. The exceptional composition of the employee delegation will end with its first renewal.

If the employees of the company, establishment, part of the company or the part of the establishment, not retaining their autonomy, are merged into an entity that does not have an employee delegation, the employee delegation of the transferred entity will act as a joint delegation.

3.8. Electorate conditions

3.8.1. Active voting¹⁰

Employees may participate in employee delegates elections regardless of nationality provided they have reached the age of 16 years, have a work or apprenticeship contract with the company and on the day of the elections have worked in the company for at least 6 months.

3.8.2. Passive voting¹¹

To be eligible as employee delegates, employees must meet the following criteria:

- be at least 18 years old on the day of the election;
- have worked continuously for the 12 months previous to the 1st day of the month in which elections are announced;
- be either of Luxembourg nationality or be authorized to work in Luxembourg.

NOTE: Parents and relatives up to the 4th degree of the company director, managers, directors and company's staff supervisors department may not be elected as members or alternates of an employee delegation. Apprentices also can not be elected as members or alternates of an employee delegation.

Employees working on a part time basis simultaneously in several¹² companies are eligible only in the company in which they are employed for the longest weekly working time; in the event of equality of working time, they are eligible in the company in which they have worked the longest.

In the event that the company in which the employee is eligible does not fall within the scope of the legal obligation to establish an employee delegation, the employee is eligible in the company subject to this obligation.

Temporary employees and employees on secondment may not assert their voting¹³ or eligibility rights for the positions of employee delegate in user companies.

NOTE: Nonetheless, temporary employees and employees on secondment may use their rights to submit claims, consult employee delegates and to access personnel files concerning them within the user company.

9 Article L. 413-2(5) of the Labour Code

10 Article L. 413-3 of the Labour Code

11 Article L. 413-4 of the Labour Code

12 Article L. 413-5 of the Labour Code

13 Article L. 413-6 of the Labour Code

4. DURATION AND END OF THE TERM OF AN OFFICE ¹⁴

It should be reminded that the delegate is in principle elected for a term of 5 years and that his mandate is renewable.

However, his mandate ends:

1. in the event of non-reelection as a full or alternate member, as soon as the new delegation has been set up;
2. when the person concerned is no longer an employee of the company;
3. in the event of resignation;
4. when the trade union organisation which submitted his nomination has informed the company director and the delegation that the person concerned no longer belongs to that trade union;
5. in the event of death;
6. in the event of refusal, non-extension or withdrawal of the authorisation conferring the right to work.

The alternate member is called on to replace the full member:

- if the full member has an impediment;
- when the mandate of the full member has ended for one of the reasons listed above under points 2 to 6. In this case, the alternate member will complete the term of office of the full member.

5. DUTIES OF THE EMPLOYEE DELEGATION

The employee delegation has an important number of tasks and responsibilities. In particular, it is informed and consulted by the employer on many subjects.

The Labour Code defines :

- information ¹⁵ as the transmission of information by employer to employee delegations in order to provide them with knowledge of an issue under review and to assess it at a time, in a manner and with content that is appropriate so that the delegation may process it and prepare for any necessary consultations;
- consultation, as means an exchange of perspectives and establishing of dialogue between employee delegates and employers, carried out at a time, in a manner and with content that is appropriate, on the basis of information provided by employers in accordance with the provisions of the above note and producing the opinion that employee delegations formulate by right, so as to allow employee delegations to meet with employers and obtain from them a reasoned response to all opinions they may have submitted, in order to arrive at, if possible, agreement regarding decisions on items within employers' power.

The social partners may, at any time and at an appropriate level, which may be at company level, freely determine the methods for informing and consulting with employees through negotiations. These agreements may contain different implementing provisions provided that, when defining and implementing the arrangements for information and consultation, the employer and the employees' delegates work in an environment of mutual cooperation and respect of mutual rights and responsibilities, acknowledging at once both the interests of the company and that of employees.

¹⁴ Articles L. 413-3 and L. 413-4 of the Labour Code

¹⁵ Article L. 414-1 of the Labour Code

5.1. General mission and right to information ¹⁶

5.1.1. General mission to safeguard and defend the interests of employees

The general mission of the employee delegation is to safeguard and defend the interests of the company's employees in terms of working conditions, job security and social status.

5.1.2. Dispute resolution

In the context of its general mission, the employee delegation is called on, in particular:

- to prevent and resolve, in a spirit of cooperation, individual or collective disputes that may arise between employers and employees;
- to submit to the employer any individual or collective claim;
- to refer to the Labour and Mines Inspectorate (ITM), in the absence of a settlement of the above disputes, any complaint or observation relating to the application of legal, regulatory, administrative and contractual provisions relating to working conditions, rights and protection of employees in the exercise of their profession.

5.1.3. Equal treatment

In the exercise of its functions, the employee delegation will ensure strict compliance with equal treatment of men and women regarding access to employment, vocational training and professional advancement, as well as remuneration and working conditions.

5.1.4. Information on the company's operations and corporate life

The company director is required to provide the employee delegation with the necessary information to properly carry out their duties and will inform its members about the company's operations and corporate life, including recent and probable developments in its activities and its economic situation.

This information is provided at the request of the delegation or on a monthly basis in companies with at least 150 employees.

In other companies, it is done during meetings with the company's management.

5.1.5. Health and safety

The company director is required to provide to the employee delegation and the safety and health delegate all the necessary information regarding:

1. health and safety risks as well as protection and prevention measures and activities regarding both the company in general and each type of workstation or function;
2. the protective measures to be taken and, if necessary, the protective equipment to be used;
3. the changes and evolution of the absence rate.

The information under 1. and 2. must also be provided to any employer of persons working for external companies involved in the company, who must submit it to his employee delegation.

5.1.6. Information on economic and financial change in companies of less than 150 employees ¹⁷

If the company employs less than 150 persons during the 12 months preceding the first day of the month in which elections are announced, the management is required to inform the employee delegation in writing, at

¹⁶ Article L. 414-2 of the Labour Code

¹⁷ Information and consultation on economic and financial developments in companies with 150 or more employees: see Section 5.3.4. below.

least once per year, of economic and financial changes and of the company's recent and future business activities.

For this purpose, it will submit to the employee delegation a comprehensive report on the company's business activities, turnover, overall production and operating results, orders, changes in the structure and amount of personnel remuneration and investments made.

5.1.7. Right to request additional information

If members of the employee delegation consider that the information provided is not sufficient to fulfil their duties, they may request additional information from the company director within the limits of the information required by law.

5.2. Information and consultation on the company life ¹⁸

5.2.1. Miscellaneous information and consultations

In terms of information and consultation, the employee delegation's mission is to:

- give its opinion and make proposals on any matter relating to the improvement of working and employment conditions and of the social situation of the company's employees;
- give its opinion on the drafting or amendment of the company's internal rules and procedures and to strictly monitor compliance with these rules and procedures
- propose amendments to the rules and procedures, on which the management or, where applicable, the participants of the meeting must take a decision within 2 months, which must be communicated immediately to the delegation;
- in companies with at least 100 employees, to participate in the training of apprentices in the company and in the management of apprenticeship centres, if any;
- assist in the establishment and implementation of any initial vocational training programmes, in particular apprenticeship training;
- promote the integration of disabled and handicapped persons and endeavour to create jobs appropriate to their physical and intellectual capacity;
- participate in the industrial safety and environmental protection as well as in the prevention of industrial accidents and occupational illnesses;
- participate in the implementation of policies for the prevention of harassment and violence in the workplace;
- give its opinion prior to the establishment, modification and termination of a supplementary pension scheme;
- give its opinion on issues regarding working time;
- give its opinion on professional continuing training plans;
- participate in the management of measures in favour of young persons and to advise the employer on all matters relating to working conditions and the protection of young employees;
- to assist in implementing internal reclassifications;
- promote the healthy balance between family and professional life;
- monitoring the setting up and running of the time savings account.

5.2.2. Structure and changes in employment

The company director is required to inform and consult the employee delegation and the equality delegate on the situation, structure and expected changes in employment within the company as well as on any anticipatory measures proposed, in particular in the event of a threat to employment; especially he must provide the employee delegation and the equality delegate with a six-monthly breakdown of statistics by gender on recruitment, promotions, transfers, dismissals, remuneration and training of the company's employees.

¹⁸ Article L. 414-3 of the Labour Code

5.2.3. Major changes in work organisation or in contracts

The company director is required to inform and consult the employee delegation on decisions likely to lead to major changes in the work organisation or in employment contracts, including those covered by the provisions regarding legislation on collective redundancies, the maintenance of employees' rights in the event of a transfer of company and the use of temporary workers.

5.2.4. Employment support and employment initiation contracts

The company director is required to inform and consult the employee delegation and the equality delegate with regard to establishing employment support contracts (contrats d'appui-emploi – CAE) and employment initiation contracts (contrats d'initiation à l'emploi – CIE).

5.2.5. Management of social works

The company director is required to inform and consult the employee delegation regarding the management of social works (before participation) established in the company for the benefit of employees or their families, including measures to provide or facilitate employees' housing.

For this purpose, the delegation will receive a management report from the company director at least once per year.

If employees contribute financially to social works, this management report must be formally approved by the employee delegation.

5.3. Information and consultation in technical, economic and financial matters in companies with at least 150 employees from the 2019 social elections

These provisions entered into force with the 2019 social elections, when work councils were abolished and their powers transferred to employee delegations in companies employing at least 150 persons during the 12 months preceding the first day of the month in which the elections were announced.

5.3.1. Company facilities, work equipment and working methods¹⁹

The company director must inform and consult the employee delegation before taking any important decisions regarding:

- the construction, transformation or extension of production or administrative facilities;
- the introduction, improvement, renewal or transformation of equipment;
- the introduction, improvement, renewal or transformation of working methods and production processes with the exception of trade secrets.

The company director is required to inform the employee delegation of the impact of the measures listed above regarding working conditions and working environment.

