

LEGISLATION ON STAFF DELEGATIONS

The legislation on staff delegations has been carefully translated from French into English and parts have been overtaken from other authors which we would like to thank for allowing us the use of those texts.

The translated legislation should help everybody having problems to understand the original French texts. Nevertheless, despite our greatest care, it is possible that there are errors or mistakes in the translated version. To this effect we want to point out that only the original French texts published in the official gazette (Mémorial) is authoritative and shall prevail. (If you have any proposals or ideas to improve this translation, please let us know).

This text in Word format is available electronically on the Internet pages of the Labour Inspectorate (<https://guichet.itm.lu/elections>).

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Co-ordinated text of the amended Act of 31st July 2006

« Code du Travail »

Book IV – Staff representations

Title One – Staff delegations

MEMORIAL A 2006, N° 149, p. 2455

amended by the Act of 9th Mai 2008 (MEMORIAL A 2008, N°59, p. 786)

amended by the Act of 13th. Mai 2008(MEMORIAL A 2008, N°60, p. 790)

amended by the Act of 11th November 2011..... (MEMORIAL A 2011, N°222, p. 3907)

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Chapter 1. - Installation of the personnel delegations

Section 1. - Principal delegations

Art. L. 411-1. (1) All employers in the private sector shall be required to have staff delegates designated in establishments employing regularly at least a number of 15 staff members bound by contract of employment, whatever the nature of their activities and their legal status might be.

The same applies to all employers in the public sector employing regularly at least 15 staff members bound by contract of employment other than those whose work relationship is directed by the public statute or assimilated, whereas civil servants or public employees.

According to the present title, the staff members having joined the establishment by the event of the transfer of company, establishments that are part of the company or the whole of it like it is described in the Book I, title II, chapter VII, are supposed to have become staff members of this company at the date they started with the initial employer.

(2) In all establishments, a staff delegation shall be set up for the entire staff by means of a single ballot.

(3) All the staff members in an establishment bound by an employment contract, except those with an apprenticeship contract, shall be taken into account in calculating the number of staff employed by that establishment.

Staff working part-time, whose work time is equal or more than sixteen hours per week should be totally included in the calculation of staff number in the establishment.

For those personnel whose working time is less than the above mentioned, the calculation is done in dividing the total of this staff's worked hours of in their employment contract by the legally or conventionally fixed working time.

Personnel under fixed term contracts and personnel on loan of the company are taken in account to calculate the number of personnel in the company in the proportion of their attendance in it during the past 12 months.

However, the personnel under fixed term contracts and personnel on loan to the company by another company are excluded from the headcount of the company, when they substitute absent personnel or personnel whose employment contract is suspended.

Art. L. 411-2. For the computation of personnel occupied by the interim contractor, permanent employees of this company and, personnel that have been linked to it by a mission contract during a total period of at least 10 months during the year prior to the computation date, must be taken in account.

Section 2. - Divisionary delegations

Art. L. 411-3. Where the establishment is divided in at least three divisions and the principal delegation so requests there shall be instituted for each division, within three months of the designation of the principal delegation, a divisionary delegation, provided the division employs regularly at least 100 staff members.

The head of the company shall determine and demarcate the divisions in the establishment in agreement with the principal delegation.

In the event of disagreement the head of the company or the principal delegation may apply to the minister who has the labour in his attributions who shall decide on the merits in the light of the opinion given by the Director of the Labour and Mines Inspectorate. The Minister's decision is appealable in the Administrative Court (*Tribunal Administratif*), which shall judge the merits at last instance.

Each divisionary delegation shall be elected in the same way as the principal delegation and shall be made up of one full member and one substitute member for every 50 staff members, without however exceeding five in number.

Section 3. - Central delegations

Art. L. 411-4. Where several establishments within the meaning of **Art. L. 411-1.** make up a single company, a central delegation shall be set up.

The central delegation shall represent the interest of all staff members in the various establishments of a single company.

It shall be made up of 3 delegates and 3 substitute delegates for each of the separate establishments.

The members of the central delegation shall be elected by the principal delegations of the establishment by secret ballot by list, according to the rules of proportional representation, from among their respective members.

Section 4. - Young workers' delegates

Art. L. 411-5. (1) Young staff members in establishments shall be represented in the following manner:

1 delegate where the establishment employs regularly at least 5 young personnel members;

2 delegates where the establishment employs regularly more than 25 young personnel members;

3 delegates where the establishment employs regularly more than 50 young personnel members;

4 delegates where the establishment employs regularly more than 100 young personnel members.

For each young worker's delegate there shall be elected one substitute delegate who shall automatically take the place of the delegate, definitively in the circumstances provided for in **Art. L. 415-3.** and temporarily in those provided for in **Art. L. 415-4.**

(2) Adolescents of either sex who are under the age of 21, and who have been working in the company for at least 6 months on the day of the election shall be entitled to vote for or be eligible as young workers' delegates.

The conditions of nationality for electoral rights, as well active as passive rights, are those foreseen in the articles **Art. L. 413-3.** and **Art. L. 413-4.**

(3) The function of the young workers' delegates shall be to advise the head of the establishment and the principal delegation on all questions concerning the working conditions and protection of young workers, and on matters concerning apprenticeships.

They shall have the right to have these matters included on the agenda of the principal delegation.

(4) The young worker's delegates shall be authorised to attend meetings of principal delegations where these are to discuss matters concerning adolescent workers.

A representative of the young workers' delegates shall attend all meetings of principal staff delegations.

Chapter 2. - Composition of the staff delegation

Art. L. 412-1. (1) Without prejudice to the provisions of **Art. L. 411-1.**, the numeric size of staff delegations shall depend on the number of vague earners represented:

- 1 full member where the number of staff members represented is between 15 and 25;
- 2 full members where the number of staff members represented is between 26 and 50;
- 3 full members where the number of staff members represented is between 51 and 75;
- 4 full members where the number of staff members represented is between 76 and 100;
- 5 full members where the number of staff members represented is between 101 and 200;
- 6 full members where the number of staff members represented is between 201 and 300;
- 7 full members where the number of staff members represented is between 301 and 400;
- 8 full members where the number of staff members represented is between 401 and 500;
- 9 full, members where he number of staff members represented is between 501 and 600;
- 10 full members where the number of staff members represented is between 601 and 700;
- 11 full members where the number of staff members represented is between 701 and 800;
- 12 full members where the number of staff members represented is between 801 and 900;
- 13 full members where the number of staff members represented is between 901 and 1000;
- 14 full members where the number of staff members represented is between 1001 and 1100;
- 15 full members where the number of staff members represented is between 1101 and 1500;
- 16 full members where the number of staff members represented is between 1501 and 1900,
- 17 full members where the number of staff members represented is between 1901 and 2300;
- 18 full members where the number of staff members represented is between 2301 and 2700;
- 19 full members where the number of staff members represented is between 2701 and 3100;
- 20 full members where the number of staff members represented is between 3101 and 3500;
- 21 full members where the number of staff members represented is between 3501 and 3900;
- 22 full members where the number of staff members represented is between 3901 and 4300;
- 23 full members where the number of staff members represented is between 4301 and 4700,

24 full members where the number of staff members represented is between 4701 and 5100;

25 full members where the number of staff members represented is between 5 101 and 5500;

1 additional full member for every additional 500 staff members where the number of personnel represented exceeds 5500.

