

## PART II – LEGISLATION

The Law of 23 July 2015 on reform of the social dialogue entered into force on 1 January 2016.

However, some of its articles will not take effect until the next social elections.

In parallel, some of the former articles have continued to apply to those delegations and joint committees which were in place at the time of the entry into force of the new legislation, pending the next elections.

This document is designed to consolidate the main provisions applying in relation to staff delegations in Luxembourg undertakings with effect from the next social elections.

N.B.: This consolidated text has been prepared by FEDIL for information purposes.

Only the texts published in the *Mémorial* [Official Gazette] are authentic and legally binding.

## BOOK IV. – STAFF REPRESENTATION

### TITLE ONE – Delegations

#### Chapter I – Setting-up of delegations

##### Section 1. – Staff delegations

Art. L. 411-1. (1) All undertakings, irrespective of the nature of their activities, legal form and area of business, are required to arrange for the designation of staff delegates where, during the 12-month period prior to the first day of the month in which the poster announcing the elections is displayed, they have employed at least 15 staff pursuant to a contract of employment.

The same shall apply in respect of any public sector employer employing, during the 12-month period prior to the first day of the month in which the poster announcing the elections is displayed, at least 15 staff bound by an employment contract, other than those whose employment relationship is regulated by a special set of staff regulations not governed by private law, notably by staff regulations governed by public law or the like, whose staff are public officials and/or public employees.

For the purposes of applying this Title, employees who joined an undertaking by virtue of a transfer of an undertaking or establishment, or of part of an undertaking or establishment, within the meaning of Book I, Title II, Chapter VII shall be deemed to have formed part of that undertaking from the date of their entry into service with their initial employer.

(2) All employees of the undertaking bound by a contract of employment, apart from those engaged pursuant to an apprenticeship contract, shall be taken into account for the purposes of calculating the number of staff working in the undertaking.

Employees working on a part-time basis who work for 16 hours or more per week shall be taken fully into account for the purposes of calculating the number of staff working in the undertaking.

In relation to employees whose working time is lower than the threshold set out in the immediately preceding subparagraph, the number of staff shall be calculated by dividing the total hours provided for in their employment contracts by the statutorily prescribed or collectively agreed working time.

Employees on a fixed-term contract and employees made available to the undertaking shall be taken into account for the purposes of calculating the number of staff working in the undertaking on a pro rata basis by reference to the

amount of time that they have been present in the undertaking during the 12 months prior to the date by which the electoral lists have to be drawn up.

However, employees on a fixed-term contract and employees made available by another undertaking shall be left out of account for the purposes of calculating the number of staff where they replace an absent employee or an employee whose contract of employment has been suspended.

Art. L. 411-2. For the purposes of calculating the number of staff working for the employer on a temporary basis, there shall be taken into account, first, the permanent employees of that undertaking and, second, employees bound to it by placement contracts for a total period of at least ten months over the course of the year prior to the date of the computation.

## Section 2. – Delegations at the level of economic and social entities

Art. L. 411-3. (1) Where two or more undertakings within the meaning of Article L. 411-1 constitute an economic and social entity as defined in Article L. 161-2 of the *Labour Code*, a delegation may, upon application by at least two of the delegations comprised in the entity, be set up at the level of the economic and social entity.

Such applications must be made within three months following the elections of the staff delegations and must be addressed to the respective employers in the entities concerned.

Where the merits of such an application are contested by one or more employers or by one or more delegations acting by a majority decision, the matter may be referred to the mediation bodies provided for by Article L. 417-3.

The delegation at the level of the economic and social entity shall represent the interests of all employees working in the various undertakings comprised in that economic and social entity.

It shall have no remit other than the exchange of information between the different staff delegations from which it emanates.

It shall be composed of full members and substitute members of the staff delegations of each of the separate undertakings having a delegation within the meaning of Article L. 411-1.

The number of delegates per undertaking shall be commensurate with the number of staff employed by the undertaking concerned:

- for undertakings employing between 15 and 100 staff: one full delegate and one substitute delegate;
- for undertakings employing between 101 and 500 staff: two full delegates and two substitute delegates;
- for undertakings employing more than 500 staff: three full delegates and three substitute delegates.

The members of the delegation at the level of the economic and social entity shall be elected by the staff delegations in accordance with the relative majority system on the basis of a list-based secret ballot, from amongst the members of which they are composed.

(2) Where, amongst the undertakings constituting an economic and social entity, there are one or more undertakings employing fewer than 15 staff and not having a staff delegation, a representative shall be appointed by all of the employees working for that undertaking or those undertakings, to take part in meetings of the delegation at the level of the economic and social entity.

That representative shall be entitled to one half of the hours of training provided for by paragraph (1) of Article L. 415-9.

(3) Where at least three undertakings each employing fewer than 15 staff constitute an economic and social entity and together employ at least 15 staff, an application for the setting-up of a delegation at the level of the economic and social entity may be made to the *Inspection du travail et des mines* [Labour and Mines Inspectorate] by at least 15 employees.

The *Inspection du travail et des mines* shall fix the date of those elections, which shall take place in accordance with the relative majority system.

Where the merits of such an application are contested by one or more employers or by one or more employees, the matter may be referred to the mediation bodies provided for by Article L. 417-3.

The delegation thus elected shall be subject to the same statutory provisions as the staff delegation referred to in Article L. 411-1, apart from those contained in Sections 3, 4, 5 and 6 of Chapter IV, and its members shall have the same rights and duties as the members of the latter, apart from the right to training, which shall in all cases correspond to the maximum entitlement of a substitute delegate.

## Chapter II. – Composition of the staff delegation

Art. L. 412-1. (1) Without prejudice to the provisions of Article L. 411-1, the numerical composition of staff delegations shall be commensurate with the number of employees whom they represent:

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

(2) Staff delegations shall in addition comprise the same number of substitute members as full members.

(3) Where the staff delegation comprises only one full member, the substitute member shall be automatically authorised to attend meetings.

Art. L. 412-2. (1) In undertakings employing at least 51 staff during the 12-month period preceding the first day of the month in which the poster announcing the elections is displayed, advisers, whether or not they form part of the staff of the undertaking, may participate in a consultative capacity, for the purpose of considering specific questions, in meetings of staff delegations, where a majority of the delegates so requests, provided that the number of such advisers may not exceed one third of the members comprising the delegation.

(2) In undertakings employing between 51 and 150 staff during the 12-month period preceding the first day of the month in which the poster announcing the elections is displayed, trade unions representing members on a general national or sectorial level pursuant to Articles L. 161-4 and L. 161-7, and having at least one third of the full delegates elected, shall be entitled to propose advisers.

In undertakings employing over 150 staff during the 12-month period preceding the first day of the month in which the poster announcing the elections is displayed, trade unions representing members on a general national or sectorial level as referred to above and which obtained at least twenty per cent of the posts up for election at the last elections shall each be entitled – by way of exception, as the case may be, to the limit laid down in paragraph (1) – to propose one of the advisers.

The delegation shall designate the advisers, who shall be entitled to attend meetings of the delegation, where necessary or appropriate on the basis of the proposals submitted to it in accordance with the foregoing subparagraphs.

Where the total number to be designated exceeds that of the advisers thus appointed, the staff delegation may approve additional advisers within the limits of paragraph (1).