5.3.2. Labour requirements

In general, the company director must inform and consult the employee delegation, at least once per year, regarding the current and foreseeable labour requirements in the company and on the training, professional training and vocational re-education measures that may result from these and that may have an impact on the company's employees.

¹⁹ Article L. 414-5 of the Labour Code

5.3.3. Economic or financial decision that may have an impact on employment²⁰

The employee delegation must be informed and consulted about any economic or financial decision that may have a major impact on the company's structure or on the employment level.

This applies in particular to decisions regarding the production and sales volume, the production programme and orientation, investment policy, plans to close down or transfer the company or parts of the company, plans to restrict or extend the company's activities, plans to merge companies and plans to change the company's organisation, the introduction, amendment and cancellation of a supplementary pension scheme.

Such information and consultation must focus on the impact of the proposed measures on the volume and structure of the workforce and on the employment and working conditions of the company's personnel. They also must cover social measures, in particular vocational training and re-education measures taken or planned by the company director.

Information and consultation should in principle be prior to the proposed decision. However, this is not the case where they may hinder the management of the company or part of the company or jeopardise the implementation of a proposed operation. In this case, the company director must provide the employee delegation all the necessary information and explanations within 3 days.

5.3.4. Economic and financial change of the company²¹

The company director is required to inform and consult the employee delegation in writing, at least twice per year, regarding the economic and financial change of the company.

For this purpose, he will submit to the employee delegation a comprehensive report on the company's business activities, turnover, overall production and operating results, orders, changes in the structure and amount of personnel remuneration and investments made.

Where the company is incorporated as a joint-stock company, non-profit-making association, cooperative or foundation, the management is also required to provide the employee delegation, prior to presenting this information to the general meeting of shareholders or the decision-making body, the profit and loss account, the annual balance sheet, the auditors' report, where applicable the report of the board of directors or management and any other document submitted to the general meeting of shareholders or the decision-making body.

5.3.5. Diverging positions²²

When the company director and the employee delegation have divergent positions, such divergences must be brought to the attention of the board of directors or, where applicable, to the managing director.

Where the company is not incorporated as a joint-stock company, divergent positions must be brought to the attention of the company director, if the latter has not participated in person in the discussions.

In all cases, the company director, the board of directors, the decision-making body or the managing director will be required to report and state the reasons for the action taken on the positions expressed.

5.4. Participation in management in companies with at least 150 employees²³

In companies employing at least 150 persons during the 12 months preceding the first day of the month in which the elections are announced and without prejudice to the application of other legal or contractual provisions, decisions relating to the following must be taken jointly between the employer and the employee delegation:

- the introduction or application of technical installations to monitor the employee's behaviour and performance at his workstation;

20 Article L. 414-6 of the Labour Code

21 Article L. 414-7 of the Labour Code

22 Article L. 414-8 of the Labour Code

23 Article L. 414-9 of the Labour Code

- the introduction or modification of measures regarding the health and safety of employees and the prevention of occupational illness;
- the establishment or modification of general criteria for personal selection in the event of recruitment, promotion, transfer, dismissal and, where appropriate, priority criteria for the admission of employees to early retirement programmes;
- the establishment and implementation of any collective programme or action for continuing vocational training;
- the establishment or modification of overall evaluation criteria for employees;
- the establishment or modification of the internal regulations, taking into account, where appropriate, the collective agreements in force;
- the granting of rewards to employees who, through their initiatives or proposals for technical improvement, have proven to be particularly useful to companies, without prejudice to the laws and regulations governing patents and inventions;
- the introduction and the modification of a specific telework regime at company level.

5.4.1. Procedures for implementing the right of participation of employee delegates²⁴

A meeting between the employer and the employee delegation on participation rights should take place at least once every quarter.

The purpose of these meetings will be to discuss the points on which the delegation has the right to participate, with the aim of reaching an agreement.

The company will be represented by the company director or his delegate, who will be able to be assisted by persons of their choice, the number of company delegates not exceeding in this case that of employee delegates.

The delegation chair and the company director or his delegate will draft jointly the agenda, which will be submitted to the members of the employee delegation at least 5 days before the meeting.

They will be required to include on the agenda the items specified in a request submitted by at least half of the employee delegates or proposed by the company director 3 days before the meeting.

If the parties cannot agree on one of the decisions to be taken in accordance with the agenda, the employee delegation will give its board a mandate to conduct negotiations and take a decision with the employer.

The Board of the delegation may be assisted by a maximum of 4 advisers, at least one of whom will be appointed by each trade union which has general or sectoral national representation and which has obtained at least 20% of the elected members at the last elections.

Within 48 hours the board will inform the employee delegation of the joint decision.

The employee delegation will have 48 hours from this information to make a duly motivated request for the renegotiation of one or several issues to be decided upon.

Meetings will be held in camera during working hours.

The company director must provide suitable premises and the necessary equipment for the meetings.

Decisions on employee participation rights will be adopted jointly between the employer and the employee delegation or between the employer and the board, each party having 1 vote.

In case of disagreement concerning one of the measures subject to the participation procedure, this dispute may be submitted by the employer, the delegation or the board to the mediation bodies.

All the discussions during the meetings will be recorded in minutes of the meeting and will be countersigned by the company director or his delegate and the delegation chair or his representative.

Employee representatives will be required to report regularly to the delegations at the level of the economic and social entity and to the equality delegate on the outcome of the discussions at these meetings.

²⁴ Articles L. 414-10 to L. 414-13 of the Labour Code

They will provide the equality delegate with an updated list of general criteria regarding:

- the establishment or modification of general criteria for personal selection in the event of recruitment, promotion, transfer, dismissal and, where appropriate, priority criteria for the admission of employees to early retirement programmes;
- the establishment or modification of overall evaluation criteria for employees;

despite the employer who may claim that such information is confidential.

In the latter case, the equality delegate will be required to keep these criteria secret, unless he informs the Labour and Mines Inspectorate of those who violate the principle of equal treatment.

5.5. Other missions

The employee delegation has a number of other missions, in particular as regards:

- the interview prior to dismissal or an essential modification of the employment contract: the employee delegation receives a copy of the employee's summons²⁵;
- the transfer of a company or part of a company: the delegation is informed and consulted in proper time before the transfer²⁶;
- working time: the delegation has different responsibilities with regard to the use of a reference period and a work organization plan²⁷, the use of a mobile work schedule (horaire de travail mobile)²⁸, the rest period²⁹, in case of recovery of lost working time³⁰, in case of use of overtime³¹, in case of Sunday work³²;
- the employer's request to pay its employees below the threshold of the minimum social wage³³: information and consultation of the delegation;
- collective holidays³⁴: need for the agreement of the delegation;
- in the field of parental leave³⁵: information of the delegation by the employer when he exercises his right of postponement and right for the delegation to refer to the ITM if it considers that the postponement is not justified;
- sexual harassment³⁶: right to propose actions and mission to assist the victim on request;
- moral harassment³⁷;
- health and safety at work³⁸: right to information and consultation, right to make proposals, right to receive the report of the occupational doctor (médecin du travail)³⁹, right to request medical examinations⁴⁰, right to receive the list of workstations dangerous for pregnant women⁴¹, right to inspect the register of young

25 Article L. 124-2 of the Labour Code

26 Article L. 127-6 of the Labour Code

27 Article L. 211-6 ff. of the Labour Code

28 Article L. 211-8 of the Labour Code

29 Article L. 211-16 of the Labour Code

30 Article L. 211-21 of the Labour Code

31 Article L. 211-23 of the Labour Code

32 Article L. 231-2 of the Labour Code

33 Article L. 222-6 of the Labour Code

34 Article L. 233-10 of the Labour Code

35 Article L. 234-46 of the Labour Code

36 Article L. 245-6 of the Labour Code

37 Grand-Ducal Regulation of 15 December 2009 declaring the general obligation of the Convention on the harassment and violence at work between the OGB-L and LCGB unions, on the one hand, and the UEL, on the other, Mémorial A3 of 13 January 2010

38 Article L. 312-6 ff. of the Labour Code

39 Article L. 325-4 of the Labour Code

40 Article L. 326-5 of the Labour Code

41 Article L. 334-1 of the Labour Code

workers⁴², right to be informed about the protection of employees against the risks related to exposure to chemical, physical and biological agents⁴³;

- involvement in the case of a European works council or in case of the implementation of information and cross-border consultation procedure for workers⁴⁴;
- the development of a job retention plan⁴⁵ or a social plan⁴⁶;
- the employer's request for a subsidy for partial, accidental⁴⁷ or technical unemployment⁴⁸;
- the use of work of general interest⁴⁹;
- the use of aids for the employment of the long-term unemployed⁵⁰;
- lifelong learning⁵¹;
- early retirement of shift employees and night shift employees⁵² and progressive pre-retirement⁵³;
- controls carried out by the ITM in the company⁵⁴;
- the right for the delegation to request that the ITM attend its meetings⁵⁵;
- in case of use of temporary work⁵⁶, temporary loan of labor⁵⁷, part-time work⁵⁸: information and prior consultation of the delegation
- access to personal files⁵⁹: Each employee has the right to access his personal files twice per year, during working hours, and may be assisted by a member of the delegation or by the equality delegate, who are required to keep the content of the personal files secret unless they have been released from this obligation by the employee.

The employee's explanations regarding the content of his personal file must be included in it upon his request.

- processing of personal data for monitoring purposes at the workplace⁶⁰: article L. 261-1 of the Labour Code stipulates that the processing of personal data for the purpose of monitoring employees may only be carried out by the employer in the cases referred to in Article 6 (1) (a) to (f) of Regulation (EU) 2016/679⁶¹ (GDPR).