(2) Staff delegations shall also include as many substitute members as there are full members.

(3) Where a staff delegation consists of a single full member, the substitute delegate shall automatically be entitled to attend meetings held in the presence of the head of the company or the head of the establishment.

Art. L. 412-2. (1) In establishments employing regularly at least 150 members of personnel, advisers, who may, but are not required, to be on the staff of the company, may, when specific questions are being considered, participate in meetings of staff delegations in a consultative capacity, where an absolute majority of delegates so requests, although their number may not exceed one-third of the delegation's membership.

They shall be designated by the delegation by an absolute majority of its members, on a proposal from the nationally most representative trade unions represented within the delegation.

In the absence of a proposal, or where the adviser proposed in accordance with the previous paragraph is not approved by an absolute majority of the delegates; an adviser shall be designated by the delegation by an absolute majority of its members.

(2) In establishments employing regularly less than 150 members of personnel, an absolute majority of the delegation's members may decide, at the request of the delegates or the head of the establishment, to ask an employer's organisation and the nationally most representative trade unions represented within the delegation jointly to consider specific questions.

(3) For the application of the foregoing paragraphs, fractions equal to or greater than one half shall be rounded up to the nearest whole number; fractions smaller than one half shall be rounded down to the nearest whole number.

Chapter 3. - Designation of staff delegates

Section 1. - Methods of designation

Art. L. 413-1. (1) Full and substitute staff delegates shall be elected by secret ballot according to the rules of proportional representation by the staff members of the establishment from lists of candidates nominated either by the nationally most representative trade unions or by a number of staff members of the establishment representing at least 5% of the total workforce to represent, but not exceeding 100.

However, in establishments with not more than 100 members of staff, the ballot shall be determined by a relative majority, this shall also apply to the designation of young workers' delegates.

As an exception to paragraph 1, a list of candidates may also be presented by a trade union complying with the definition in Art. L. 161-3., if such union held an absolute majority of seats in the outgoing delegation.

(2) Lists must not include more candidates than the number of full and substitute members to be elected.

(3) No candidate on a list shall be elected if the list does not secure 5% of the votes cast.

(4) Rules governing elections and procedure, regarding disputed elections shall be laid down in a grand-ducal regulation.

(5) At the request of the head of the establishment or the delegation, the minister who has labour in his attributions, may subject to such conditions and arrangements as he prescribes, authorise postal voting by personnel absent from the establishment on the day of voting owing to the organisation of work at the establishment or because of sick leave, an accident at work, maternity or other leave.

(6) Should no candidates be nominated, the minister who has Labour in his attributions shall issue an order designating the full and substitute members from among the eligible employees of the establishment.

Art. L. 413-2. (1) Members of delegations shall be appointed for a five-year term and may be re-elected.

(2) Delegations are wholly renewed between 15 October and 15 November in each fifth calendar year on a date fixed for all renewals in a regulation by the minister who has labour in his attributions, published in the official gazette (Memorial).

(3) The minister who has labour in his attributions may, however, order the full renewal of a staff delegation outside the period referred to in paragraph (2) above whenever the number of members on a list is no longer sufficient and there are no further substitute members to take up the vacant seat(s).

Elections must also be held outside the period referred to in paragraph (2) above where the staff of an establishment reaches the minimum number required for setting up a staff delegation.

The term of office of a delegation set up or renewed pursuant to the foregoing sub-paragraphs shall expire at the same time as that of delegations elected pursuant to paragraph (2), unless such term would thereby be shorter than one year, in which case it shall be extended for a further period of five years.

(4) The elected delegation shall continue to perform its duties until expiration of its term of office and shall do so with the membership determined by the election, regardless of any change in staff numbers.

(5) In the event of the transfer of company, establishments that are part of the company or the whole of it like it is described in the Book I, title II, chapter VII, the statute and the function of the staff delegations shall continue in office in so far as the establishment retains its independence.

If the establishment does not retain its independence, the staff delegation members will integrate with all their rights the staff delegation whose establishment is taking over the transferred staff. This enlarged staff delegation shall proceed immediately to design a new chairman, a vice-chairman, a secretary and a bureau, as described in Art.L.416-1. The exceptionally compose staff delegation will stop with its first renewal.

If the staff members of an establishment which does not retain its independence are taken over by an establishment that does not have any staff delegation, the staff delegation of the transferred establishments is considered to be the common staff delegation.

Section 2. - Conditions of the electorate

Art. L. 413-3. All personnel of either sex, regardless of nationality, over 18 years of age, bound to the establishment by contract of employment or apprenticeship, and employed by the company for at least six months prior to the day of election, may vote for staff delegates.

Art. L. 413-4. (1) To stand for election as staff delegates, members of personnel must meet the following conditions:

be at least 18 years old, at the day of elections;

have been employed by the company without interruption for the previous year at least, at the day of elections;

be either Luxembourg national, or a national of a member state of the Agreement on the European Economic Region, or national of a not member state of the Agreement on the European Economic Region holding a B or C work permit issued in compliance with the law and regulations governing the employment of foreigners. However, nationals of a not member state of the Agreement on the European Economic Region employed on the basis of a work permit other than of type B or C may be elected but their number may not exceed one-third of the membership of the staff delegation; any elected in excess of such proportion shall be replaced as appropriate by Luxembourg nationals, nationals of a member state of the Agreement on the European Economic Region or nationals of a not member state of the Agreement on the European Economic Region holding a B or C working permit who have not been elected, but who, on the same list, have obtained the greatest number of votes.

(2) Relatives by blood or marriage up to the fourth degree of the head of the company, the managers, directors and the head of the personnel department of the establishment may not be elected as full or substitute members of a staff delegation.

Art. L. 413-5. Those personnel, having a part-time employment contract in more than one establishment are eligible only in the establishment where they are employed for the largest time; in case of equal time in both employment contracts, they are eligible in the establishment where they have the biggest seniority.

In case the establishment where this personnel has the biggest seniority does not need to apply to this law having to set up the election of a staff delegation, this personnel is eligible in the establishment having to apply to this law.”

Art. L. 413-6. The interim personnel and the personnel at the disposal of the company don't have the right to vote or be elected to the functions of personnel delegate or representative personnel at the company's joint committee or board of directors of the employing company.

However the interim personnel and the personnel at the disposal of the company have the right to claim, the right to look for advice the personnel delegation in the employing company as well as consulting their personnel files due to the present title.