To that end, trade unions representing members on a general national or sectorial level as referred to above and having at least one third of the full delegates elected shall be entitled to make proposals.

(3) The delegation may decide to designate an external expert where it considers that the matter is decisive for the undertaking or the employees. Unless otherwise agreed in advance, the undertaking's obligation to defray the financial cost thereof shall be limited to one expert and may not exceed, per mandate year and per expert, a percentage of the total annual wage bill in respect of the employees, as declared by the employer to the *Centre commun de la sécurité sociale* [Joint Social Security Centre] during the course of the year preceding the decision on the mandate, to be determined by Grand-Ducal Regulation. The head of the undertaking must be informed in advanced of the nature of the mandate thus conferred.

(4) In undertakings having a staff delegation, that delegation may decide, upon request by the delegates or the head of the undertaking, to refer specific questions for joint consideration by an employers' professional organisation and a trade union representing members on a general national or sectorial level pursuant to Articles L. 161-4 and L. 161-7.

(5) For the purposes of applying the foregoing paragraphs, fractions equal to or greater than one half shall be rounded up to the immediately higher unit, and fractions which are less than one half shall be rounded down to the immediately lower unit.

### Chapter III. – Designation of staff delegates

#### Section 1. – Designation modalities

Art. L. 413-1. (1) Full and substitute staff delegates shall be elected by a secret ballot using ballot boxes, in accordance with the proportional representation rules, by the employees of the undertaking from lists of candidates presented either by a trade union representing members on a general national level pursuant to Article L. 161-4 or by employees of the undertaking accounting for at least five per cent of the total number of staff, but not exceeding one hundred.

However, in undertakings employing fewer than 100 staff, the ballot shall take place in accordance with the relative majority system.

Trade unions representing members on a sectorial level shall be authorised to present lists in the sectors where their representativeness is recognised pursuant to Article L. 161-6.

By way of derogation from the first subparagraph, a list of candidates may also be presented by a trade union organisation meeting the definition contained in Article L.161-3, to the extent that that organisation represented an absolute majority of the members of which the previous delegation was composed.

(2) Lists may not contain a greater number of candidates than there are full and substitute mandates to be conferred.

(3) No candidate appearing on a list shall be elected where the list does not attract at least five per cent of the votes cast.

(4) The rules governing ballots and electoral disputes shall be laid down by Grand-Ducal Regulation.

(5) Upon request by the head of the undertaking or the staff delegation, the Minister responsible for employment matters may authorise, on such conditions and in accordance with such modalities as he or she may determine, postal voting for employees who are absent from the undertaking on the day of the ballot for reasons directly connected with the organisation of work in the undertaking or on account of sickness, an accident at work, maternity or leave.

(6) Where the number of candidacies submitted does not exceed the number of full and substitute delegates to be elected, and the candidates agree on the designation of the full and substitute delegate(s) and the order in which the substitute(s) is/are to be called upon to replace the full delegate(s), they shall be declared automatically elected.

The head of the undertaking or a person delegated by him or her in that regard shall draw up an official record thereof, which shall be communicated by him/her, by no later than the date fixed for the elections, to the *Inspection du travail et des mines* via the electronic platform designed for that purpose.

(7) Where no candidates are put forward, the head of the undertaking or a person delegated by him or her in that regard shall draw up an official record to that effect, which shall be communicated by him/her, by no later than the date fixed for the elections, to the *Inspection du travail et des mines* via the electronic platform designed for that purpose. The *Inspection du travail et des mines* shall carry out an investigation within the undertaking.

Upon a proposal by the Director of the *Inspection du travail et des mines*, the full delegates and, as the case may be, the substitute delegates shall then be automatically designated by decree of the Minister responsible for employment matters from amongst the eligible employees of the establishment, within two months following the date of the elections.

Art. L. 413-2. (1) Members of staff delegations shall be appointed for a term of five years and shall be eligible for re-election.

(2) Delegations shall be renewed in full between 1 February and 31 March in every fifth calendar year on a date fixed for all renewals by the Minister responsible for employment matters and published in the *Journal officiel du Grand-Duché de Luxembourg* [Official Journal of the Grand Duchy of Luxembourg].

(3) However, the Minister responsible for employment matters may, on advice from all trade unions representing members on a general national or sectorial level pursuant to Articles L. 161-4 and L. 161-7 and which are represented within the delegation elected, arrange for the staff delegation to be renewed in full outside the period referred to in paragraph (2) as soon as the full members appearing on a list cease to be sufficient in number and there are no more substitute members to occupy the vacant seat or seats.

Similarly, elections must be organised outside the period referred to in paragraph (2) where the number of employees of the undertaking reaches the effective minimum required for the setting-up of a staff delegation.

The mandate of a staff delegation set up or renewed in the circumstances provided for in the first and second subparagraphs shall expire along with those of the delegations set up in accordance with paragraph (2), unless this results in the term of its mandate being less than one year, in which case its mandate shall be extended for a further period of five years.

(4) The staff delegation set up shall continue to exercise its functions, until the expiry of its mandate, in the composition given to it by the elections, notwithstanding any change in the number of staff.

(5) In the case of a transfer of an undertaking or establishment, or of part of an undertaking or establishment, within the meaning of Book I, Title II, Chapter VII, the status and function of the staff delegation shall subsist to the extent that the establishment retains its autonomy.

Where the undertaking or establishment, or the part of the undertaking or establishment, does not retain its autonomy, the members of the staff delegation shall automatically form part of the staff delegation of the entity which takes on the employees transferred.

The delegation as thus enlarged shall proceed, within one month following the transfer, to designate a chair, a vice-chair, a secretary and a board, in accordance with Article L. 416-1. The exceptional composition of the staff delegation shall come to an end on the first occasion of its being renewed.

Where the employees of an undertaking or establishment, or of part of an undertaking or establishment, which does not retain its autonomy are taken on by an entity which does not have a staff delegation, the staff delegation of the transferred entity shall serve as a joint delegation.

## Section 2. – Conditions in respect of the electorate

Art. L. 413-3. Employees shall participate in staff delegation elections without distinction as to their nationality, provided they have reached the age of sixteen years, are bound to the establishment by a contract of employment or an apprenticeship contract and have been working in the undertaking for at least six months as at the date of the election.

Art. L. 413-4. (1) In order to be eligible, employees must fulfil the following conditions:

1. They must be at least eighteen years of age as at the date of the election;
2. They must have been working in the undertaking, without interruption, throughout the 12-month preceding the first day of the month on which the poster announcing the elections is displayed;
3. They must be either Luxembourg nationals or authorised to work on the territory of Luxembourg.

(2) Blood relations and relations by marriage, up to the fourth degree, of the head of the undertaking, its managers and executives and the head of its personnel department may not be elected as full or substitute members of a staff delegation.

Art. L. 413-5. Employees simultaneously working part-time in more than one undertaking shall be eligible only in the undertaking where they work the longest hours per week; where they work an equal number of hours in the undertakings concerned, they shall be eligible in the undertaking for which they can show that they have been working for the longest period of time.

Where the undertaking in which the employee would be eligible does not fall within the scope of the statutory obligation to set up a staff delegation, the employee shall be eligible in the undertaking subject to that obligation.