Opening cases

According to the general regime set out in the GDPR, this could include:

- the fact that the processing of employees personal data is necessary for the execution of the employment contracts, or
- the fact that the employer is subject to a legal obligation requiring the processing of the employee's personal data, or

42 Article L. 344-3 of the Labour Code

43 Article L. 351-4 of the Labour Code

44 Article L. 431-1 ff. of the Labour Code

45 Article L. 513-1 ff. of the Labour Code

46 Article L. 166-2 of the Labour Code

47 Articles L. 511-6 and L. 511-8 of the Labour Code

48 Articles L. 531-3 and L. 532-1 of the Labour Code

49 Articles L. 511-18, L. 511-20 and L. 511-22 of the Labour Code

50 Article L. 541-5 of the Labour Code

51 Articles L. 542-9 and L. 542-11 of the Labour Code

52 Article L. 583-4 of the Labour Code

53 Articles L. 584-1 and 584-5 of the Labour Code

54 Article L. 614-3 of the Labour Code

55 Article L. 614-9 of the Labour Code

56 Article L. 134-1 of the Labour Code

57 Articles L. 134-1 and L. 132-1 of the Labour Code

58 Articles L. 134-1 and L. 132-1 of the Labour Code

59 Article L. 123-2 of the Labour Code

60 Article L. 261-1 of the Labour Code

61 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation - GDPR)

- the legitimate interest of the employer that requires monitoring. It should be noted that in such a case, the implementation of monitoring requires that the employer balances his own legitimate interest with the obligation to protect the fundamental rights and freedoms of the employee concerned, such as his right to privacy in the workplace, the right of protection of his image, etc.

In all these cases, however, it remains to be assessed whether the monitoring is in line and necessary to the intended purpose.

Right to information

In addition to the right to information of the person concerned, the employer must, before initiating the monitoring, inform the employee delegation or the Labour and Mines Inspectorate in case the company is not obliged to have an employee delegation.

This preliminary notice must contain a detailed description of the purpose of the proposed processing operation, as well as the arrangements for implementing the monitoring system and, where applicable, the duration or criteria for storing the data, and a formal commitment by the employer that the collected data will not be used for any other purposes than those explicitly provided for in the preliminary notice.

Cases requiring the approval of the employee delegation

When monitoring is implemented:

- for requirements of the health and safety of employees
- for the inspection of the employee's production or services, where such action is the only way to determine the exact remuneration, or
- in the context of a work organisation based on flexible working hours

it may only be carried out with the agreement of the employee delegation, in accordance with the provisions of articles L. 211-8, L. 414-9 of the Labour Code, except where by means of this monitoring the employer fulfils a legal or regulatory obligation.

Request for prior opinion to the National Commission for Data Protection (CNPDP)

For any data processing carried out for the purpose of workplace monitoring, the employee delegation, or failing that, the employees concerned, may, within 15 days of prior notification, submit a request for a prior opinion on the conformity of the proposed processing operation for the purpose of monitoring the employee in the context of work relations to the CNPDP, which must give its opinion within one month of the referral. This request will have suspensive effect during this time period. The employer will therefore not be able to implement the monitoring until he has obtained the opinion of the CNPDP.

Right to claim

The employees concerned by the monitoring are also entitled to file a complaint with the CNPDP when they consider that the processing of their personal data does not comply with legal requirements. Such a complaint is neither a legitimate nor a valid reason for dismissal.

- proposal of auditors in public limited companies with employee delegates in the management or supervisory body of the company 62: The auditors are appointed by the general meeting of shareholders on the proposal of the employer following the participation procedure for employee delegates (see preceding point 5.4.).

62 Article 4 of the law of 23 July 2015 on the reform of social dialogue within companies, Mémorial A144

THE SPECIFIC RULES FOR THE HEALTH AND SAFETY DELEGATE⁶³

Designation

At the founding meeting, each employee delegation will appoint a health and safety delegate from among its members or from among the company's other employees.

Within 3 days of the founding meeting, the delegation chair will inform the company director and the Labour and Mines Inspectorate in writing, giving them the full name and the national number of the health and safety delegate.

In the event that the health and safety delegate is not an elected member of the delegation, he may attend all meetings of the delegation concerned in an advisory capacity.

Rights and obligations

The health and safety delegate will record the result of his observations, countersigned by the head of department, in a special register which will be kept in the company's office, where the delegation members, as well as the inspection and control personnel of the Labour and Mines Inspectorate (ITM), may consult them.

In urgent cases, where the observations require immediate action by the Labour and Mines Inspectorate (ITM), the delegate may directly address the administration, provided that he simultaneously informs the company director or his representative and the employee delegation.

Right to information and consultation

The company director is required to consult and inform the health and safety delegate regarding:

- the assessment of risks to health and safety at work, including those relating to groups of employees facing particular risk;
- the protective measures to be taken and, if necessary, the protective equipment to be used;
- declarations to be submitted to the Labour and Mines Inspectorate (ITM) on accidents at work;
- any action that may have substantial impact on health and safety;
- the appointment of employees designated as responsible for protection activities and professional risk prevention actions of the company;
- first aid, fire safety and employee evacuation measures, which are necessary and in line with the businesses and size of companies and/or entities, and that take into account other persons who may be present;
- measures to organise the necessary relations with external services, in particular in the areas of first aid, emergency medical assistance, rescue and fire-fighting;
- the use of skills within the company, skills outside the company to organise protection and prevention actions;
- suitable training provided to all employees to safeguard their health and safety;
- the assessment of the risks that the company's activities may have for the environment as far as health or working conditions are concerned;
- measures taken to protect the environment, as far as the health or working conditions of employees are concerned.

Right to make proposals

Health and safety delegates have the right to ask the employer to take appropriate measures and to submit proposals to the employer in order to mitigate any risk for employees or eliminate sources of danger.

⁶³ Article L. 414-14 of the Labour Code

Collaboration with the designated employee (travailleur désigné)

The health and safety delegate will work closely with the designated employee(s) (travailleur(s) désigné(s)).

Inspections

Every week, the health and safety delegate, accompanied by company director or his representative, may carry out an inspection at the company's headquarters and on construction sites or other temporary workplaces in the establishment.

In administrative departments, no more than 2 inspection tours may be conducted per year.

Managers of companies who are being inspected and maintenance managers attend the inspection.

Relationship with the Labour and Mines Inspectorate (ITM)

The inspection and control personnel of the Labour and Mines Inspectorate (ITM) have the right to be accompanied, during inspections, by the health and safety delegate; likewise, they may be assisted in the investigation of accidents.

Salary maintenance

The health and safety delegate may not be subject to loss of remuneration for absence from duty due to inspection tours or assistance provided to inspection and control personnel of the Labour and Mines Inspectorate (ITM).

Training leave

The employer must allow the health and safety delegate free time, known as training leave, to participate, without loss of pay, in training activities organised by trade union organisations or specialised institutions during normal working hours and aimed at improving knowledge of health and safety at work.

This training leave is apart from the training leave for employee delegates and may not be counted against paid annual leave.

The duration of the training leave is 40 hours per term, increased by 10 additional hours for an initial term in the company concerned.

The training leave is considered as a work period.

For companies whose total number of employees does not exceed 150, the related remuneration expenses are borne by the State,

A Granducal regulation may specify the terms and conditions of this training leave and increase its duration in the event of exceptional circumstances due to changes in the workplace.

THE SPECIFIC RULES FOR THE EQUALITY DELEGATE⁶⁴

Designation

At its founding meeting, each employee delegation will appoint an equality delegate from among its full or alternate members, and for the duration of its term of office, and will inform the company director and the Labour and Mines Inspectorate (ITM) in writing within 3 days.

Mission

The equality delegate's mission is to ensure equal treatment between men and women at work with regard to access to employment, vocational training and professional advancement, as well as remuneration and working conditions.

For this purpose, without prejudice to any powers conferred on him by other legal provisions, the equality delegate, acting alone or together with the employee delegation in the areas of his mission, will in particular be empowered to:

- give his opinion and make proposals on any matter relating, directly or indirectly, to one of the above areas;
- to recommend to the employer awareness actions for the company's employees;
- to draft and submit to the employer a plan with measures to promote equal opportunities between men and women;
- to submit to the employer any individual or collective complaint regarding equal treatment of men and women;
- to prevent and resolve individual or collective disputes that may arise between employers and employees regarding equal treatment of men and women;
- to refer any complaints or observations to the Labour and Mines Inspectorate (ITM) if the above disputes are not resolved;
- to interview staff of both genders separately once per year;
- to ensure the equality training of apprentices in the company;
- to assist in establishing and implementing any initial vocational training schemes, in particular apprenticeship training;
- to provide consultations in an appropriate facility for the employees either outside or during working hours. In the latter case, the equality delegate must agree with the company director on the time and methods of organising these consultations, the duration of which is deducted from his credited hours;
- to give his opinion prior to any creation of part-time jobs in the company.

Time-off rights

In order to carry out his duties, the equality delegate receives a specific number of time-off rights in the form of hours:

- 4 paid hours per month, if the company employs between 15 and 25 persons during the 12 months preceding the 1st day of the month in which the elections are announced;
- 6 paid hours per month, if the company employs between 26 and 50 persons during the 12 months preceding the 1st day of the month in which the elections are announced;
- 8 paid hours per month, if the company employs between 51 and 75 persons during the 12 months preceding the 1st day of the month in which the elections are announced;
- 10 paid hours per month, if the company employs between 76 and 150 persons during the 12 months preceding the 1st day of the month in which the elections are announced;
- 4 hours per week, if the company employs more than 150 persons during the 12 months preceding the 1st day of the month in which the elections are announced.

These additional credited hours are reserved for the exclusive use of the equality delegate.

⁶⁴ Article L. 414-15 of the Labour Code

Training leave

The equality delegate will be entitled to training leave in order to participate, without loss of pay, in training activities organised by trade union organisations or specialised institutions during normal working hours and aimed at improving the economic, legal, social and psychological knowledge relevant to the performance of his duties.

The equality delegate has therefore 2 half-days of training leave per year, which cannot be deducted from his annual leave.

The duration of the training leave is treated as a work period. For companies with less than 150 employees, the related remuneration expenses are borne by the State.