Chapter 4. - Duties of staff delegates

Section 1. - General Duties

Art. L. 414-1. (1) The general purpose of the staff delegation is to protect and defend the interests of the staff of the establishment as regards working conditions, security of employment and social status, in as much as this is not the responsibility of the company's joint works council, should one exist.

(2) In this context, and without prejudice to other duties assigned to it by specific legislation the staff delegation shall in particular:

give its opinion and make proposals on any matters concerning improvements in working and employment conditions and in the situation of the personnel of the establishment;

put any claims, either individual or collective, to the employer;

prevent and settle any conflicts, either individual or collective, which may arise between the employer and the personnel of the establishment;

refer, should no settlement of the aforementioned conflicts be reached, to the Labour and Mines Inspectorate any complaint or comment concerning the application of the law, regulations, administrative or collective provisions governing working conditions and the protection of employed personnel in the course of their work;

give its opinion on the drafting or amendment of departmental workshop regulations for the establishment and closely supervise the enforcement of such regulations;

propose amendments to the internal regulations, on which the management or, where appropriate, the company's joint works council must reach a decision within a period of two months, such decision must be communicated to the delegation immediately;

in companies with more than 150 employees, participate in the training of apprentices within the establishment and the management of apprenticeship centres, where such exist;

co-operate in determining and implementing apprenticeship schemes;

promote the integration of the victims of accident's and handicapped persons and make an effort to create jobs suited to their physical and mental abilities;

participate in the management of the establishment's welfare activities;

participate in the protection of work and the work environment and in the prevention of industrial accidents and occupational disease;

give its opinion prior on establishing, modifying or abolishing of a extra legal pension fund.

Section 2. - Delegate for Staff Safety

Art. L. 414-2. (1) Each principal delegation and, as appropriate, each divisional delegation shall designate from among its members or from among the other personnel of the establishment one delegate for staff safety.

(2) The safety delegate shall set down his findings, countersigned by the head of department, in a special register which shall remain at the offices of the establishment, where members of the delegation and the inspection and supervision staff of the Labour and Mines Inspectorate may consult it.

In urgent cases, where the findings require immediate intervention by the Labour and Mines Inspectorate, the delegate is entitled to refer directly to that agency, on condition that he informs the head of the company or his representative and the delegation at the same time.

(3) Each week, the safety delegate, accompanied by the head of the establishment or his representative, may carry out a tour of inspection at the headquarters of the establishment, on its sites or at any other temporary places of work. However; tours of inspection of sites or other temporary places of work of establishments with where the headcount of staff is less than 150 members of personnel may not be made without the prior agreement of the head of the establishment or his representative.

In administrative departments there may not be more than two tours of inspection per year.

The person in charge of the division being inspected and the person in charge of the maintenance department shall accompany the person carrying out the inspection referred to in the preceding paragraphs.

(4) The inspection and supervision staff of the Labour and Mines Inspectorate has the right to be accompanied, on their tours, by the safety delegate; they may also be so accompanied when inquiring accidents.

(5) The safety delegate may not lose any remuneration as a result of his absences from work on tours of inspection or to accompany the inspection and supervisory staff of the Labour and Mines Inspectorate.

(6) The head of the establishment has to consult and inform the safety delegate about:

the valuation of risks for health and security at work, specially those of personnel exposed to specific risks;

protection means to take and, if necessary, the equipment to use;

the declarations to make at Labour and Mines Inspectorate conform to art L. 613-1.;

of any action that could affect substantially the health and security;

of the nominations of the designated personnel members for health and security matters who will have to care about any protective activities and activities in order to prevent the professional risks of the company and/or the establishment;

the measures undertaken in first aid, fire protection and evacuation of staff, the planned measures, adopted in activities and the huge of the company and/or the establishment, and caring about other persons that might be present;

the measures meant to organise the needed relationship with external services, specially about first aid, urgent medical assistance, of salvage and fire combat;

of having recourse on competence inside the company or the establishment, external competence to the company or the establishment to organise protective and preventive actions;

appropriate training to all staff in the interest of its own health and security.

The safety delegates shall ask the employer to take appropriate measures and to make propositions to avoid all possible risks for the staff members or eliminate all sources of danger.

Section 3. - Equality Delegate

Art. L. 414-3. (1) Each principal delegation and, as appropriate, each divisional delegation shall designate immediately after their introduction and for the length of their mandate from among its members one equality delegate.

(2) The equality delegate has as a mission to defend the equality in treatment between female and male vague earners of the establishment in which concerns the access to work, training and professional promotions as well as salary and working conditions.

In this context, and without prejudice to other duties assigned to it by specific legislation the equality delegate, as single delegate or together with the staff delegation, according to their mission, shall in particular

give his opinion and make proposals on any matters concerning, directly or indirectly, to any of the above mentioned domains;

propose to the employer actions to sensibilise the personnel of the establishment;

prepare and forward to the employer a plan of measures in order to promote the equality in chances between women and men as covert by art. L. 241-2. paragraph (2);

forward any claims, either individual or collective, concerning equality between men and women to the employer;

prevent and settle any conflicts, either individual or collective, which may arise between the employer and the personnel of the establishment, concerning equality between men and women;

refer, should no settlement of the aforementioned conflicts be reached, to the Labour and Mines Inspectorate any complaint or comment;

convene once a year, separately, the staff of each sex;

supervise the training of apprentices of the establishment in matters of equality;

co-operate in determining and implementing apprenticeship schemes;

organise, intended to all staff, in an appropriate room, a consultation for personnel of the establishment either outside or inside normal working hours. In second case, the equality delegate has to get an agreement with the employer about time and modalities of organising these consultations, which time has to be deducted from the credit of paid hours described in paragraph (4) below;

give his opinion about any part-time job to be created in the establishment

(3) are applicable to the equality delegate the articles **Art. L. 415-1.**, **Art. L. 415-2.**, **Art. L. 415-5.** and **Art. L. 415-6.** paragraph (1).

(4) In order to realise all the missions defined in the article above, the credit of paid hours envisaged at the article **Art. L. 415-5.**, paragraph (2) of the delegation is raised by:

4 paid hours a month, if the establishment counts regularly between 15 and 25 personnel members

6 paid hours a month, if the establishment counts regularly between 26 and 50 personnel members

8 paid hours a month, if the establishment counts regularly between 51 and 75 personnel members

10 paid hours a month, if the establishment counts regularly between 76 and 150 personnel members

4 paid hours a week, if the establishment counts regularly more than 150 personnel members

The above credit of paid hours is for exclusive use by the equality delegate.

(5) The employer shall be obliged to allow the equality delegate the free time, called training leave, necessary to participate, without loss of remuneration in training schemes organised by the trade unions or specialised bodies at times falling within normal working hours aimed to improve their knowledge of the economic, legal, social and psychological aspects to execute his mission.

This way, the equality delegate has to be freed from any work during two half days of working time a year, without being deducted from annual paid leave. The period of training leave has to be considered as working time, remuneration of the delegates for this leave is paid by the State as far as the total number of staff in the establishment does not exceed 150 members.