Art. L. 413-6. Temporary employees and workers made available to undertakings may not claim any right to vote or assert their eligibility to serve as staff delegates or as employee representatives on the board of directors of the undertaking using their services.

However, temporary employees and workers made available to undertakings may exercise, within the undertaking using their services, the right to submit complaints, the right to consult the staff delegates and the right to have access to personnel files concerning them in accordance with the provisions of this Title.

## Chapter IV. – Remit of the staff delegation

Art. L. 414-1. (1) Without prejudice to any more specific or restrictive provisions laid down in Articles L. 414-2, L. 414-3 and L. 414-5 to L. 414-7, the following expressions shall bear the following meanings:

– "information": the transmission by the employer of data to the staff delegation in order to allow them to be informed about the topic addressed and to consider it, at such time, in such fashion and with such content as is appropriate, so that the delegation is able, in particular, to properly examine the information and, where necessary, to prepare for consultation;

– "consultation": the exchange of views and the establishment of a dialogue between the staff delegates and the employer, taking place at such time, by such means and with such content as is appropriate, on the basis of the information supplied by the employer in accordance with the provisions of the previous indent, and of the opinion which the staff delegation is entitled to express, so as to enable the staff delegation to meet with the employer and to obtain a duly reasoned response to any opinion that it may issue, in particular with a view to reaching, as the case may be, an agreement on decisions falling within the powers of the employer.

(2) The social partners may, at any time and at such level as may be appropriate, including at the level of the undertaking, freely determine, by way of a negotiated agreement, the modalities for the provision of information to, and consultation of, the employees. Such agreements may lay down application provisions which are different from

those contained in Articles L. 414-3 and L. 414-5 to L. 414-7, provided that the principles enshrined in paragraph (3) of this Article are respected.

(3) When determining and implementing the modalities for the provision of information and consultation, the employer and the employees' representatives shall work together in a spirit of cooperation and respect for their reciprocal rights and obligations, taking into account both the interests of the undertaking and those of the employees.

(4) The provisions of paragraphs (1) to (3) of this Article and of Articles L. 414-3 and L. 414-5 to L. 414-7 shall not affect the procedures for the provision of information and consultation provided for by the legislation on employee representation on boards of directors and supervisory boards, on collective redundancies, on the safeguarding of employees' rights in the event of transfers of undertakings, on the European Works Council, on the involvement of employees in European companies, European cooperative societies or companies resulting from a cross-border merger, or any other statutory provisions.

#### Section 1. – General remit and right to receive information

L. 414-2. (1) The general mission of the staff delegation shall be to safeguard and defend the interests of the salaried staff of the undertaking in relation to working conditions, security of employment and employment status.

(2) In that context, and subject to any other powers and responsibilities reserved to it by other statutory provisions, the staff delegation shall in particular be called upon to:

1. prevent and settle, in a spirit of cooperation, any differences, whether individual or collective, that may arise between the employer and the employees;
2. submit to the employer any complaints, whether individual or collective;
3. where differences as referred to above cannot be resolved, refer to the *Inspection du travail et des mines* any complaint or observation concerning the application of statutory, regulatory, administrative and/or collectively agreed provisions relating to working conditions and/or the rights and protection of employees in the performance of their job.

(3) In the exercise of its remit, the staff delegation shall monitor strict compliance with the principle of equal treatment within the meaning of Title V of Book II as regards access to employment, vocational training and career advancement, as well as pay and working conditions.

(4) The head of the undertaking shall be required to communicate to the staff delegation all such information as is necessary for the proper performance of its task and which may enlighten its members regarding the functioning and life of the undertaking, including recent developments and the way in which its activities are likely to develop, as well as its economic situation.

Such information must be communicated upon request by the delegation or monthly in undertakings employing at least 150 staff.

In other undertakings, it must be communicated on the occasion of meetings with the management of the undertaking as referred to in Article L. 415-6(1).

(5) The head of the undertaking shall be required to communicate to the staff delegation and to the health and safety delegate all such information as its members may need concerning:

1. health and safety risks and protection and prevention measures and activities concerning both the undertaking generally and each type of job or function;
2. the protection measures needing to be taken and, where necessary, the protection equipment to be used;
3. changes in the rate of absenteeism.

The information in respect of points 1 and 2 must also be communicated to all employers of staff of external undertakings intervening in the undertaking; such external employers must forward the information to their own staff delegations.

(6) Where the undertaking has employed fewer than 150 staff during the 12-month period preceding the first day of the month in which the poster announcing the elections is displayed, the management shall be required to inform the staff delegation in writing, at least once per year, about the economic and financial development of the undertaking and about its recent and future activities.

To that end, it shall submit to the staff delegation a comprehensive report concerning the undertaking's activities, turnover, global production and operating results, orders, developments regarding the structure and amount of staff pay and investments made.

(7) Where the members of the staff delegation consider that the information provided is insufficient to enable it to fulfil the tasks set out in paragraph (2) of this Article and Article L. 414-3, they may request the head of the undertaking to supply additional information within the limits of the information that must be supplied to them pursuant to this Title.

## Section 2. – Provision of information and consultation concerning the life of the undertaking

Art. L. 414-3. (1) As regards information and consultation, the staff delegation shall be tasked with:

1. giving its opinion and putting forward proposals regarding any point which involves improving working and employment conditions and the employment situation of the staff of the undertaking;
2. giving its opinion concerning the drawing-up or modification of the internal rules of the undertaking and strictly monitoring the enforcement of those rules;
3. proposing modifications to the internal rules; in relation to those modifications, the management or, as the case may be, the persons attending the meeting provided for in Article L. 414-10 must take a decision within two months, which decision must be communicated immediately to the delegation;
4. in undertakings employing more than 100 staff, participating in the training of apprentices in the undertaking and the management of apprenticeship centres where these exist;
5. collaborating in the establishment and implementation of any basic vocational training scheme, including in particular apprenticeship schemes;
6. promoting the integration of persons disabled by accidents and handicapped persons, and working to create jobs appropriate to their physical and intellectual capacities;
7. participating in protection in the workplace and its environment and prevention of accidents in the workplace and occupational diseases;
8. participating in the implementation of the policy for preventing harassment and violence in the workplace;
9. giving its opinion prior to the setting-up, modification or discontinuance of a supplementary pension scheme;
10. giving its opinion on matters relating to working hours;
11. giving its opinion on plans for ongoing vocational training;
12. participating in the management of measures in favour of young persons and advising the employer on all matters relating to the working conditions and protection of young workers;
13. collaborating in the implementation of internal reclassifications;
14. promoting a healthy balance between family life and professional life.

(2) The head of the undertaking shall be required to inform and consult the staff delegation and the equality delegate regarding the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, notably where there is a threat to employment; in particular, he or she must, to that end, provide the staff delegation and the equality delegate every six months with statistics, broken down according to gender, on the recruitment, promotion, re-assignment, dismissal, pay and training of employees of the undertaking.

(3) The head of the undertaking shall be required to inform and consult the staff delegation on decisions likely to lead to substantial changes in work organisation or employment contracts, including those covered by the legislation on mass redundancies, the safeguarding of employees' rights in the event of transfers of undertakings and recourse to the services of temporary staff.