In the event that the designated equality delegate is an alternate member of the delegation, he may participate in all decisions relating to his special mandate and may attend with advisory capacity all meetings of the delegation.

6. THE RESOURCES AVAILABLE TO THE EMPLOYEE DELEGATION

6.1. Right to leave the workplace and credit of hours (crédit d'heures)⁶⁵

Members of employee delegations will have the right to leave their workplace without reduction of their remuneration to the extent necessary for the performance of the tasks assigned to them by law, after informing the company director and provided that this does not hinder the proper functioning of the company's operations.

In the context of their mandate, the company director must allow the members of the delegation the necessary time for the performance of their duties and must remunerate this time as working time.

6.1.1. Companies with less than 250 employees

In order to be able to fulfil their legal missions, delegates are thus entitled to time-off rights as follows:

- In companies whose represented staff does not exceed 149 employees, the company director grants the employee delegates a total of time-off rights in proportion to the number of employees they represent based on a credit of 40 hours per week for 500 employees.
- In companies with represented staff between 150 and 249, the company director grants delegates a total of time-off rights in proportion to the number of employees they represent, based on a credit of 40 hours per week for 250 employees.

For the purposes of the preceding paragraphs, fractions of hours equal to or greater than one-half will be rounded up to the next unit; fractions of hours less than one-half will be rounded down to the next unit.

The time-off rights referred to above will be distributed, in proportion to the votes received, among all the lists having obtained at least 20% of the seats at the time of the election.

Staff in companies	Number of delegates	Weekly time-off rights
15	1	1
20	1	2
40	2	3
60	3	5
80	4	6
100	4	8
120	5	10
140	5	11
149	5	12
150	5	24
160	5	26
180	5	29
200	5	32
220	6	35
240	6	38
249	6	40

6.1.2. Companies with 250 employees or more

The company director is required to release from all work of any kind and to grant a permanent exemption from service with full salary and, where applicable, the right to promotion and advancement to:

⁶⁵ Articles L. 415-5 and L. 415-9 of the Labour Code

- 1 delegate when the number of employees is between 250 and 500;
- 2 delegates, when the number of employees is between 501 and 1,000;
- 3 delegates, when the number of employees is between 1,001 and 2,000;
- 4 delegates, when the number of employees is between 2,001 and 3,500;
- 1 additional delegate for every 1,500 employees, when the number of employees exceeds 3,500.

The appointment of the full-time delegates (*délégué libéré*) is made by secret list vote by the members of the delegation according to the rules of proportional representation.

However, when the number of employees exceeds 1,000, the trade union organisations which are nationally representative, represented within the delegation and linked to the establishment by collective labour agreement will each appoint one of the full-time delegates.

The delegation may decide to convert one or more full-time delegates into time-off rights, on the basis of forty hours per full delegate and in proportion to the votes obtained at the time of the election. It must inform the company director accordingly.

6.2. Right to meet⁶⁶

Employee delegations may meet once per month during working hours, subject to 5 working days' notice to management, unless agreed on a shorter period; they must, however, meet at least 6 times per year during working hours, including 3 mandatory meetings with the company's management.

Time spent at meetings is paid as working time.

Once per year, the primary employee delegation can meet in full assembly with the company's employees. The meeting, which is held in camera, is convened by the delegation chair.

The company director may be invited to attend or send a representative.

6.3. Consultation hours⁶⁷

The employee delegation may provide consultation hours for the company's employees in the delegation premises.

If the delegation includes one or more full-time delegates, these consultations will be conducted by the latter during working hours at times chosen by the delegation and communicated in advance to the company director.

Delegations that do not have a full-time delegate may hold consultation hours either outside or during working hours; in the latter case, they must first agree with the company director on the time and procedures for organising and granting consultation hours, which will be deducted from the delegation's credited hours.

6.4. Right of assistance by advisors and experts⁶⁸

6.4.1. Number of advisors

In companies employing at least 51 persons during the 12 months preceding the 1st day of the month in which the elections are announced, advisors, whether or not part of the company's personnel, may participate, for the examination of specific questions, in employee delegations meetings in an advisory capacity, where a majority of the delegates requires so, provided that their number may not exceed one third of the delegation members.

⁶⁶ Articles L. 415-6 and L. 415-7 of the Labour Code

⁶⁷ Article L. 415-8 of the Labour Code

⁶⁸ Article L. 412-2 of the Labour Code

6.4.2. Determination of advisors

a. Proposal of advisors

In companies employing between 51 and 150 persons, during the 12 months preceding the 1st day of the month in which the elections are announced, trade unions having general or sectoral national representation and which have at least one third of the effective elected representatives have the right to propose advisors.

In companies employing more than 150 persons during the 12 months preceding the first day of the month in which the elections are announced, trade unions having general or sectoral national representation referred to above and which have obtained at least twenty per cent of the elected representatives at the last elections will each have the right to propose one advisors. In this case, the limit of one third of the number of delegation members in terms of the number of advisors may be exceeded.

b. Designation of advisors

The delegation will appoint the advisors who are entitled to attend the delegation meetings, if required based on the proposals submitted to it in conformity with the preceding paragraphs.

If the total number to be appointed exceeds the number of advisors thus appointed, the employee delegation may approve additional advisors within the limit of one third of the delegation members.

For this purpose, trade unions having general or sectoral national representation referred to above and which have at least one third of the effective elected representatives have the right to submit proposals.

c. External expert

The delegation may decide to appoint an external expert when it considers that the matter is decisive for the company or its employees.

Unless otherwise agreed in advance, the company's financial responsibility is limited to one expert and may not exceed, per financial year and per expert, a percentage of the total annual employees payroll, declared by the employer to the Joint Social Security Centre during the year preceding the decision for this mandate, which is determined by Granducal regulation at 0,10%.⁶⁹

The company director must be informed in advance of the nature of the mandate thus conferred.

d. Use of professional employers' and trade union organisations

In companies with an employee delegation, the latter may decide, at the request of the delegates or of the company director, to entrust specific questions to a joint review by a professional employer's organisation and a trade union with general nationwide or sector representation.

6.5. Posting of delegation announcements⁷⁰

The posting of announcements, reports and stances of the employee delegation, the equality delegate and the health and safety delegate, are done freely in various formats accessible to personnel for this use, including electronic means, insofar as they are directly related to their duties.

The delegates elected on

- a list submitted by a trade union organisation that has general national or sectoral representation;
- a list submitted by another trade union organisation insofar as they represent the absolute majority of the members who make up the delegation.

may also:

⁶⁹ Grand-Ducal Regulation of 15 December 2017 implementing Article L. 412-2 of the Labour Code, Mémorial A1084

⁷⁰ Article L. 414-16 of the Labour Code

- freely post trade union announcements on various media reserved for this purpose and different from those referred to above; a copy of these trade union announcements will be sent to the company director simultaneously to the posting;
- freely circulate trade union publications and leaflets to the company's employees within the company and at places to be determined by mutual agreement with the company director.

6.6. Right to contact the company's employees⁷¹

The members of the employee delegation have the right to contact all company employees. As such, they are entitled to move freely within the company, on construction sites or other temporary workplaces and to have contact with employees after having informed the employer. They also have the right to contact them through all available means of communication within the company.

6.7. Training leave (congé formation)⁷²

The employer is required to allow the employee representatives the free time, known as training leave, necessary to participate without loss of pay in training activities organised by trade union organisations or specialised institutions, including in particular professional chambers, during normal working hours and aimed at improving their economic, social and technical knowledge in their role as employee representatives.

The duration of the training leave may not be deducted from the duration of the paid annual leave; it is considered as a work time.

6.7.1. Companies with between 15 to 49 employees

In companies employing between 15 and 49 persons during the 12 months preceding the first day of the month in which the elections are announced, the members of the employee delegations are entitled, each during their term of office, to one week of training leave, the related remuneration expenses being borne by the State.

6.7.2. Companies with between 50 to 150 employees

In companies employing between 50 and 150 persons during the 12 months preceding the first day of the month in which the elections are announced, the members of the employee delegations are entitled, each during their term of office, to 2 weeks of training leave, the remuneration expenses relating to one week of training leave being borne by the State.

6.7.3. Companies with more than 150 employees

In companies that have more than 150 employees during the 12 months preceding the first day of the month in which the elections are announced, the members of the employee delegations are each entitled to one week of training leave per year.

6.7.4. New mandates

Delegates elected for the first time are entitled to an additional 16 hours during the first year of their term.

6.7.5. Alternate delegates

Alternate members of the employee delegation receive half of the training hours compared to the full delegates.

When these alternate members become full members during their term of office, the part of the training leave already taken under the previous paragraph will be deducted from the training leave to which they are entitled as full members.

⁷¹ Article L. 414-16 of the Labour Code

⁷² Article L. 415-9 of the Labour Code

6.7.6. Eligible training programmes

The duration of the training leave must not be counted towards the duration of paid annual leave. It must be treated as working time.

Training leave must be granted by the company director each year, at the request of the delegates who wish to participate in certified training programmes, within the context of a list drawn up by mutual agreement between the employers' professional organisations and the trade unions having general national or sectoral representation.

Specific requests may be addressed to the Labour minister who certifies these training courses.

7. ORGANISATION AND FUNCTIONING

7.1. Appointment of the president, vice-president, secretary and board⁷³

At the constituent meeting of the employee delegation, which will be called within one month of the elections by the employee who has obtained the largest number of votes in the election, the employee delegation will appoint from among its full members, by secret ballot and in accordance with the rules of a relative majority, a president, a vice-president and a secretary; in the event of a tie, the eldest candidate will be elected.

In the absence of elections, the founding meeting will be called by the eldest full delegate in the same manner.

For the conduct of day-to-day business and the preparation of its meetings, the delegation will appoint from among its full members, by secret ballot of the list according to the rules of proportional representation, a board which consists in addition of the president, the vice-president and the secretary of:

- 1 member, when the delegation consists of at least 8 members;
- 2 members, when the delegation consists of at least 10 members;
- 3 members, when the delegation consists of at least 12 members;
- 4 members, when the delegation consists of at least 14 members.