Section 4. - Information Life of the Company

Art. L. 414-4. (1) The head of the company is required to communicate to the delegation any information likely to enlighten its members about the functioning and life of the company. This communication shall be made monthly in companies with a joint works council; in other company's it shall be made at the meetings with the establishment's management referred to in Article **Art. L. 415-6.**, paragraph (1).

(2) The head of the company shall communicate to the delegation all necessary information to enlighten its members about:

1. the risks for security and health as well as the measures and activities of protection and prevention concerning as well the company or the establishments in general as every type of workplace or function;
2. the measures of protection to take, and, if necessary, the protection equipment to use.

This same information has to be communicated to all employers of external personnel of the company and establishment working in the company. These staffs have to communicate the information to its personnel delegation.

(3) The head of the company shall inform and seek advice from the staff delegation and the equality delegate about the level, the structure and the possible development of employment in the establishment or company as well as the possibly foreseen measures of anticipations, mainly in what

threat of employment is concerned; thus he has to communicate to the staff delegation and the equality delegate twice a year statistics ordered by sex on employment, promotions, mutations, notices, remuneration and training of personnel members in the company.

(4) The head of the company shall inform and seek advice from the staff delegation about decisions which could possibly implicate important changes in the employment organisation or the employment contracts, amongst them, measures about mass dismissals and the maintenance of employments rights during company take-over.

(Act of November 11th 2009) “(5) The head of the company shall inform and seek advice from the staff delegation and the equality delegate about the signature of contracts of employmentaid (*appui-emploi*), contracts of initiation in employment (*initiation à l’emploi*) as well as contracts to the initiation of professional experience (*initiation à l’emploi-expérience*).“

Art. L. 414-5. Where the company is a joint stock company, the administration or management is obliged to inform the staff delegation in writing at least once a year on the company's economic and financial situation.

For this purpose it shall present to the delegation, after their presentation to the company's joint works council where such exists, an overall report on the activities of the company, its turnover, the overall results of production and operation, orders, any changes in its structure, the amount paid to staff as remuneration, and any investments made.

Section 5. - Postings of Communications by Staff Delegation

Art. L. 414-6. (1) Communications, reports and opinions of the staff delegation shall be posted freely on notice board reserved for the purpose, in as much as they are directly connected with its officially recognised duties.

(2) Delegates elected on a list presented by a nationally representative trade union organisation may, in addition:

freely post trade union communications on notice boards reserved for the purpose and separate from those referred to in paragraph (1) above; a copy of any such communication shall be forwarded to the head of the company at the same time as it is posted on the notice board;

freely distribute union publications and tracts to personnel members in the establishment on the premises and in places to be decided by common agreement with the head of the company;

collect, where appropriate, trade union dues within the establishment, as long as this does not disrupt the functioning of the establishment.

The same; shall apply to delegates elected on a list presented by a trade union organisation as defined in Article L.161-3, where they represent an absolute majority of the staff delegation's members.

Section 6. - Consult of Personal Files

Art. L. 414-7. All staff members shall be entitled to consult their personal files twice a year during working hours; on such occasions they may be accompanied by a member of the delegation who

shall be required to keep secret the content of personal files unless freed from this obligation by the concerned staff member.

Workers' comments on the content of their personal files must be included therein at their request.

Chapter 5. – Status of staff delegates

Section 1. - Delegates' obligations

Art. L. 415-1. Members of staff delegations shall remain bound by the internal regulations of the establishment.

By common agreement between delegates and the head of the establishment or his representative, they shall be entitled where necessary to leave their workplace without any loss of remuneration to carry out their statutory duties.

Art. L. 415-2. Members of staff delegations and the advisers referred to in article **Art. L. 412-2.** shall be bound to maintain professional secrecy in all matters concerning production processes. They shall further be bound to keep secret any information deemed confidential by the head of the company or his representative.

Delegation members who consider such confidentiality excessive may appeal within one full week to the Director of the Labour and Mines Inspectorate, whose decision on whether the information should be deemed confidential shall be final.

Section 2. - Duration of term of office

Art. L. 415-3. The term of office of a staff delegate ends:

in the event of non-re-election as full or substitute member, as soon as the new delegation is officially constituted;

where the person concerned ceases to be a member of a staff;

in the event of resignation;

where the trade union which put forward his candidature informs the head of the company and the delegation that the person concerned is no longer a member of that organisation;

in the event of death.

Art. L. 415-4. The substitute member shall take the place of the full member:

where the full member is prevented from attending to his duties;

where the term of office of the full member has ended for one of the reasons listed in points 2 to 5 in article **Art. L. 415-3.** above; in such an event the substitute member shall complete the term of office of the full member.

Section 3. - Performance of duties

Art. L. 415-5. (1) In connection with article **Art. L. 415-1.**, the head of the establishment shall be obliged to allow members of the delegation the time necessary for the performance of their duties and to remunerate such time as working time.

(2) Moreover, in establishments the represented staff members do not exceed 500, the head of the company shall allow staff delegates a total credit of paid hours in proportion to the number of staff they represent on the basis of a credit of 40 hours per week per 500 staff members represented.

For the purposes of the foregoing paragraph, fractions of hours equal to or greater than a half shall be rounded up to the nearest whole number; fractions of hours less than a half shall be rounded down to the nearest whole number.

(3) The head of the establishment shall be required to release from all work generally of whatever kind and grant permanent dispensation from work with maintenance of remuneration and, if appropriate, of entitlement to promotion and advancement to:

one delegate, where the number of staff represented by the delegation is between 501 and 750;

two delegates, where the number of staff represented by the delegation is between 751 and 1500;

three delegates, where the number of staff represented by the delegation is between 1501 and 3000;

four delegates, where the number of staff represented by the delegation is between 3001 and 5000;

five delegates, where the number of staff represented by the delegation is between 5001 and 7000;

one additional delegate for every additional 2000 staff members represented, where the number of staff members represented by the delegation exceeds 7000.

The delegates to be released from their work shall be chosen by means of a secret ballot by list by the members of the delegation according to the rules of proportional representation.

However, where the number of workers represented by the delegation is greater than 1500, the nationally most representative trade union represented within the delegation and bound to the establishment by a collective labour agreement shall each designate one of the delegates to be released from their work, pursuant to this paragraph.

The delegation, on a decision taken by the absolute majority of its members, may decide to convert one or more of the delegates released in accordance with paragraph (1) into a credit of hours, on the basis of 40 hours per released delegate.

(4) The remuneration of members of delegations may not be less than that what they would have received if they actually worked during the hours spent on staff representation.

(5) An agreement between the head of the establishment and the staff delegation shall determine the measures needed to reinstate released delegates in their previous jobs or in equivalent jobs when their term of office ends.

Art. L. 415-6. (1) Staff delegations may meet once a month during working hours and must give 48 hours' notice to the management, unless a shorter period is agreed on; they must, however, meet

during working hours at least six times a year, three of which meetings must be with the establishment's management.