(4) The head of the undertaking shall be required to inform and consult the staff delegation and the equality delegate regarding the conclusion of employment support contracts and pre-employment contracts.



(5) The head of the undertaking shall be required to inform and consult the staff delegation on the management of company benefit schemes set up within the undertaking for the benefit of employees or their families, including measures aimed at ensuring or facilitating accommodation for employees.

To that end, the head of the undertaking shall provide the staff delegation, at least once per year, with a management report.

Where the employees make a financial contribution to the company benefit scheme, that management report must be formally approved by the staff delegation.

### Section 3. – Information and consultation in technical, economic and financial matters

Art. L. 414-4. The provisions of this section shall apply to undertakings employing at least 150 staff during the 12-month period preceding the first day of the month in which the poster announcing the elections is or displayed.

Art. L. 414-5. (1) The head of the undertaking must inform and consult the staff delegation in advance of any important decision concerning:

1. the construction, transformation or extension of production or administration installations;
2. the introduction, improvement, renewal or transformation of equipment;
3. the introduction, improvement, renewal or transformation of working methods and production processes, apart from manufacturing secrets.

(2) The head of the undertaking shall be required to inform the staff delegation about the impacts of the measures listed in paragraph (1) on working conditions and the working environment.

(3) Generally, the head of the undertaking must inform and consult the staff delegation, at least once per year, concerning the current and foreseeable needs in respect of the workforce within the undertaking and the measures, notably regarding basic training, advanced training and vocational retraining, which may result therefrom for the employees of the undertaking.

Art. L. 414-6. (1) The staff delegation must be informed and consulted with regard to any decision of an economic or financial nature which may have a decisive effect on the structure of the undertaking or the level of employment.

This covers, in particular, decisions concerning production and sales volumes, the planning and orientation of production, investment policy, any planned closure or transfer of the undertaking or parts thereof, plans to restrict or expand the activities of the undertaking, any planned merger of undertakings and planned changes to the way in which the undertaking is organised, or the setting-up, modification or discontinuance of a supplementary pension scheme.

(2) The provisions of this Article concerning information and consultation are compulsorily applicable to the repercussions of planned measures regarding the volume and structure of the workforce, as well as the employment and working conditions of the staff of the undertaking. In addition, they are applicable to social measures, including in particular vocational training and retraining measures taken or envisaged by the head of the undertaking.

(3) The information and consultation provided for by this Article must in principle take place prior to adoption of the decision envisaged. However, this is not the position where they might impair the management of the undertaking or part thereof or might compromise the carrying-out of a projected operation. In such a case, the head of the undertaking must provide the staff delegation with all necessary information and explanations within three days.

Art. L. 414-7. (1) The head of the undertaking shall be required to inform and consult the staff delegation in writing, at least twice per year, concerning the economic and financial development of the undertaking.

To that end, he or she shall submit to the staff delegation a comprehensive report concerning the undertaking's activities, turnover, global production and operating results, orders, developments regarding the structure and amount of staff pay and investments made.

(2) Where the undertaking is constituted in the form of a *société par actions* [company limited by shares], an *association sans but lucratif* [not-for-profit association], cooperative or foundation, its executive or management organ shall in addition be required to communicate to the staff delegation, prior to their presentation to the general meeting of shareholders or the decision-making body, the profit and loss account, the annual balance sheet, the auditors'

report and, as the case may be, the report of the board of directors or management, together with any other document submitted to the general meeting of shareholders or the decision-making body.

Art. L. 414-8. Where, in the case of a consultation held pursuant to Articles L. 414-5, L. 414-6 and L. 414-7(1), the head of the undertaking and the staff delegation adopt divergent positions, these must be brought to the knowledge of the board of directors or, as the case may be, the manager or managers.

Where the undertaking is not constituted in the form of a *société par actions*, the positions referred to in the immediately preceding subparagraph must be brought to the knowledge of the head of the undertaking if he or she has not taken part in person in the deliberations.

In all cases, the head of the undertaking, the board of directors, the decision-making body or the manager shall be required to give a duly reasoned account of the steps taken by way of follow-up to the positions expressed.

#### Section 4. – Participation in certain decisions of the undertaking

Art. L. 414-9. In undertakings employing at least 150 staff during the 12-month period preceding the first day of the month in which the poster announcing the elections is displayed, and without prejudice to the application of any other statutory or collectively agreed provisions, decisions must be taken by common accord between the employer and the staff delegation concerning:

1. the introduction or application of technical installations designed to monitor the behaviour and performance of employees in their jobs;
2. the introduction or modification of measures concerning the health and safety of employees and the prevention of occupational diseases;
3. the establishment or modification of the general criteria concerning the selection of staff members for recruitment, promotion, re-assignment or dismissal and, as the case may be, the priority criteria for allowing employees to take early retirement;
4. the establishment and implementation of any programme or collective action regarding ongoing vocational training;
5. the establishment or modification of general criteria for the assessment of employees;
6. the establishment or modification of the internal rules, having regard, as the case may be, to any collective agreements in force;
7. the grant of rewards to employees who, by their initiatives or proposals for technical improvements, have made a particularly useful contribution to the undertaking, without prejudice to the laws and regulations governing patents and inventions.

Art. L. 414-10. The employer and the staff delegation must meet at least once per quarter to discuss the points provided for in Article L. 414-9.

The subject-matter of those meetings shall be discussion of the points provided for in Article L. 414-9, with the aim of reaching an agreement.

The undertaking shall be represented thereat by the head of the undertaking or a person delegated by him or her, who shall have the right to arrange to be assisted by persons of their choice; the number of representatives of the undertaking may not in such circumstances exceed the number of staff delegates.

The chair of the delegation and the head of the undertaking or his or her delegate shall, by common accord, fix the agenda, which must be communicated to the members of the staff delegation at least five days before the meeting.

They shall be required to include in the agenda points specified in a request submitted by at least one half of the staff delegates or proposed by the head of the undertaking three days before the meeting.

Where the parties cannot reach agreement on one of the decisions to be taken in accordance with the agenda, the staff delegation shall mandate the board provided for in Article L. 416-1(2) to conduct the negotiations and to take a decision with the employer on the points provided for by Article L. 414-9.

The aforesaid board may arrange to be assisted by a maximum of four advisers as provided for by Article L. 412-2, including at least one appointed by each trade union representing members at a general national or sectorial level

pursuant to Articles L. 161-4 and L. 161-7 and which obtained at least twenty per cent of the seats up for election at the last elections.

The board shall communicate the joint decision to the staff delegation within 48 hours.

The staff delegation shall have 48 hours from receipt of that communication in which to submit a duly reasoned request for renegotiation of one or more of the questions to be settled.

Art. L. 414-11. (1) Meetings shall be held in camera during working hours.

(2) The head of the undertaking must make convenient premises available together with the equipment needed for the meetings.

Art. L. 414-12. (1) Decisions to be taken in relation to matters listed in Article L. 414-9 shall be adopted by common accord between the employer and the staff delegation or between the employer and the delegation's board, with each party having one vote.

(2) In the event of disagreement on any of the measures listed in Article L. 414-9, the dispute may be referred by the employer, the staff delegation or the delegation's board to the mediation bodies provided for in Article L. 417-3.