Numerical composition	Makeup of board
Fewer than 8 members	President, vice-president and Secretary
8 or 9 members	President, vice-president, Secretary and 1 member
10 or 11 members	President, vice-president, Secretary and 2 members
12 or 13 members	President, vice-president, Secretary and 3 members
14 members or more	President, vice-president, Secretary and 4 members

For its tasks relating to participation rights, the board will be increased by at least one delegate, in proportion to the votes obtained, from each list represented in the employee delegation but not yet represented in the board.

A grand-ducal regulation of 15 December 2017⁷⁴ determines in order the obligatory points to the order of the day of the constituent meeting and the conduct of it:

1. Designation of a polling station with at least 2 members and at least one member of each union represented in the employee delegation;
2. Election of the president;
3. Election of the vice-president;
4. Election of the secretary;

⁷³ Article L. 416-1 of the Labour Code

⁷⁴ Grand-Ducal Regulation of 15 December 2017 implementing Article L. 412-2 of the Labour Code, Mémorial A1084

5. Election of the board;
6. Election of the equality delegate;
7. Election of the safety and health delegate;
8. Decision on the allocation of the credit of hours, respectively designation of the full-time delegate(s).

Within 3 days of the founding meeting, the delegation president will notify in writing the company director and the Labour and Mines Inspectorate (ITM) of the names of the vice- president, the secretary, the board members, the equality delegate and the safety and health delegate.

At the first meeting after the founding meeting of the employee delegation, the elected members are informed by the company director about the company's structure, any ties with other companies, foreseeable economic changes, the employment structure, vocational continuing training, health and safety at work policies and equal treatment.

7.2. Deliberations⁷⁵

The subject of the employee delegation's deliberations will be set by an agenda which will be drawn up by the delegation's board and communicated to the members at least 5 days before the meeting.

The board will be required to include on the agenda the items specified in a request submitted by at least one third of the delegation members, at the latest 3 working days before the meeting. In this case, if the request was made after the agenda was submitted to the delegation members, its chair must inform the delegation members within 24 hours.

7.3. Calling delegation meeting⁷⁶

The employee delegation will meet when convened in writing by its president.

The delegation president must call the delegation at least 6 times per year.

He is also required to call the delegation whenever at least one third of its full members request so in writing; the applicants will indicate the items they wish to be included on the agenda at the meeting.

The company director or his representative may be invited by the delegation to participate in its discussions, but may not vote.

The Minister of Labour may summon the delegation for such purposes as he deems appropriate; he may also delegate to the meetings an official of his choice who must be permitted to make observations. The company director or his representative must be invited to attend these meetings.

Delegation meetings are held in camera.⁷⁷

7.4. Decisions⁷⁸

Decisions and resolutions of the employee delegation are taken by a majority of the members present.

The secretary keeps the minutes of each meeting.

The minutes of the meeting will be read and approved at the opening of the next meeting; a copy will be sent to the company director.

The delegation board is responsible for publishing a press release, posted on the appropriate announcement board.

⁷⁵ Article L. 416-2 of the Labour Code

⁷⁶ Article L. 416-3 of the Labour Code

⁷⁷ Article L. 416-4 of the Labour Code

⁷⁸ Article L. 416-5 of the Labour Code

7.5. Delegation costs⁷⁹

Delegate functions are purely honorary. Nevertheless, the employer will bear the subsistence and travel expenses incurred by the employee delegation members that directly relate to the performance of their duties in the company, with the exception of those relating to training leave.

Similarly, the employer facilitates travel between the company's entities, if necessary by providing delegates with an appropriate means of transport.

Meetings and consultations of employee delegations occur within company premises in an appropriate location with office costs, including IT equipment and access to internal and external means of communication, heating and light paid for by employers.

Where the delegation includes one or more full-time delegates, the company director must also provide a permanent office with equipment and secretarial personnel, if necessary.

8. STATUS OF EMPLOYEE DELEGATES

8.1. Internal regulation

The members of the employee delegation will, in the exercise of their mandate, adhere to the internal regulation of the company or establishment.⁸⁰

The internal regulation of the company or establishment may not impede the performance of the duties of employee delegate in accordance with the law.⁸¹

8.2. Professional secrecy⁸²

Members of employee delegations and their advisors and experts are bound by professional secrecy in all matters relating to manufacturing processes.

Furthermore, they are required to keep all confidential information that is expressly qualified as such by the company director or his delegate in the legitimate interest of the company, both in respect of employees and third parties, unless the employees or third parties are themselves bound by an obligation of confidentiality.

The company director may refuse to disclose information or to carry out consultations where their nature is such that, according to objective criteria, they would seriously impede the functioning, management or future of the undertaking or company, would cause them harm or would jeopardise a planned operation.

Delegation members who consider that the classification of information as confidential or the refusal to disclose information or consultations is abusive, may appeal within 2 weeks to the Director of the Labour and Mines Inspectorate (ITM).

The decision of the director or his delegate must be submitted to the parties no later than the 8th day after the request is made. It will be in written form and duly substantiated, taking into account the interests and needs of employees and their representatives, as well as the economic needs and constraints that must be taken into account by the company director in their management of a company or as part of their exercise of power as head of a company in accordance with the principles of prudent management.

Within 15 days of its notification, the decision of the Director of the Labour and Mines Inspectorate (ITM) or his delegate may be appealed before the Administrative Court.

⁷⁹ Articles L. 416-6 and L. 416-7 of the Labour Code

⁸⁰ Article L. 415-1 of the Labour Code

⁸¹ Article L. 417-1 of the Labour Code

⁸² Article L. 415-2 of the Labour Code

8.3. Salary maintenance⁸³

Delegation members may not receive lower remuneration than they would have received if they had actually worked during the delegation hours.

8.4. Delegates' Careers⁸⁴

An agreement to be concluded between the company director and the employee delegation will provide information on the theoretical career development of delegates benefiting from credited hours corresponding to at least 50% of their normal working time in relation to a reference group of employees and will establish the necessary measures for the full reintegration of these delegates into their former job or into an equivalent job during or at the end of their mandate.

This agreement will also govern the participation of all delegates in continuing professional training offered by the company, including training relating to the position held before the mandate and, if necessary, training relating to an equivalent new job to be held during or at the end of their mandate.

8.5. Special protection

8.5.1. Protection of the employee delegate against a change in an essential element of his employment contract⁸⁵

During their term of office⁸⁶, neither the members and alternates of the employee delegations, nor the health and safety delegate, may be the subject of any change to an essential clause of their employment contract making article L. 121-7 of the Labour Code applicable.

If necessary, these delegates may by simple request, ask the president of the labour court to duly summon the parties involved and to rule on a summary and urgent basis with a view to stopping any unilateral modification of such a clause.

8.5.2. Protection against dismissal⁸⁷

a. The principle

During their mandate, delegates may not, on pain of nullity, be dismissed or called for a preliminary interview, even for serious misconduct.⁸⁸

b. Two options

- **Cancellation procedure**

Within one month of the dismissal, the delegate may by simple request, ask the president of the labour court to duly summon the parties involved and to rule on a summary and urgent basis to nullify the dismissal and order that delegates be kept in their jobs or, if applicable, be reinstated in them.

83 Article L. 415-5(4) of the Labour Code

84 Article L. 415-5(5) of the Labour Code

85 Article L. 415-10 of the Labour Code

86 See also explanations under Section 8.5.7. below

87 Article L. 415-10 of the Labour Code

88 See also explanations under Section 8.5.7. below

- **Alternative: claim for damages**

The delegate who does not apply for cancellation of the dismissal process may ask the court to declare the contract void on the day of notification of the dismissal and to order the employer to pay damages, taking also into account the specific damage suffered by the null dismissal in relation to his status as a delegate under special protection. The delegate exercising this option is to be considered as involuntarily unemployed from the date of dismissal.

Legal action for compensation for any abusive termination of the employment contract must be presented to the labour court, within 3 months to from the notification of the dismissal, failing which the claimant will be precluded from filing.

NOTE: Accepting either option (the one for cancellation and the one for damages) is irreversible.

8.5.3. The special case of closing down of a business

The law stipulates that in the event of the company's closure, the mandate of the delegate ends automatically with the shutdown of business activities.

8.5.4. Suspension for serious misconduct

In the event of serious misconduct, the company director may notify the delegate of a suspension. This decision must state precisely the acts alleged against the delegate and the circumstances to which the serious nature of the charges are attributable.

The act or acts that may justify a judicial resolution on grounds of serious misconduct may not be invoked beyond a period of one month from the day on which the party invoking it became aware of them, unless such act has given rise to criminal proceedings within the month.

The time limit provided for in the previous paragraph will not apply if a party invokes a previous misconduct in support of a new case of serious misconduct which is involved within the deadline.