(2) Staff delegations may meet as often as is necessary for their efficient performance of their statutory duties.

(3) The central delegation shall meet during working hours as often as necessary.

(4) The time spent on meetings referred to in paragraphs (1) and (3) above has to be remunerated as working hours.

Art. L. 415-7. (1) Once a year the central delegation has to convene the members of principal delegations to hear, in the presence of the head of the company and the heads of establishment or their representatives, a report on the activities of the various principal delegations.

(2) At least once a year the principal delegations has to convene the members of divisional delegations to hear, in the presence of the head of the company and the heads of establishment or their representatives, a report on the activities of the various divisional delegations.

Art. L. 415-8. Once a year the principal staff delegation may hold a plenary assembly of the personnel of the establishment. The assembly, which shall meet in private, shall be convened by the chairman of the principal delegation.

The head of the company is invited to attend or to be represented there.

Art. L. 415-9. (1) The principal delegation may arrange times when the staff members of the establishment may consult the delegation in its office.

(2) Where the delegation includes one or more delegates released from their work in accordance with Article **Art. L. 415-5.(3)**, these delegates shall be available for consultation during working hours at times determined by the delegation and communicated previously to the head of the establishment.

(3) In establishments employing regularly more than 25 young personnel members, the young staff delegation may set aside one hour each week for young staff members to consult delegates in the presence of a member of the bureau of the principal delegation, who must be released from all work generally of whatever kind for the purpose.

(4) Delegations which do not include a released delegate may arrange times for staff to consult them either outside or during working hours; in the latter case, they must first reach agreement with the head of the establishment on times, practical arrangements and the number of hours consultation allowed, which number shall be deducted from the delegation's credit of paid hours.

Art. L. 415-10. (1) The employer shall be obliged to allow full staff delegates the free time, called training leave, necessary to take part without loss of remuneration in training schemes organised by trade unions or by specialised bodies at times falling within normal working hours aimed at improving their knowledge of the economic social and technical aspects of their role as staff representatives.

(2) In establishments employing regularly between 15 and 50 members of staff, full members of staff delegations shall have the right to one working week's training leave during their term of office, the corresponding remuneration is in charge of the State.

In establishments employing regularly between 51 and 150 members of staff, full members of staff delegations shall have the right to two working weeks' training leave during their term of office, the corresponding remuneration for one week's training leave is in charge of the State.

In establishments employing regularly more than 150 members of staff, full members of staff delegations shall have the right to one working week's training leave per year.

(3) The period of training leave must not be deducted from annual paid leave; it shall be treated as working time.

Delegates must be allowed to take training leave by the head of the company at their request and within the limits set out in paragraph (2) above in order to attend approved training courses on a list drawn up each year by joint agreement between the professional organisations of employers and the nationally most representative trade union organisations.

Section 4. - Special protection against dismissal

Art. L. 415-11. (1) During their term of office full members and substitute members of the various staff delegations may not be dismissed; notification of dismissal from the employer to any such delegate or an instruction to attend an interview prior to dismissal shall be null and void. Within fifteen days of termination of the contract, the employee may submit to the president of the labour tribunal, who shall decide in urgent summary proceedings, having heard or duly convened the parties, a simple application to have the dismissal set aside and the maintenance of the contract or his reinstatement ordered, in accordance with the provisions of Article L. 124-12. The order of the president of the labour tribunal shall be immediately enforceable; it may be appealed against by simple application within forty days of its notification by the registrar, before the presiding judge of the court of appeal responsible for appeals involving labour legislation. A decision shall be made in urgent proceedings, the parties having been heard or duly convened.

(2) Nevertheless, in the event of serious misconduct (*faute grave*), the head of the company shall have the possibility of ordering the immediate suspension of the person concerned pending the final decision of the labour tribunal on the application to terminate the employment contract.

Where the labour tribunal refuses to grant such an application, the suspension shall be set aside and its effects automatically cancelled out.

(3) Within eight days of the notification of suspension or of improper dismissal, the delegation member concerned may submit to the president of the labour tribunal, who shall decide in urgent summary proceedings, having heard or duly convened the parties, whether the delegation member's remuneration should continue to be paid or should be suspended, pending final settlement of the dispute. Appeal may be made against this decision on the same conditions as against the decisions of the labour tribunal; the decision is immediately enforceable, if need be on the basis of the original judgement before it is registered.

In the event of improper dismissal not accompanied by suspension under the conditions set out in paragraph (2) above, the president shall order the delegate's immediate reintegration in the company.

(4) Where the suspended delegate has taken up new paid employment, whether as an vague earner or as a self-employed person, the employer may apply to the president of the labour tribunal to have remuneration suspended.

Art. L. 415-12. The provisions of Article **Art. L. 415-11.** above shall be applicable to dismissals of former members of staff delegations in the six months immediately following the expiry or termination of their term of office and to candidates for staff delegations for a period of three months from the time of nomination. They shall also be applicable to delegates involved in a transfer of company or establishment where their term of office expires as a result of such transfer.

Chapter 6. - Operations and organisation

Art. L. 416-1. (1) The staff delegation shall appoint from among its members by secret ballot according to the system of relative majority a chairman, vice-chairman and secretary; in the event of a tied vote, the elder candidate shall be elected.

(2) For the purpose of dealing with day-to-day business and preparing meetings, the delegation shall also designate from among its members by secret ballot by list according to the system of proportional representation a bureau made up as follows:

3 members, where the delegation is made up of at least 9 members;

5 members, where the delegation is made up of at least 12 members;

7 members, where the delegation is made up of at least 16 members;

9 members, where the delegation is made up of at least 22 members.

(3) The chairman, the vice-chairman and the secretary shall automatically be members of the delegation's bureau.

In delegations with fewer than 9 members, the chairman or the vice-chairman shall automatically form the delegation's bureau.

Art. L. 416-2. (1) The subjects to be discussed by the staff delegation shall be set up in an agenda drawn up by the delegation's bureau and communicated to members at least five days before the meeting.

(2) The bureau shall be required to include on the agenda any matters specifically requested by at least one-third of the members of the delegation three days before the meeting. Should such a request be made after the agenda has been sent out to the members of the delegation, the chairman of the delegation must notify the members of the delegation of it within twenty-four hours.

Art. L. 416-3. (1) The staff delegation shall meet when convened in writing by its chairman.

(2) The chairman of the delegation must convene it at least six times a year.

(3) He shall also be required to convene the delegation whenever this is requested in writing by at least one-third of its full members; those making the request shall indicate the matters they wish to have included in the agenda for the meeting.

For the application of the foregoing paragraph, fractions equal to or greater than a half shall be rounded up to the nearest whole number, the fractions smaller than a half shall be rounded down to the nearest whole number.

(4) The head of the establishment or his representative may be invited by the delegation to take part in its discussions, but without being present when votes are taken.