Art. L. 414-13. All deliberations taking place in the course of meetings shall be recorded in minutes of the meeting concerned, to be countersigned by the head of the undertaking or his/her representative and the chair of the staff delegation or his/her representative.

The staff representatives shall be required to report regularly to the delegations at the level of the economic and social entity, and to the equality delegate, on the results of the discussions conducted in the context of those meetings.

They shall submit to the equality delegate an up-to-date list of the general criteria mentioned in points 3 and 5 of Article L. 414-9, even where the employer asserts in relation to them that these are of a confidential nature pursuant to Article L. 415-2(1).

In the latter case, the equality delegate shall be required to maintain confidentiality regarding those criteria, apart from referring to the *Inspection du travail et des mines* the names of those violating the principle of equal treatment.

#### Section 5. – The health and safety delegate

Art. L. 414-14. (1) Each delegation shall at the constituent meeting designate, from amongst its members or from amongst the other employees of the undertaking, a delegate responsible for the health and safety of the staff. Within three days after the constituent meeting, the chair of the delegation shall communicate in writing to the head of the undertaking the surname; first name and national identity number of the health and safety delegate.

(2) Where the health and safety delegate designated pursuant to paragraph (1) is not an elected member of the staff delegation, he or she may attend all meetings of the delegation concerned, but in a consultative capacity only.

(3) The health and safety delegate shall deposit a record of his or her findings, countersigned by the departmental head, in a special register which shall be kept in the undertaking's office, where it may be inspected by the members of the delegation and the inspection and control staff of the *Inspection du travail et des mines*.

In urgent cases, where the findings made call for immediate intervention by the *Inspection du travail et des mines*, the delegate shall be entitled to approach that body direct, provided that he or she at the same time informs the head of the undertaking or the latter's representative and the staff delegation to that effect.

(4) Each week, the health and safety delegate, accompanied by the head of the undertaking or the latter's representative, may carry out a tour of inspection in the head office of the undertaking or on its sites or in its other workplaces of a temporary nature.

In the administrative departments, the number of such tours of inspection may not exceed two per year.

The person responsible for the department within the undertaking that is the subject of a tour of inspection as referred to in the foregoing subparagraphs and the head of the maintenance department shall be present during that tour of inspection.

(5) The inspection and control staff of the *Inspection du travail et des mines* shall have the right to be accompanied, during their tours of inspection, by the health and safety delegate; by the same token, they may arrange to be accompanied when investigating accidents.

(6) The health and safety delegate may not suffer any loss of pay by reason of his or her absences from normal work occasioned by tours of inspection or the provision of any assistance to the inspection and control staff of the *Inspection du travail et des mines*.

(7) The head of the undertaking shall be required to consult and provide information to the health and safety delegate concerning:

1. assessment of the risks posed to health and safety in the workplace, including those concerning groups of employees at particular risk;
2. any protection measures to be taken and, where necessary, the protection equipment to be used;
3. declarations to be submitted to the *Inspection du travail et des mines* pursuant to Article L. 614-11;
4. any action which may have a significant impact on health and safety;
5. the appointment of designated employees to deal with protection activities and activities for the prevention of occupational risks that the undertaking may face;
6. any measures taken with regard to first aid, firefighting and the evacuation of employees, and any necessary measures, adapted to reflect the nature of the activities and the size of the undertaking, having regard to other persons present;
7. any measures designed to organise the requisite dealings with external services, relating in particular to first aid, urgent medical assistance, rescue and firefighting;
8. recourse within the undertaking to competent authorities outside the undertaking for the organisation of protection and prevention activities;
9. the provision of adequate training to each employee in the interests of his/her health and safety;
10. assessment of the risks that the activities of the undertaking may pose to the environment in so far as health or working conditions are concerned;
11. measures taken to protect the environment, in so far as the health or working conditions of employees are concerned.

Health and safety delegates shall be entitled to request the employer to take appropriate measures and to submit to the employer proposals in that respect, such as to reduce all risk for employees or to eliminate sources of danger.

(8) The health and safety delegate shall work in close collaboration with the employee or employees designated pursuant to Article L. 312-3.

(9) The employer must allow the health and safety delegate free time, known as training leave, to take part, without any loss of pay, in training programmes organised by trade union organisations or by specialist institutions, at times coinciding with normal working hours and aimed at improving knowledge in matters concerning health and safety in the workplace.

Such training leave shall be granted in addition to, and without regard to, the training leave provided for in respect of staff delegates, and shall not be charged to annual holiday leave.

The duration of the training leave shall be 40 hours per mandate, plus 10 additional hours for the initial mandate in the undertaking concerned.

It shall be assimilated to working time and the cost in terms of pay shall be borne by the State in the case of undertakings employing not more than 150 staff.

The modalities of such training leave may be laid down by Grand-Ducal Regulation, which may increase its duration where exceptional circumstances arise by reason of changes occurring in the workplace.

## Section 6. – The equality delegate

Art. L. 414-15. (1) Each delegation shall at the constituent meeting designate, from amongst its full or substitute members and for the duration of its mandate, an equality delegate. Within three days following the constituent meeting, the chair of the delegation shall communicate in writing to the head of the undertaking the surname; first name and national identity number of the equality delegate.

(2) The equality delegate shall be tasked with defending equal treatment within the meaning of Title IV of Book II as regards access to employment, vocational training and career advancement, as well as pay and working conditions.

To that end, without prejudice to any remit that may be conferred on him or her by other statutory provisions, the equality delegate, acting alone or in concert with the staff delegation, within the areas falling within the ambit of his/her mission, shall be empowered in particular:

1. to issue an opinion and put forward proposals on any points or matters relating directly or indirectly to any of the areas referred to above;
2. to propose to the employer actions to raise awareness amongst the employees of the undertaking;
3. to prepare and present to the employer a programme of measures aimed at promoting equality of opportunity between men and women such as those covered by the final part of Article L. 241-4(2);
4. to submit to the employer any individual or collective complaint in relation to equal treatment between men and women;
5. to prevent and reconcile any differences, whether individual or collective, that may arise between the employer and staff members concerning equal treatment between men and women;
6. where the abovementioned differences cannot be settled, to refer any complaint or observation to the *Inspection du travail et des mines*;
7. once a year, to summon the employees of one or other gender to appear, separately;
8. to monitor the equality training of apprentices in the undertaking;
9. to collaborate in the setting-up and implementation of any basic vocational training schemes, including in particular apprenticeship schemes;
10. to hold consultations in appropriate premises for employees of the undertaking, either outside working hours or during working hours. In the latter case, the equality delegate must agree with the head of the undertaking the time at which, and the arrangements whereby, such consultations are to take place; their duration shall be charged to the time-off rights referred to in paragraph (4) of this Article;
11. to issue his or her opinion prior to the creation of any part-time post within the undertaking.

(3) Articles L. 415-1, L. 415-2, L. 415-5 and L. 415-6(1) shall apply to the equality delegate.