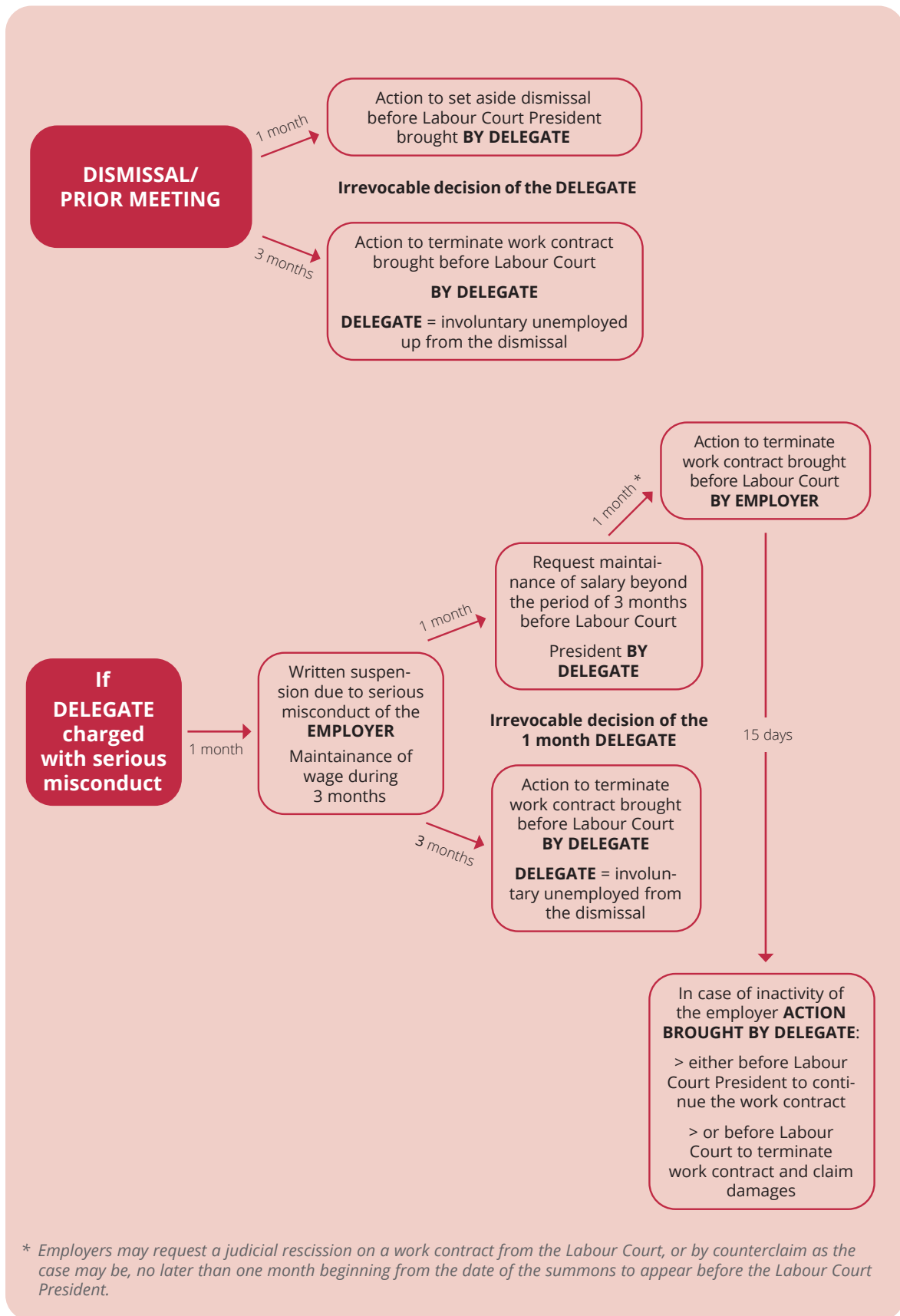
For a period of 3 months following the date of notification, the delegate will retain his salary and the allowances and other benefits to which he would have been entitled if his contract had been retained. These salaries, allowances and other benefits remain definitively retained by the delegate.

- Within one month of the eviction, the delegate may by simple request, ask the president of the labour court to duly summon the parties involved and to rule on a summary and urgent basis to determine whether to maintain or suspend payment of salaries beyond the 3-month limit while awaiting the final settlement of the dispute.
- A delegate who does not wish to remain employed or to re-join the company may solicit the court to terminate the contract within 3 months of notification of suspension and to seek a court ruling ordering the employer to pay damages acknowledging specific damages suffered by the termination of the contract with relation to the status of delegate under special protection. The delegate exercising this option is to be considered as involuntarily unemployed.

NOTE: The choice of either of these 2 options is irreversible.

- The employer may submit his claim for judicial termination of the employment contract to the labour court, if necessary by counterclaim, at the latest within one month from the date of notification of the summons to appear before the president of the labour court.
 - Should the labour court deny this request, the effects of the exemption will automatically cease.
 - Should the labour court approve this request, the termination takes effect on the date of the suspension notification.
- If the employer does not initiate this procedure within the time limits, the employee may by simple request, within 15 days after the expiry of the time limit, ask the president of the labour court to issue a ruling on a summary and urgent basis and within 2 weeks following the expiration of the deadline, to order the contract to remain in force for all parties, or if an employee no longer wishes to remain or be reinstated at work, to solicit the Labour Court seek a court ruling ordering the employer to pay damages, acknowledging specific damages suffered by the termination of the contract with relation to the status of delegates under special protection. The delegate exercising this option is to be considered as involuntarily unemployed.

For the duration of this procedure, the credit of hours of the delegate will be forwarded, if necessary, to the rest of the delegation in place, who will distribute them among its members.



8.5.5. When the suspended delegate finds a new job

When the suspended delegate takes on a new paid job, whether salaried or self-employed, the employer may seek the suspension of wages before the president of the labour court.

8.5.6. When the delegate's contract is terminated and he must reimburse the salaries received to the employer

A delegate whose contract has been terminated by the labour court and for whom the president of the labour court has ordered maintenance of salary payments up until final resolution of dispute and if the court ordered to reimburse these interim salary payments to the employer, may request of the Director of the National Employment Agency (ITM) to be admitted retroactively to the benefit of the full unemployment and at most until the day of the final settlement of the dispute.

Before he can receive retroactive unemployment benefit, the delegate must provide proof of full or partial reimbursement of the wages received. In the absence of proof of full compliance with court orders and at the request of the employer and the delegate, the Director of the National Employment Agency will transfer the amount of unemployment benefit due to the delegate directly to the employer, up to the amount corresponding to the court order that remains due.

This eligibility to full unemployment benefit is a legal right, unless the delegate has been convicted of a crime by a final court judgment, for the same acts that justified his dismissal. If this conviction occurs after the payment of all or part of the full unemployment benefit, he must reimburse the Employment Fund for the amounts paid in this respect.

8.5.7. Protection of former staff delegation members and election candidates for employee delegation⁸⁹

All above indicated provisions will apply to dismissals of former members of employee delegations and former health and safety delegates during the first 6 months following the expiry or termination of their term of office and to candidates to the functions of delegation members as soon as applications are submitted and for a period of 3 months. In the event of contestation of elections followed by new elections, this time period will be extended until the date of the new elections.

9. DISPUTES

9.1. Labour and Mines Inspection

The Labour and Mines Inspectorate (Inspection du travail et des mines – ITM) is responsible for ensuring the application of the provisions on employee delegation.⁹⁰

Disputes relating to the electorate and the regularity of electoral operations fall within the competence of the Director of the Labour and Mines Inspectorate; his decision may be appealed to the administrative courts.⁹¹

⁸⁹ Article L. 415-11 of the Labour Code

⁹⁰ Article L. 417-2 of the Labour Code

⁹¹ Article L. 417-4(1) of the Labour Code

9.2. Mediation commission

Disputes in matters of:

- economic and social entity;
- right of assistance from advisors and experts;
- withholding of information by the employer;
- right of the employee delegation to participation;
- organisation and functioning of the delegation;

certified not resolved within one month of any intervention by the Labour and Mines Inspectorate (ITM), may, within one month of the date of issue of the certificate of non-resolution, be submitted to a mediation commission set up under a collective agreement, either at company or sectoral level, or under an agreement on interprofessional dialogue.

This Commission is chaired by a mediator designated jointly by the parties in the collective labour agreement or in the interprofessional dialogue agreement. He may be assisted in this task by an employer representative as well as by a delegation representative. The collective or interprofessional dialogue agreement will also set the procedure to be followed, the time limits to be respected, the payment of costs and the other detailed provisions for the application of this paragraph.

Where the company has no mediation commission, the parties may, within one month of the date of issue of the certificate of non-resolution, refer the matter to the Director of the Labour and Mines Inspectorate, who summons them within 5 days with a view to appointing a mediator. In this case, the mediator is chosen, by mutual agreement between the parties, from a list covering a period of 5 years, comprising 6 persons proposed by the Minister of Labour and chosen by the Government. If the parties do not agree on the mediator, he will be randomly chosen from the list provided for in the previous paragraph. The mediator may appoint one or more experts. He is assisted by a government representative who is provided by the Labour and Mines Inspectorate as administrative secretary. If the mediation does not result in an agreement within 3 months of the mediator's appointment, the mediator will draw up a report outlining the areas of disagreement, which will be submitted to the parties and to the Director of the Labour and Mines Inspectorate.

It should be noted that the labour court remains competent to hear disputes that may be submitted to the mediation commission, except as regards the participation rights of the employee delegation, which falls within the sole competence of the mediation commission.

9.3. Labour Court⁹²

Disputes relating to employee delegation which do not fall within the competence of the Labour and Mines Inspectorate and the administrative courts fall within the competence of the Labour Court, with the exception of disputes relating to the delegation's right of participation.