(5) The minister who has the Labour in his attributions may convene the delegation for any purpose he may deem appropriate; he may also delegate to such meetings a civil servant of his choice, whose comments must be heard.

The head of the establishment or his representative must be invited to the meetings provided for in this paragraph.

Art. L. 416-4. Delegations shall meet in private.

Art. L. 416-5. (1) The decisions and resolutions of the staff delegation shall be taken by the majority of the members present.

(2) The secretary of the delegation shall keep minutes of each meeting.

The minutes of each meeting shall be read and approved at the start of the following meeting; a copy shall be forwarded to the head of the company.

The bureau of the delegation shall be responsible for issuing a statement, posted on the notice board referred to in Article **Art. L. 414-6.** (1).

Art. L. 416-6. The duties of delegates are entirely unpaid. However, the employer shall pay the accommodation and travel expenses incurred by members of the staff delegation directly in connection with the performance of their duties in the establishment, except those incurred in connection with the use of the training leave referred to in Article **Art. L. 415-10.**

Art. L. 416-7. Staff delegations' meetings and consultation sessions shall take place within the establishment in offices provided by the employer, who shall also meet the running costs and pay for heating and lighting.

Where the delegation includes one or more delegates released from their work in accordance with the provisions of article **Art. L. 415-5.** (3), the head of the establishment shall also be required to make available and equip a permanent office and, if appropriate, provide the necessary secretarial staff.

Chapter 7. - Final provisions

Art. L. 417-1. The provisions of the present Act shall not prevent the conclusion of agreements embodying clauses more favourable to the staff.

Art. L. 417-2. The Labour and Mines Inspectorate is responsible for supervising the application of this Act and the measures taken for its implementation.

Art. L. 417-3. (1) Disputes concerning persons eligible to vote and the proper conduct of electoral operations shall be the responsibility of the Director of the «Inspection du Travail et des Mines»; his decisions may be appealed against before the Administrative Court, hearing and deciding at last instance the merits. of the case.

(2) Unless decided otherwise, any disputes concerning the present Act and its implementing regulations, other than those referred to in the previous paragraph, shall be the responsibility of the Labour Court.

Art. L. 417-4. Any deliberate hindrance either to the setting up of a staff delegation or to the free appointment of its members or to its proper functioning or the designation of the equality delegate or the exercise of its mission shall be punishable by a fine of between 251 € and 15.000 €.

Anyone not fulfilling the obligations set out in Articles **Art. L. 414-7.** and **Art. L. 415-2.** of the present Act is liable to the penalties prescribed in Article 458 of the Criminal Code.

In the event of similar offence within two years of a conviction, the maximum penalties provided for in the previous paragraphs may be doubled; moreover, in the case of an offence under the first paragraph, a prison sentence of between 8 days and 3 months may be imposed.

Co-ordinated text of the amended Grand-Ducal Regulation of 21st September 1979 on electoral operations to designate staff delegates.

Last update August 2008 by the Service of Staff Representations of the Labour and Mines Inspectorate

(MEMORIAL A 1979, p. 1458)

amended by the GD Regulation of 13th June 1988(MEMORIAL A 1988,p. 564)

amended by the GD Regulation of 13th July 1993(MEMORIAL A 1983,p. 1007)

amended by the GD Regulation of 17th July 2008.....(MEMORIAL A 2008,p.1515)

Chapter 1. - Organisation of elections (Art. 1)

Chapter 2. - Compilation of electoral lists (Art. 2 –3)

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Chapter 1. - Organisation of elections

Art. 1. (1) Elections to designate staff delegates shall be organised and directed by the head of the establishment or by a person he shall delegate for this purpose.

(2) They shall be held between 15 October and 15 November in each fifth calendar year on a date fixed for all renewals in regulation by the Minister for Labour, published in the Mémorial.

(3) The Minister for Labour may, however, order the full renewal of a staff delegation outside the period referred to in paragraph (2) above whenever the number of members on a list is no longer sufficient and there are no further substitute members to take up the vacant seat(s).

Elections must also be organised outside the period referred to in paragraph (2) above where the staff of an establishment reaches the minimum number required for setting up a staff delegation and if the Director of the « Labour and Mines Inspectorate does order so, in the event of failure on the part of a head of the establishment to fulfil the obligation to have the delegation(s) required by law set up.

Chapter 2. - Compilation of electoral lists

(Grand-Ducal Regulation of 17th July 2008) “**Art. 2.** The head of the establishment or his delegate shall compile for each election separately alphabetical lists of those staff members who meet the requirements for voting and standing for elections.

He shall also compile a separate alphabetical list of those young workers who meet the conditions for voting and standing for elections as young workers' delegates.”

Art. 3. (1) At least one month before the elections the head of the establishment or his delegate must post notices informing the staff of the establishment of the date and place of the elections and of the time at which ballot shall begin and end. Between the beginning and the end of voting operations there must be sufficient time - which may not be less than one hour - for each voter to cast his vote. The notices shall as well indicate the number of staff delegates to be elected, the place where any interested party may find the posting with the names of candidates and the conditions of passive voting rights.

(2) Three weeks before election day, the head of the establishment or his delegate shall make the alphabetical lists referred to in Article 2 available for inspection by any interested party.

On the same day at the latest, notices shall be posted informing the staff that any complaint concerning the lists as published must be made to the head of the establishment within three working days after publishing date.

(3) A copy of the alphabetical lists and the notice shall be forwarded to the Labour and Mines Inspectorate on the day they are published.

Chapter 3. - Nominations

Art. 4. (1) Where elections are held according to the proportional voting system, nominations shall be submitted in the form of lists; any individual nomination shall be deemed to constitute a separate list of its own.

(2) Where elections are held according to the relative majority system, nominations shall be submitted for individual candidatures.

(3) Each list and each individual nomination must be accompanied by a signed declaration in which the candidate(s) state that they accept their nomination.

(4) The lists or individual nominations must be forwarded to the head of the establishment or his delegate no later than six o'clock in the evening on the fifteenth calendar day before the start of voting. No nomination shall be admissible after this deadline.

(Grand-Ducal Regulation of 17th July 2008) **Art. 5.** (1) Where elections are by list according to the proportional voting system, lists of candidates may be presented by:

the nationally most representative trade unions described in article L. 161-5. of the “Code du Travail”;

trade unions justifying a representativity in an important defined economic sector such as described in article L. 161-6. of the “Code du Travail”;

trade unions as defined in article L. 161-3. of the “Code du Travail”, provided such organisations represent an absolute majority of members of the outgoing delegation when nominations are made;

any group of staff members of the establishment representing at least 5% but not more than 100 members of the workforce to be represented.

Where a list is presented under a mixed title by one or more nationally representative trade unions in conjunction with a trade union as defined in article L.161-3 of the “Code du Travail”; the latter shall not be required to satisfy the conditions prescribed in part 4 of the previous paragraph.