(4) With a view to performance of the tasks laid down by this Article, the time-off rights provided for by Article L. 415-5(2) shall be increased by:

four paid hours per month, where the undertaking has employed between 15 and 25 staff during the 12-month period preceding the first day of the month in which the poster announcing the elections is displayed;

six paid hours per month, where the undertaking has employed between 26 and 50 staff during the 12-month period preceding the first day of the month in which the poster announcing the elections is displayed;

eight paid hours per month, where the undertaking has employed between 51 and 75 staff during the 12-month period preceding the first day of the month in the poster announcing of the elections is displayed;

ten paid hours per month, where the undertaking has employed between 76 and 150 staff during the 12-month period preceding the first day of the month in the poster announcing of the elections is displayed;

four hours per week, where the undertaking has employed over 150 staff during the 12-month period preceding the first day of the month in which the poster announcing the elections is or displayed.

This additional time-off right is reserved for the exclusive use of the equality delegate.

(5) The employer must allow the delegate free time, known as training leave, to take part, without any loss of pay, in training programmes organised by trade union organisations or by specialist institutions, at times coinciding with normal working hours and aimed at improving his or her knowledge concerning economic, legal, social and psychological matters which may be useful for the performance of his or her tasks.

The equality delegate shall thus have two half working days of training leave per year of his or her mandate, which shall not be chargeable to his/her annual holiday leave. The duration of the training leave shall be assimilated to

working time and the cost thereof in terms of pay shall be borne by the State in the case of undertakings employing not more than 150 staff.

(6) Where the equality delegate designated pursuant to paragraph (1) is a substitute member of the delegation, he or she may participate in all decisions relating to his/her special mandate and may attend, in a consultative capacity, all meetings of the delegation concerned.

#### Section 7. – Posting-up of communications from the delegation

Art. L. 414-16. (1) Communications, reports and position statements of the staff delegation, the equality delegate and the health and safety delegate may be freely posted up and/or displayed on the divers media accessible to the staff and reserved for such use, including electronic media, in so far as they have a direct connection with the remit reserved to it, him or her by law.

(2) Delegates elected from a list presented by a trade union representing members on a general national or sectorial level pursuant to Articles L. 161-4 and L. 161-7 may in addition:

1. freely post up and/or display trade union communications on the divers media reserved for such use and distinct from those referred to in paragraph (1); copies of such trade union communications shall be sent to the head of the undertaking at the same time as they are posted up and/or displayed;
2. freely disseminate publications and pamphlets of a trade union nature to the employees of the undertaking, within the precincts of the undertaking and in places to be agreed with the head of the undertaking.

The same shall apply in respect of delegates elected from a list presented by a trade union organisation meeting the definition laid down in Article L. 161-3, provided that they represent an absolute majority of the members of which the delegation is composed.

(3) Members of the staff delegation shall be entitled to enter into contact with all employees of the undertaking.

For that purpose, they shall be authorised to move freely within the undertaking, on its sites and in other temporary workplaces, and to have contact with employees after first informing the employer. They shall also have the right to contact them by all means of communication available within the undertaking.

Art. L. 414-17. Each employee shall have the right, twice per year during working hours, to access the personnel files concerning him or her; he or she may arrange on that occasion to be assisted by a member of the staff delegation or by the equality delegate, who shall be bound to maintain confidentiality regarding the content of the personnel files save to the extent that they have been released from that obligation by the employee concerned.

Explanations by the employee concerning the content of his or her personnel file must be included therein at the request of the person concerned.

### Chapter V. – Status of staff delegates

#### Section 1. – Obligations of delegates

Art. L. 415-1. Members of the staff delegation shall, in the exercise of their mandate, respect the internal rules of the undertaking or establishment.

Members of the staff delegation shall have the right to leave their normal employment position without any reduction in pay, to the extent necessary for the accomplishment of the tasks assigned to them by this Title, after first informing the head of the undertaking and on condition that this does not impair the smooth running and operation of the service or department in which they work.

Art. L. 415-2. (1) Members of staff delegations and advisers and experts as referred to in Article L. 412-2 shall be bound by professional secrecy in relation to all matters concerning manufacturing processes.

In addition, they shall be bound to keep secret any information purporting to be of a confidential nature which is expressly classified as such by the head of the undertaking or the latter's representative in the legitimate interests of the undertaking, vis-à-vis both employees and third parties, save where the employees or third parties are in turn bound by a confidentiality obligation.

(2) The head of the undertaking may refuse to communicate information or to hold consultations where the nature thereof is such that, according to objective criteria, they would seriously impair the functioning, management or future of the undertaking, would cause prejudice thereto or would compromise a planned operation.

(3) Where members of the delegation consider that the classification of information as confidential, or a refusal to communicate information or to hold consultations, in accordance with the preceding two paragraphs, is unjustified, they may appeal to the Director of the *Inspection du travail et des mines*.

The decision of the Director or of his or her delegate must be addressed to the parties by no later than the eighth day following the despatch of the application. It shall be in writing and accompanied by a proper statement of reasons, and shall take into account the interests and needs of the employees and their representatives and the economic necessities and constraints needing to be taken into account by the head of the undertaking or in the context of the exercise of his or her power to manage the undertaking in accordance with the principles of prudent and careful management.

Within 15 days after service of the decision of the Director of the *Inspection du travail et des mines* or of his or her delegate, an application for annulment thereof may be made to the *Tribunal administrative* [Administrative Court].

## Section 2. – Term of the mandate

Art. L. 415-3. A delegate's mandate shall come to an end:

1. in the event that the delegate is not re-elected as a full or substitute member, once the newly elected delegation has been installed;
2. where the person concerned ceases to be a staff member;
3. in the event of his or her resignation;
4. where the trade union organisation which put him or her forward as a candidate has informed the head of the undertaking and the delegation that the person concerned has ceased to be a member of that trade union organisation;
5. in the event of his or her death;
6. in the event of refusal, non-renewal or withdrawal of the authorisation conferring the right to work.

Art. L. 415-4. The substitute member shall be called upon to sit in place of the full member:

1. in the event that the latter is prevented from attending or acting;
2. where the mandate of the full member has come to an end for one of the reasons listed in points 2 to 6 of Article L.415-3; in such cases, the substitute member shall complete the mandate of the full member.

## Section 3. – Exercise of the mandate

Art. L. 415-5. (1) In the context of Article L. 415-1, and without prejudice to paragraph (2) of this Article, the head of the undertaking must allow members of the delegation the time that they need in order to exercise their functions, and must remunerate that time as working time.

(2) In undertakings where the number of staff represented does not exceed 149 employees, the head of the undertaking shall grant delegates paid time-off rights the total of which shall be proportional to the number of employees whom they represent, on the basis of one time-off right of 40 hours per week at the rate of 500 employees.

In undertakings where the number of staff represented is between 150 and 249 employees, the head of the undertaking shall grant delegates paid time-off rights the total of which shall be proportional to the number of employees whom they represent, on the basis of one time-off right of 40 hours per week at the rate of 250 employees.

For the purposes of applying the foregoing paragraphs, fractions of hours equal to or greater than one half shall be rounded up to the immediately higher unit, and fractions of hours which are less than one half shall be rounded down to the immediately lower unit.

The time-off rights referred to above shall be shared out, in proportion to the number of votes received, between all the lists that obtained at least twenty per cent of the seats in the election.