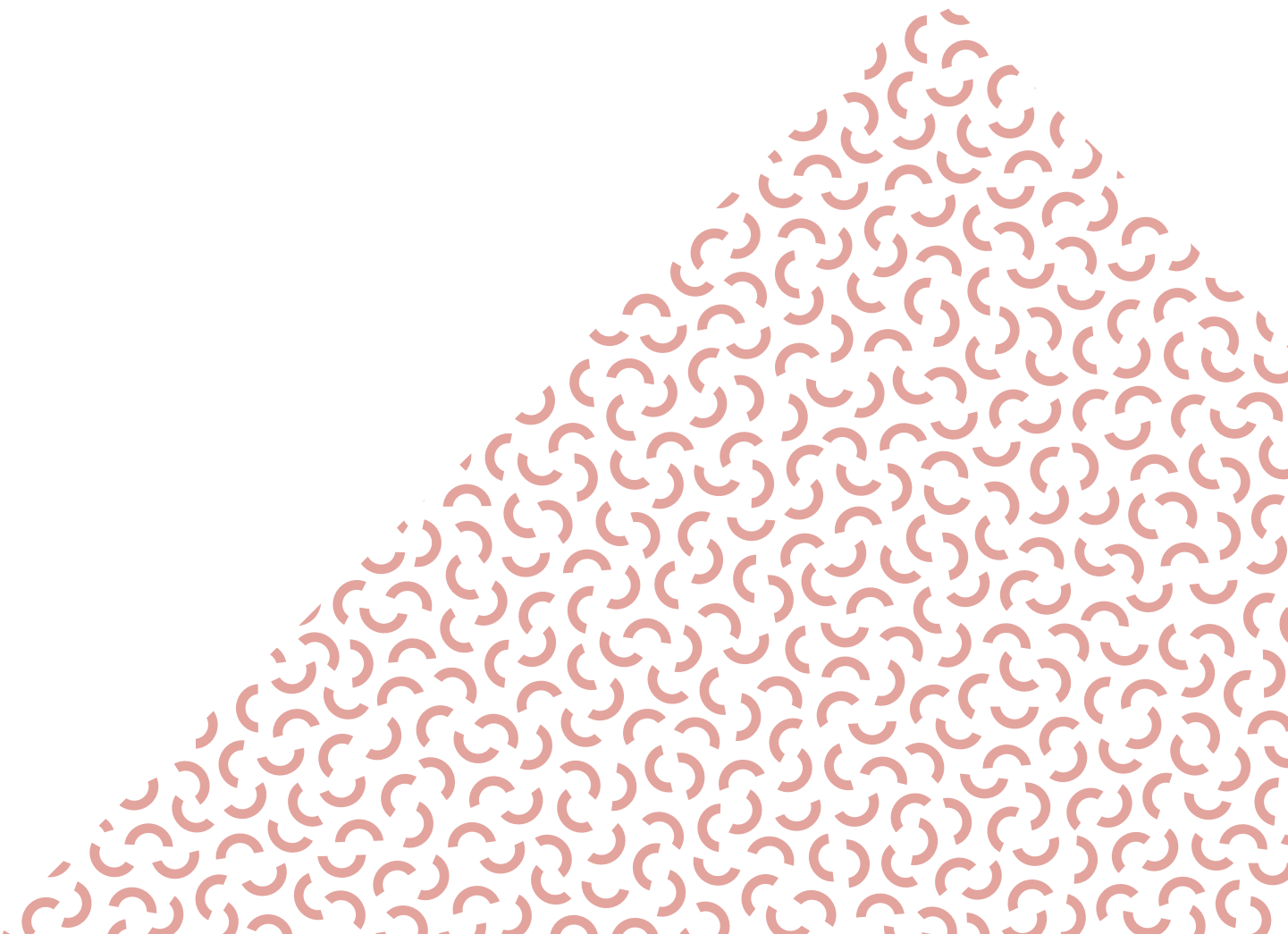
9.4. Obstruction offences⁹³

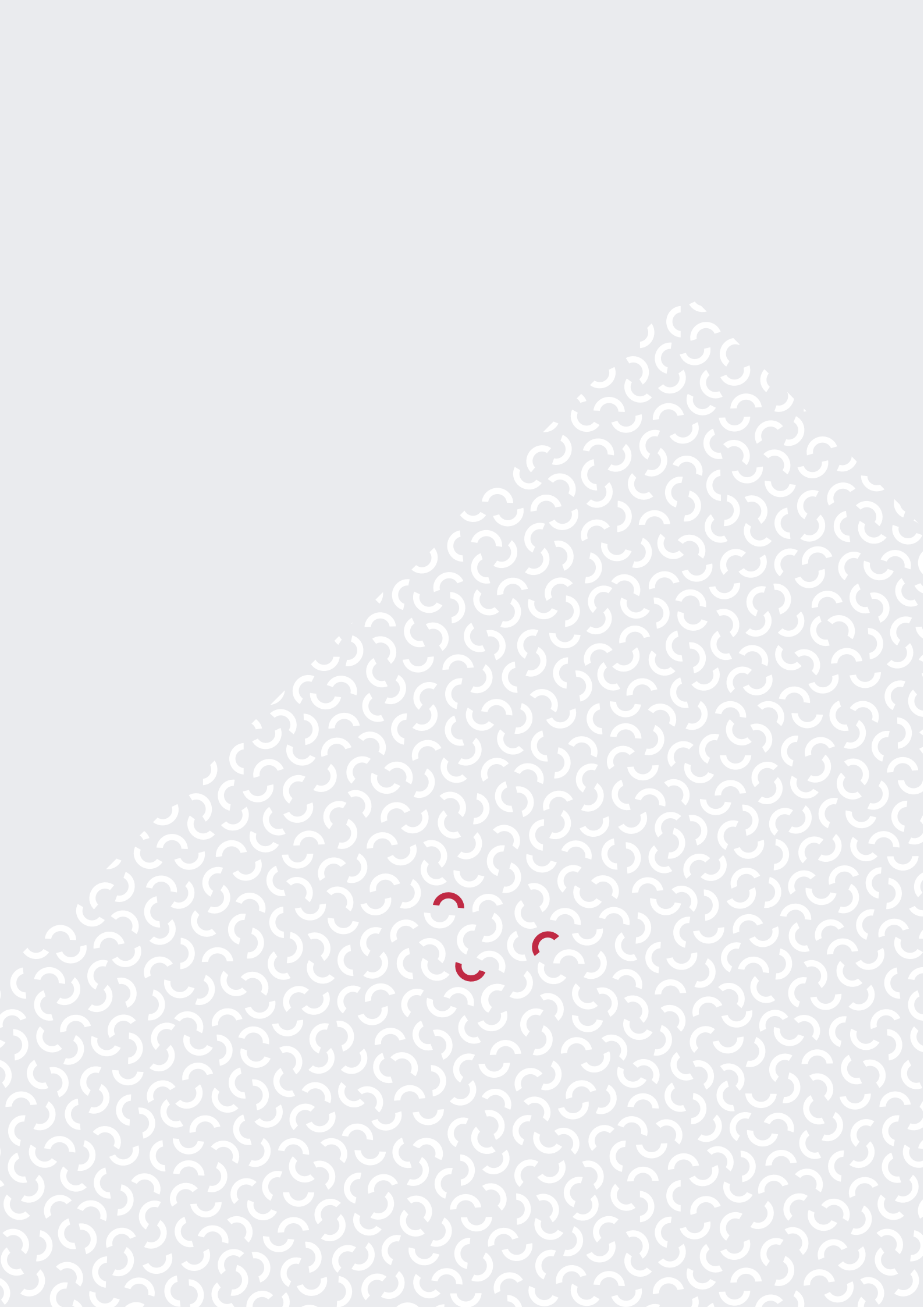
Any deliberate obstruction of the constitution of an employee delegation, the free appointment of its members, its regular functioning, the appointment of an equality delegate or a health safety and delegate, will be punishable by a fine of 251 to 15,000 euros.

The same applies for obstructing the appointment of a delegation at the level of the economic and social entity and to that of the health and safety delegate as well as to the exercise of his tasks.

⁹² Art L. 417-4 (2) of the Labour Code

⁹³ Art L. 417-5 of the Labour Code





III. DELEGATION AT THE LEVEL OF THE ECONOMIC AND SOCIAL ENTITY





Since the 2019 social elections, it is possible to have an employee delegation appointed at a new level, namely that of the economic and social entity.

Where several companies, i.e. several different legal entities, together constitute what is known as an economic and social entity, a delegation at the level of the economic and social entity may be established at the request of at least 2 delegations of the entity.⁹⁴

1. DEFINITION OF THE ECONOMIC AND SOCIAL ENTITY

The economic and social entity is defined in Article L. 161-2 of the Labour Code as follows:

A company constituting an economic and social entity is understood to be a group of entities, even with autonomous and/or distinct legal personalities, and even operating under a franchise system, which present one or more elements allowing to conclude that they are not independent and/or autonomous units, but reveal:

- a concentration of management powers and identical and complementary businesses;
- respectively a community of employees linked by identical, similar or complementary interests, with a comparable social status.

In assessing the existence of an economic and social entity, all available information is taken into account, such as:

- the fact of having common or complementary structures or infrastructures;
- of having a common, complementary or coordinated strategy;
- of having one or more totally or partially identical, complementary or interrelated economic beneficiaries;
- to report to a common, complementary or related management or shareholder structure, or to management, direction or control entities composed in whole or in part of the same persons or persons representing the same organisations;
- to have a community of employees linked by common or complementary interests or having a similar or related social status.

Several establishments operating under the same or substantially similar brand name, including under a franchise regime, are presumed to form an economic and social entity.

In practice, it is a group of companies, legally separate entities which form a single entity in economic and social terms.

2. PROCEDURE TO BE FOLLOWED

It is the responsibility of the employee delegations of the various companies to request the establishment of a delegation at the level of the economic and social entity. The request must be made by at least 2 delegations of 2 different companies in the group.

Requests must be made within 3 months after the elections of the employee delegations and are submitted to the respective employers of the entities concerned.

In the event of a dispute on the merits of the case by one or more employers or by one or more delegations deciding by a majority, the mediation bodies provided for in Article L. 417-3 of the Labour Code may be consulted (see Part II, Section 9.).

⁹⁴ Article L. 411-3 of the Labour Code

3. DELEGATION TASKS AT THE LEVEL OF THE ECONOMIC AND SOCIAL ENTITY

The delegation at the level of the economic and social entity represents the interests of all persons employed in the various companies of an economic and social entity.

Its sole task is to exchange information between different employee delegations from which it originates.

4. DELEGATION COMPOSITION AT THE LEVEL OF THE ECONOMIC AND SOCIAL ENTITY

It is composed of full and alternate delegates from each of the separate companies with an employee delegation.

The number of delegates per company depends on the number of company employees:

- for companies with between 15 and 100 employees: 1 full delegate and 1 alternate delegate;
- for companies with between 101 and 500 employees: 2 full delegates and 2 alternate delegates;
- for companies with more than 500 employees: 3 full delegates and 3 alternate delegates.