(2) Where elections are held according to the relative majority system, nominations may be submitted by:

the nationally most representative trade unions such as described in article L. 161-5. of the “Code du Travail”;

trade unions justifying a representativity in an important defined economic sector such as described in article L. 161-6. of the “Code du Travail”;

trade unions as defined in article L. 161-3. of the “Code du Travail”, provided such organisations represent an absolute majority of members of the outgoing delegation when nominations are made;

five electors.

As an exception to part 3 of the previous paragraph, nominations for the designation of young staff delegates shall be admissible where they are made by three young people entitled to vote in the relevant election.”

Art. 6. (1) Each list of candidates shall bear the name of an agent whom the persons presenting the list have chosen to submit the list to the head of the establishment or his delegate; the list may be submitted by registered letter no later than two days before the date referred to in Article 4. (4), as attested by the postmark.

(2) Each list must bear a title; in the event of different lists bearing the same title, the agents shall be invited to establish the necessary distinctions, failing which, the head of the establishment or his delegate shall assign a distinguishing letter to each list; this must be done before the deadline for nominations.

(3) The list shall indicate in alphabetical order the surnames, first names and occupations of candidates with the name of the trade union organisation or group of electors nominating them.

(4) No-one may appear on more than one list as either candidate, nominator or agent. Should a candidate be nominated on more than one list, the list bearing the earliest date shall alone be valid; should all lists bear the same date, all shall be null and void.

(5) A list may not include more candidates than the number of full and substitutes delegates to be designated.

Art. 7. The head of the establishment or his delegate shall register the lists or individual nominations in the order in which they are submitted. He shall refuse to register any list or any individual nomination which does not comply with the present regulation.

Chapter 4. - Composition and publication of lists of candidates

Art. 8. On expiration of the period referred to in Article 4. (4) of the present regulation, the head of the establishment or his delegate finalises the list of candidates.

(2) Where the number of candidates does not exceed or is lower than the number of full and substitute delegates to be elected, such candidates shall be declared elected without further

formality, provided always that only one list of candidates has been presented and that the agent for that list has expressly designated both the full delegates and the substitute delegates in the order in which they are to replace the full delegates.

The head of the establishment or his delegate shall draw up a written report accordingly.

Art. 9. If no valid nomination is received within the period provided for in Article 4. (4) of the present regulation, or if there are fewer candidates than seats to be filled, the head of the establishment or his delegate shall so inform the electors and, where appropriate, the agents of lists and grant three days grace.

(2) If, on expiry of the grace period provided for in the previous paragraph, no valid nomination has been received, the head of the establishment or his delegate shall draw up a written report to that effect and shall transmit it with the relevant documents to the Director of the Labour and Mines Inspectorate; the full and substitute delegates shall then be designated ex officio by the Minister for Labour from among the eligible workers of the establishment, on a proposal from the Director of the Labour and Mines Inspectorate.

Art. 10 (1) The valid nominations must be posted on the notice-board for the three working days immediately preceding the ballot, except in the case of postal voting, where the Minister for Labour may order a longer period.

(Grand-Ducal Regulation of 13th June 1988) “(2) Where the election is held according to the proportional voting system, the notice shall indicate on a single sheet and in big letters the surnames, first names and occupations of the candidates on all the valid lists registered.”

(Grand-Ducal Regulation of 13th July 1993) “For each list the order of nomination of candidates shall be maintained. The lists is headed by the number given to the professional organisation which presented it, as of disposals of the Grand-Ducal Regulation of 13th June 1993 concerning the allocation of a common number of classification for the lists of candidates presented by a same professional organisation, a same trade union or group of staff members for the elections of professional chambers, sickness fund and staff delegations.

The trade unions or group of staff members concerned by article 5. (1) who did not ask or were not given a common number of classification as of the Grand-Ducal Regulation above mentioned have to use the number of classification allocated to them by the Director of Labour and Mines Inspectorate on simple request.”

(3) Where the election is held according to the majority system, the notice shall indicate on a single sheet and in big letters the surnames, first names and occupations of all the candidates validly nominated, whether by themselves or by others. The candidates shall be listed in alphabetical order.

(4) The notice shall also give the necessary instructions for voters.

Art. 11. *(abolished by the Grand-Ducal Regulation of 13th June 1988)*

Chapter 5. - Preparation of ballot papers

Art. 12. After finalising the lists of candidates and posting notice of the nominations, the head of the establishment or his delegate shall immediately prepare the ballot papers.

Ballot papers shall be identical to the notice except that they may be smaller and shall not include the instructions for voters. They shall indicate the number of full and substitute delegates to be elected.

Art 13. (1) Where the election is to be held according to the proportional voting system, each list shall be headed by a box reserved for the vote. There shall be two other boxes after the surnames and first names of each candidate. The box at the top of the list shall be black and have in its centre a small circle the same colour as the paper.

(2) Where the election is to be held according to the majority system, there shall be only one box after the surname and first names of each candidate. There shall be no box at the top of the list.

Art. 14. The ballot papers used in any given ballot must be identical as regards paper, layout and printing.

The use of any other ballot papers shall be prohibited.

Ballot papers must be stamped on the reverse before voting, using a stamp made available by the head of the establishment.

Chapter 6. - Constitution of the electoral office

(Grand-Ducal Regulation of 17th July 2008) “**Art. 15.** (I) On election day there shall be set up a main electoral office, and, if needed, supplemental electoral offices, comprising each a chairman and two assessors.

The head of the establishment or his delegate shall act as chairman.

A representative of the head of establishment will act as chairman of each supplemental electoral office.

At each time, two staff members, to be designated by the outgoing delegation, shall act as assessors.

If the outgoing delegation fails to designate assessors and if a new delegation is being installed, the assessors shall be designated from among the electors by the head of the establishment or, in the event of disagreement, by the Director of the Labour and Mines Inspectorate.

(2) However, no outgoing full or substitute staff delegate and no new candidate for election as a staff delegate can be an assessor.”

Art. 16. The members of the electoral office shall be required to count faithfully the votes cast and to preserve the secrecy of the ballot.

Chapter 7. - Voting procedure

Art. 17. (1) Staff delegates shall be elected by secret ballot by the staff of the establishment. As the voters arrive, one of the assessors shall mark off their names on the alphabetical lists drawn up by the head of the establishment or his delegate.

On arrival each voter shall receive from the president a ballot paper folded in four at right angles and stamped on the reverse.

(2) Any voter inadvertently spoiling the paper given to him can ask the president for another and hand back the original paper, which shall be destroyed forthwith.

Art. 18. After voting the voter shall show the president his voting paper properly folded in four again, with the stamp on the outside, and place it in the ballot box.

Proxy votes shall not be allowed. The ballot paper must be handed in by the voter in person; it must neither be handed in by a third party nor posted except where postal voting has been authorised by a decision of the Minister for Labour following the request from the head of the establishment or the delegation made no later than one month before the date of the election.

Chapter 8. - Rules governing elections

Art. 19. Elections shall be by the list system of proportional representation.