(3) The head of the undertaking shall be required to release from all work generally, of whatever nature, and to grant a permanent dispensation from service, with maintenance of pay and, as the case may be, of the right to promotion and advancement, to:

- one delegate, where the number of staff is between 250 and 500 employees;
- two delegates, where the number of staff is between 501 and 1,000 employees;
- three delegates, where the number of staff is between 1,001 and 2,000 employees;
- four delegates, where the number of staff is between 2,001 and 3,500 employees;
- one additional delegate per tranche of 1,500 employees, where the number of staff exceeds 3,500 employees.

Released delegates shall be designated by way of a list-based secret ballot by the members of the delegation, in accordance with the proportional representation rules.

However, where the number of staff exceeds 1,000 employees, the trade union organisations representing members at a national level pursuant to Article L. 161-4 which are represented within the delegation and bound to the undertaking by a collective employment agreement shall each designate one of the released delegates in accordance with the provisions of this paragraph.

The delegation may decide to convert one or more delegates released in accordance with the first subparagraph into a time-off right, on the basis of 40 hours per released delegate and in proportion to the number of votes obtained in the election.

It shall inform the head of the undertaking of any such decision.

(4) Members of the delegation may not be remunerated in a sum lower than that which they would have been paid if they had in fact worked during the delegation hours.

(5) An agreement to be concluded between the head of the undertaking and the staff delegation shall set out the theoretical development of the careers of those delegates enjoying time-off rights corresponding to at least 50% of their normal working time compared to a reference group of employee, and shall fix the measures necessary for the complete reinstatement of those delegates in their old job or an equivalent job during or upon the expiry of their mandate.

That agreement shall also regulate the participation of all delegates in ongoing vocational training provided by the undertaking, including in particular training relating to the post occupied by them prior to their mandate and, where necessary, training relating to a new equivalent post to be occupied during or upon the expiry of their mandate.

Art. L. 415-6. (1) Staff delegations may meet once per month during working hours, subject to giving the management at least five working days' advance notice, unless a shorter notice period is agreed; however, they must meet during working hours at least six times per year, including three times with the management of the undertaking.

(2) Time spent in the meetings referred to in paragraph (1) shall be remunerated as working time.

Art. L. 415-7. Once per year, the staff delegation may meet in plenary session with the salaried staff of the undertaking. The meeting shall be held in camera and shall be called by the chair of the delegation.

The head of the undertaking may be invited to attend that meeting or to arrange to be represented thereat.

Art. L. 415-8. (1) The staff delegation may provide for consultation sessions with salaried employees of the undertaking, to be held in the delegation's premises.

(2) Where the staff delegation comprises one or more delegates released in accordance with the provisions of Article L. 415-5(3), those consultations shall be conducted by the latter during working hours at times fixed by the delegation and communicated in advance to the head of the undertaking.

(3) Delegations which do not include any released delegates may provide for consultation sessions either outside working hours or in working hours; in the latter case, they must agree in advance with the head of the undertaking the time at which such consultation sessions are to take place and the arrangements for organising and granting them; their duration shall be charged to the delegation's time-off rights.

Art. L. 415-9. (1) The employer shall be required to allow full staff delegates the free time, known as training leave, necessary in order to take part, without any loss of pay, in training programmes organised by trade union organisations or by specialist institutions, including in particular business chambers, at times coinciding with normal



working hours and aimed at improving their knowledge of economic, social and technical matters in their role as representatives of the employees.

(2) In undertakings employing between 15 and 49 staff during the 12-month period preceding the first day of the month in which the poster announcing the elections is displayed, full members of staff delegations shall be entitled, each during the course of his or her mandate, to one working week of training leave, with the cost of their remuneration in that regard being borne by the State.

In undertakings employing between 50 and 150 staff during the 12-month period preceding the first day of the month in which the poster announcing the elections is displayed, full members of staff delegations shall be entitled, each during the course of his or her mandate, to two working weeks of training leave, with the cost of their remuneration for one week of training leave being borne by the State.

In undertakings employing more than 150 staff during the 12-month period preceding the first day of the month in which the poster announcing the elections is displayed, full members of staff delegations shall each be entitled to one working week of training leave per year of their mandate.

Delegates elected for the first time shall be entitled to a further 16 hours during the first year of their mandate.

Substitute members of the staff delegation shall be entitled to one half of the training hours provided for in this paragraph.

Where such substitute members become full members during the course of their mandate, that part of the training leave that they have already taken pursuant to the immediately preceding subparagraph shall be deducted from the training leave which they are entitled to claim as full delegates.

(3) The time spent on training leave may not be charged to the amount of paid annual holiday leave; it shall be assimilated to a period of work.

The benefit of training leave must be granted by the head of the undertaking, at their request and within the limits set out in paragraph (2), to delegates wishing to do an approved training course, each year, within the framework of a list drawn up by common accord by the employers' professional organisations and the trade unions representing members on a general national or sectorial level pursuant to Articles L. 161-4 and L. 161-7.

Specific requests may be addressed to the Minister responsible for employment matters, who must approve such training programmes.

#### Section 4. – Special protection

Art. L. 415-10. (1) Throughout their mandate, full and substitute members of staff delegations and the health and safety delegate may not be the subject of any modification of an essential clause of their contract of employment rendering Article L. 121-7 applicable.

Where necessary, such delegates may, by simple application, request the president of the labour court to order the cessation of any unilateral modification of such a clause; such application shall be determined by the president as an urgent matter in accordance with the procedure used for summary applications, after hearing the parties or duly summoning them to appear.

(2) Delegates as referred to above may not, throughout the period of statutory protection, be dismissed or summoned to attend an interview prior to dismissal, even on grounds of serious misconduct; if they are, the dismissal or call to an interview shall be null and void.

Within one month following his or her dismissal, the delegate may, by simple application, request the president of the labour court to rule that the dismissal is invalid and to order that the delegate be kept on or, as the case may be, reinstated in accordance with the provisions of Article 124-12; such application shall be determined by the president as an urgent matter in accordance with the procedure used for summary applications, after hearing the parties or duly summoning them to appear.

The order of the president of the labour court shall be immediately enforceable; an appeal against that order may be made, by simple application, within 40 days from service thereof by the court registry, to the president of the chamber of the *Cour d'appel* [Court of Appeal] to which appeals in labour law matters are assigned. The appellate court shall give its ruling as a matter of urgency, after hearing the parties or duly summoning them to appear.

Where the delegate concerned has not exercised the right of recourse provided for in the second subparagraph, he or she may apply to the court for an order that the contract be deemed to have ceased on the day on which the dismissal notice was received and that the employer is to pay damages reflecting, in addition, the specific damage caused by the invalid dismissal to the applicant's status as a delegate enjoying special protection. Where the delegate exercises this option, he or she shall be deemed to be unemployed through no fault of his/her own, within the meaning of Article L. 521-3, as from the date of the dismissal.

Legal proceedings for compensation for any wrongful termination of the contract of employment must be brought before the labour court within three months from receipt of the notice of dismissal, failing which they will be time-barred.

The choice of option between the two types of application described in the second and fourth subparagraphs shall be irreversible.

(3) In the event of closure of the undertaking, the delegates' mandate shall automatically cease upon the cessation of activities.

(4) Where serious misconduct is alleged, the head of the undertaking shall have the right, subject to compliance with the provisions of Article L. 121-6(3), to serve a notice of suspension on the delegate. The decision contained in that notice must set out in precise terms the act or acts alleged against the delegate and the circumstances which are such as to render them serious.