The members of the delegation at the level of the economic and social entity are elected by the employee delegations according to the majority system relating to the secret list vote, among their members.

If one or several companies with fewer than 15 employees have no employee delegation amongst the companies comprising an economic and social entity, a representative is designated from all of the employees of these companies who will participate in delegation meetings at the economic and social entity level. This representative will receive half of the training hours provided for in paragraph 2 of Article L. 415-9 of the Labour Code.

5. SMALL ENTERPRISES WITH LESS THAN 15 EMPLOYEES CONSTITUTING TOGETHER AN ECONOMIC AND SOCIAL ENTITY

If at least 3 companies, each employing fewer than 15 persons, constitute an economic and social entity, and together they employ at least 15 persons, a request to establish a delegation at the economic and social entity level may be submitted to the Labour and Mines Inspectorate by at least 15 employees.

The Labour and Mines Inspectorate sets the date of these elections, which will be held according to the relative majority system. In the event of a dispute on the merits of the case by one or more employers or employees, the mediation bodies provided for in Article L. 417-3 of the Labour Code may be consulted (see Part II, Section 9.).

The delegation thus elected is subject to the same legal provisions as the traditional employee delegation, with the exception of those relating to information and consultation in companies with at least 150 employees, those relating to the right of participation in companies with at least 150 employees, as well as those relating to the equality delegate and the health and safety delegate.

Their members have the same rights and duties as the members of this delegation, with the exception of the right to training, which in all cases corresponds to the maximum training allotment for the alternate delegate.



IV. **EMPLOYEE REPRESENTATIVES IN PUBLIC LIMITED COMPANIES**





Some public limited companies are required to have employee representatives on their board of directors or supervisory board.

Which companies should have a board of directors or supervisory board that includes members representing the staff?⁹⁵

The following companies must have employee representatives in their boards of directors or supervisory boards:

- companies registered in Luxembourg, under the form of a public limited company and which usually employs 1000 employees at least in the last 3 years;
- companies registered in Luxembourg, under the form of a public limited company, and which benefit from a State financial participation of at least 25% or a State concession relating to their main business activity. These companies are designated by Granducal regulation. According to a Granducal decree of 11 August 1974, it concerns CEGEDEL, LUXAIR, CLT and SES. This decree was modified in 2008 in order to add the Luxembourg airport company LUX-AIRPORT to this list.

What is the minimum number of members of the board of directors or supervisory board?⁹⁶

The directors or members of the supervisory board of the companies concerned must be at least 9 in all.

How is employee representation ensured?⁹⁷

The law makes a distinction between:

- a public limited company with at least 1000 employees: one third of the directors or members of the supervisory board must represent the personnel;
- a public limited company with State participation or concession: at least 3 directors or 3 of the members of the supervisory board must represent the company's employees. The board of directors or the supervisory board will be composed of one director representing the personnel per group of 100 employees, however the total number of directors or members of the supervisory board may not exceed one third of the members of the board of directors or the supervisory board.

How are the members representing employees on the boards of directors or on supervisory board appointed?⁹⁸

The members of the board of directors or supervisory board representing the employees are appointed by the employee delegation from amongst the company's employees. The election will be held by secret ballot in accordance according to the rules of proportional representation.⁹⁹

An exception to the standard rules for appointing members of the board of directors or supervisory board is provided for in the case of public limited companies in the steel sector. Indeed, 3 of the members of the board of directors or supervisory board representing the personnel are appointed not by the employee delegation, but by the most widely represented trade union organisations at national level. This appointment is made after consultation with the signatory parties to the collective contract applicable to the company. The members of the board of directors or supervisory board thus appointed do not necessarily have to be employees of the company. In the absence of appointment within the time limits set, the members of the board of directors or supervisory board will be appointed by the Minister of Labour from amongst the company's personnel.

When should employee representatives in boards of directors or supervisory boards be appointed?

The appointment will be made no later than the month preceding the expiry of the term of office of the previous members of the board of directors or supervisory board.

95 Article L. 426-1 ff. of the Labour Code

96 Article L. 426-2 of the Labour Code

97 Article L. 426-3 of the Labour Code

98 Articles L. 426-4 and L. 426-5 of the Labour Code

99 Modified Grand-Ducal Regulation of 24 September 1974 concerning electoral operations for the appointment of employees representatives on joint works committees, boards of directors and supervisory boards

What are the requirements to become members of the board of directors or supervisory board representing employees?¹⁰⁰

An employee of the company who wishes to run for office must have an employment contract at least 2 years prior to his appointment as a member of the board of directors or supervisory board, which contract must correspond to actual employment.

It should be noted that his appointment as a member of the board of directors or supervisory board does not negate the benefits of this contract.

What is the duration of the mandate?¹⁰¹

The members of the board of directors or supervisory board representing the employees are appointed for a term of office equal to that of the other members of the board of directors or supervisory board. Their term of office is renewable.

According to the amended law of 10 August 1915 on trading companies, the maximum term of office of members of the board of directors or supervisory board is 6 years.

What are the reasons for terminating the mandate?

The term of office of members of the board of directors or supervisory board representing employees will end in the following cases:

- death of the member of the board of directors or supervisory board;
- voluntary resignation;
- termination of the working relationship;
- revocation of the mandate either by the employee delegation, by the trade union organisation or by the Minister of Labour.

How is the replacement of an outgoing member ensured?

When a member of the board of directors or supervisory board ceases to hold office for one of the reasons listed above, he is replaced:

- by the next candidate in sequence on the list, if the outgoing member has been appointed by the employee delegation;
- by a candidate nominated by the trade union organisations with the widest nationally representative or, failing that, by the Minister of Labour, if the outgoing member is part of a company in the steel sector.

It should be noted that in the event of a seat vacancy, the other members of the board of directors or supervisory board have the right to occupy it temporarily until the first meeting of the plenary session which proceeds to the definitive election.

What is their liability?¹⁰²

The members of the board of directors or supervisory board representing the staff are responsible for misconduct in their management in accordance with the common law governing the liability of members of the board of Directors or Supervisory Board.

The members of the board of directors or supervisory board representing the staff are jointly and severally responsible with the other members of the board of directors or the supervisory board in accordance with the provisions of the second paragraph of Article 59 of the amended law of 10 August 1915 on commercial companies.

¹⁰⁰ Article L. 426-6 of the Labour Code

¹⁰¹ Article L. 426-7 of the Labour Code

¹⁰² Article L. 426-8 of the Labour Code

Can a member of the board of directors or supervisory board representing employees be dismissed?¹⁰³

No, members of the board of directors or supervisory board representing employees may not be dismissed during their term of office, unless authorised by the Labour Court.

This also applies to:

- former members of the board of directors or supervisory board representing employees for a period of 6 months following the expiry of their term of office;
- candidates for the seat of member of the board of directors or supervisory board for a period of 3 months from the submission of their candidacy.

Can a member of the board of directors or supervisory board be dismissed in the event of serious misconduct?¹⁰⁴

In the event of serious misconduct by a member of the board of directors or supervisory board representing employees in the performance of their professional activities in the company, the rules are aligned with those of the employee delegates, except for the retroactive right to unemployment which may be enjoyed by the delegate whose contract has been terminated by the court and who is ordered to reimburse the employer (see Part II, Section 8.5.4.).

Is there any conflict of interest with the status of a member of the board of directors or supervisory board representing employees?¹⁰⁵

Yes, a member of the board of directors or supervisory board representing employees may not simultaneously be a member of the board of directors or supervisory board of 2 or more companies with business activities of the same nature and purpose.

Similarly, he may not be employed by another company with business activities of the same nature as that in which he is a director.

Furthermore, a member of the board of directors or supervisory board representing employees may not be a member of more than 2 boards of directors or supervisory boards.

¹⁰³ Article L. 426-9 of the Labour Code

¹⁰⁴ Article L. 426-9 of the Labour Code

¹⁰⁵ Article L. 426-10 of the Labour Code



V. LEGAL BASIS





LABOUR CODE (Extracts)

Book IV - Staff representation: Articles L.411-1 to L.427-3

MODIFIED GRAND-DUCAL REGULATION OF 24 SEPTEMBER 1974 CONCERNING THE ELECTORAL OPERATIONS FOR THE DESIGNATION OF THE STAFF REPRESENTATIVES IN THE JOINT WORKS COUNCILS AND THE BOARDS OF DIRECTORS OR THE SUPERVISORY BOARDS

GRAND-DUCAL REGULATION OF 15 DECEMBER 2017 IMPLEMENTING ARTICLE L. 412-2 OF THE LABOUR CODE

GRAND-DUCAL REGULATION OF 15 DECEMBER 2017 IMPLEMENTING ARTICLE L. 416-1 OF THE LABOUR CODE

GRAND-DUCAL REGULATION OF 11 SEPTEMBER 2018 CONCERNING THE ELECTORAL OPERATIONS FOR THE DESIGNATION OF THE STAFF DELEGATES

NOTES

Lined writing area with horizontal rules.

Social dialogue in companies is an important element of governance for the sustainable development of our economy and our society.

The law dated 23 July 2015 for the reform of social dialogue within companies imposed a number of major new rules that govern the social dialogue processes in companies.

At the time, some of the legal changes provided for by the 2015 law came into force on 1st January 2016. Others only came into force from on the social elections in 2019.

With a view to the social elections of 2024, the CSL has decided to re-issue this publication, which is a practical work that aims to provide information that is as complete as possible. It includes:

- in introduction, an overview of the structure of the social dialogue;
- a practical guide to the applicable provisions on social dialogue.



CHAMBRE DES SALARIÉS
LUXEMBOURG

18 rue Auguste Lumière
L-1950 Luxembourg
B.P. 1263
L-1012 Luxembourg

T +352 27 494 200
F +352 27 494 250

csl@csl.lu
www.csl.lu