However, in establishments with fewer than 100 staff members, voting shall be by the relative majority system; the same shall apply for the designation of young workers' delegates.

Art. 20. (1) Each voter shall have as many votes as there are full and substitute delegates to be elected.

(2) Where the election is by the proportional voting system, the voter may give two votes to each candidate, up to the total number of votes he holds.

Voters filling in or marking the circle in the box at the top of a list shall vote for the list in its entirety and shall give only one vote to each candidate on the list.

Each cross (+ or x) marked in one of the boxes after the name of a candidate shall count as a vote for that candidate.

(3) Where the election is by the majority system the voter may give only one vote to each candidate, up to the total number of votes he holds; he shall do so by marking a cross (+ or x) in the box after the name of the candidate.

(4) Any circle filled in, even incompletely, and any cross, even roughly drawn, shall constitute a valid vote, unless it is obviously intended to make the voting paper recognisable.

Any cross marked elsewhere than in the proper box shall invalidate the ballot paper.

Voters must refrain from entering any other mark, signature, crossing-out or symbol on the ballot paper.

Art. 21. Voters may cast all their votes in favour of one of the lists or share them among various lists.

Chapter 9. - Counting of the votes

Art. 22. At the appointed time for the close of voting, the ballot box shall be opened by the president in the presence of the two assessors.

Art. 23. The electoral office shall count, without unfolding, the ballot papers in the ballot box.

The number of voters and the number of ballot papers shall be recorded. Before unfolding the voting papers, the president shall shuffle them.

Art. 24. The votes cast in favour of a complete list (list votes) or individual candidates (personal votes) shall count both for the list in calculating the proportional distribution of seats to each list, and for candidates in allocating seats within each list. A vote cast in the box placed at the top of a list shall count for as many list votes as there are candidates on this list.

Art. 25. The president shall announce the number of list votes and personal votes. The two assessors shall each count the votes and shall make separate note thereof.

Art. 26. Spoilt ballot papers shall be disregarded in calculating the number of votes cast. The following shall be deemed spoilt:

any ballot papers other than those handed to voters by the president;

ballot papers casting more votes than there are delegates to be elected and those on which no vote is cast;

ballot papers whose shape and size has been altered, which enclose a paper or other object; of any kind or where the voter could be identified by a sign, crossing-out or mark of any kind.

Art. 27. The electoral office shall determine the number of voters, the number of spoilt papers (including blank papers) and the number of valid papers, the number of list votes obtained by each list of candidates and the number of personal votes obtained by each candidate. All this shall be entered in the record.

Art. 28. When all the papers have been counted, the assessors shall examine them and make any comments or complaints.

Papers which are disputed shall be added to the valid papers if they have been accepted as such by the electoral office.

Cancelled or disputed papers, other than blank papers, shall be initialled by the members of the bureau.

Complaints and the decisions of the electoral office shall be noted in the record.

Chapter 10. - Allocation of seats

Section 1. - Election by proportional voting system

Art. 29. To determine the distribution of seats, the total number of valid votes gained by the various lists shall be divided by the number of full delegates to be elected plus 1.

The term "electoral number" shall mean the whole number immediately above the quotient thereby obtained.

Each list shall be allocated as many full delegates' seats and as many substitute delegates' seats as the number of times the "electoral number" is contained in the number of votes gained by the list.

A list which fails to secure at least 5% of the valid votes cast shall be disregarded in the distribution of seats.

Art. 30. When the number of full and substitute delegates thereby elected is lower than the total number of full and substitute delegates to be elected, the number of votes for each list shall be divided by the number of full delegates' seats already obtained, plus 1. The full delegate's seat and the corresponding substitute delegate's seat shall be allocated to the list which obtains the highest quotient. The same process shall be repeated if more seats remain to be filled.

In the event of equal quotients, the full delegate's seat and the substitute delegate's seat shall be allocated to the list obtaining the highest number of votes.

Art. 31. The seats of delegate and substitute delegate shall be allocated, within each list, to the candidates obtaining the highest number of votes.

The seats of substitute delegate shall be allocated to the candidates who, by the number of votes they have obtained, come next in line after the actual delegates.

Art. 32. Where the number of candidates exceeds the number of members to be elected, those who have obtained the most votes are elected.

Section 2. - Election by majority voting

Art. 33. Where the election is held according to the relative majority system, those obtaining the most votes are elected.

Section 3. - Common provisions

Art. 34. In the event of a tied vote, the elder candidate shall be elected.

Art. 35. A record of the electoral operations and the results of the ballot shall be drawn up and signed forthwith by the president and the assessors; a copy shall be forwarded to the Labour and Mines Inspectorate.

Art. 36. The names of the full and substitute delegates elected shall be posted on the establishment's notice-board for the three days following election day.

The same shall apply for the names of representatives declared elected or automatically designated pursuant to Article 9. (2) of this regulation.

Art. 37. Should a candidate who is elected refuse to take up office, he must duly inform the president within six days of the date of the announcement of the result of the elections. He shall then be replaced by the person who on the list obtained the next highest number of votes and the number of substitutes shall be made up, as necessary, by the next candidate not elected with, after him, the highest number of votes.

These facts shall be notified to the staff in the same way and within the same time limits as for the announcement of the result of the elections.

Thereafter, the number of substitutes may no longer be made up.

Art. 38. The delegation must not be installed until fifteen days have elapsed from the last day of posting of the results of the election or, in the event of dispute, until the Director of the Labour and Mines Inspectorate gives his decision.

Chapter 11. - Complaints concerning elections

Art. 39. Complaints concerning the electorate and the regularity of the electoral operations must be submitted by registered letter to the Director of the Labour and Mines Inspectorate who shall give a reasoned decision urgently and at any event within fifteen days after having heard or duly convened the party or parties concerned.

They shall be admissible only if they are made within fifteen days following the last day on which the result of the elections are to be posted pursuant to Article 36.

Art. 40. Within fifteen days of their notification, the decisions of the Director of the Labour and Mines Inspectorate may be appealed against before the *Litigation Division of the Conseil d'État**, hearing the matter as an urgent case and at any event within a month and decide at last instance the merits of the case.

The appeal shall have a suspensory effect.

Art. 41. If the election is declared null and void by the Director of the Labour and Mines Inspectorate or, in the event of an appeal, by the *Litigation Division of the Conseil d'Etat**, new elections must be held within two months of the date on which the first election was annulled.

Chapter 12. - Final provisions

Art. 42. Documents concerning the elections shall be kept by the staff delegation until its term of office expires.

All the expenses occasioned by the elections shall be met by the company.

Art. 43. The time limits provided for in this regulation shall be extended to the first working day thereafter where the last day of the time limit is a Sunday, a statutory holiday or a day not worked in the establishment.

Art. 44. For the calculation of the number of workers regularly employed in the establishment, account shall be taken of those workers employed permanently by the establishment during the twelve months preceding the one in which notice of the date of the election is posted.

* The italic words should be replaced as of the Act of 7th November 1996 by “administrative court”