An act or acts, or a fault or faults, which may justify a judgment declaring the employment contract void on serious grounds may not be invoked later than one month after the day on which the party invoking them first came to know of them, unless they have given rise within that month to a criminal prosecution.

The time-limit laid down in the immediately preceding subparagraph shall not apply where a party invokes a previous act or fault in support of an allegation of a fresh act or a fresh fault.

For three months following the date of service of the notice, the delegate shall continue to receive his or her salary plus the benefits and other advantages which he or she could have claimed if the contract were maintained. The right to receive those salary payments, benefits and other advantages shall remain definitively vested in the delegate.

Within one month following the notice of suspension, the delegate may, by simple application, request the president of the labour court to rule, after hearing the parties or duly summoning them to appear, on the question whether payment of the salary should continue or be suspended beyond the three-month period, pending the definitive outcome of the proceedings; such application shall be determined by the president as an urgent matter in accordance with the procedure used for summary applications.

Where the delegate does not wish to be kept on or, as the case may be, reinstated, he or she may, within three months following service of the notice of suspension, apply to the labour court for a declaration that the contract has been terminated and for an order requiring the employer to pay damages reflecting the specific damage caused by the cessation of the contract to the applicant's status as a delegate enjoying special protection.

A delegate who exercises that option shall be deemed to be unemployed through no fault of his/her own, within the meaning of Article L. 521-3, at the end of the period laid down in the fourth subparagraph.

The choice of option between the two types of application described in the fifth and sixth subparagraphs shall be irreversible.

(5) The employer may present its application for a judicial declaration that the employment contract is void in proceedings brought by it before the labour court or, as the case may be, by way of counterclaim, by no later than one month following the date of service of the summons to appear before the president of the labour court.

Where the labour court refuses to grant that application, the effects of the act of dispensing with the delegate's services shall automatically cease.

Where the labour court grants that application, the termination of the contract shall take effect on the date of service of the suspension notice.

Such ruling by the court may be appealed against on the terms and conditions applying to judgments delivered by the labour court; it shall be immediately enforceable, where necessary on the authority of the original signed judgment and before registration.

Where the employer does not bring such proceedings within the time-limit prescribed, the employee may, within 15 days following the expiry of that time-limit, by simple application, request the president of the labour court to

order that performance of the contract by all the parties to the proceedings is to be continued; such application shall be determined by the president as an urgent matter in accordance with the procedure used for summary applications, after hearing the parties or duly summoning them to appear. Alternatively, if the employee does not wish to be kept on or, as the case may be, reinstated, he or she may apply to the labour court for a declaration that the contract has been terminated and an order requiring the employer to pay damages reflecting the specific damage caused by the cessation of the contract to the applicant's status as a delegate enjoying special protection. A delegate who exercises that option shall be deemed to be unemployed through no fault of his/her own, within the meaning of Article L. 521-3, at the end of the period laid down in the second subparagraph.

(6) Where a delegate who has been suspended enters into new paid employment, as a salaried or non-salaried employee, the employer may apply to the president of the labour court for an order suspending payment of the delegate's salary.

(7) A delegate whose contract has been declared terminated by the labour court and in respect of whom the president of the labour court has ordered that his or her salary should continue to be paid pending the definitive outcome of the proceedings may, if he or she is ordered to repay to his or her employer the salary payments received by him or her in the intervening period, apply to the Director of the *Agence pour le développement de l'emploi* [Employment Development Agency] to be allowed retroactively to claim unemployment benefit in full, within the limits laid down in Article L. 521-11 and, at most, up to the day on which the case is definitively determined.

Before being able to receive the retroactive unemployment benefit, the delegate must produce evidence of repayment, in full or in part, of the salary payments received. In the absence of evidence showing that the payment order made against the delegate has been fully complied with, and upon application by the employer and the delegate, the Director of the *Agence pour le développement de l'emploi* shall remit the amount of the unemployment benefit due to the delegate directly to the employer, up to an amount corresponding to the amount ordered to be repaid which has not yet been repaid.

The delegate shall be allowed *ipso jure* to claim such unemployment benefit in full, save where he or she has been convicted of a criminal offence by a judgment that has become final and non-appealable, in respect of the same acts as those alleged by way of justification for the suspension. Where the repayment order is made after all or part of the full employment benefit has been paid, he or she must repay the amounts of benefit thus paid to the *Fonds pour l'emploi* [Employment Fund].

Art. L. 415-11. The provisions of Article L. 415-10 shall apply to dismissals of former delegation members and former health and safety delegates during the first six months following the expiry or cessation of their mandate and to candidates for office as members of staff delegations as soon as their candidacies are presented and for a period of three months. Where the results of elections are contested and those elections are followed by fresh elections, that period shall be extended until the date of the fresh elections.

Art. L. 415-12. Throughout this procedure, the amount of time off to which the delegate was entitled shall be passed, where appropriate, to the rest of the delegation in place and shared out by it amongst its members.

## Chapter VI. – Organisation and functioning

Art. L. 416-1. (1) At the constituent meeting, which must be called and held within one month after the elections by the employee who obtained the greatest number of votes in the ballot, the staff delegation shall designate from amongst its members, by secret ballot and in accordance with the relative majority rules, a chair, a vice-chair and a secretary; where the voting results in a tie, the oldest person shall be elected.

Where no elections are held, pursuant to Article L.413-1(6), the constituent meeting shall be called, under the same conditions, by the oldest full delegate.

A Grand-Ducal Regulation shall determine, in order, the points which must appear on the agenda of the constituent meeting and the way in which this is to be conducted.

(2) For the despatch of day-to-day business and the preparation of its meetings, the staff delegation shall designate from amongst its members, by secret list-based ballot and in accordance with the proportional representation rules, a board comprising, in addition to the chair, the vice-chair and the secretary:

1 member, where the delegation is composed of at least 8 members;

2 members, where the delegation is composed of at least 10 members;

3 members, where the delegation is composed of at least 12 members;

4 members, where the delegation is composed of at least 14 members.

For the performance of its tasks in the context of Articles L. 414-9 to L. 414-13, the board shall be enlarged by at least one staff delegate, in proportion to the number of votes obtained, from each list that is represented in the staff delegation but not represented on the board pursuant to paragraph (2).

(3) Within three days following the constituent meeting, the chair of the delegation shall notify the head of the undertaking in writing of the surnames, first names and national identity numbers of the vice-chair, of the secretary and of the members of the board.

Within five days following the notification referred to in the first subparagraph, the head of the undertaking shall be required:

1. to register on the electronic platform designed for that purpose, using the pre-drafted form made available on that platform by the *Inspection du travail et des mines*, the surnames, first names and national identity numbers of:

(a) the chair;

(b) the vice-chair;

(c) the secretary;

(d) the members of the board;

(e) the health and safety delegate referred to in Article L. 414-14(1);

(f) the equality delegate referred to in Article L. 414-15(1);

2. to sign the printed form and to have it signed by the chair of the delegation;

3. to transmit the form, duly filled out and signed, to the *Inspection du travail et des mines*, using the electronic platform designed for that purpose.

(4) At the first meeting after the constituent meeting of the staff delegation, the elected members shall be informed by the head of the undertaking about the structure of the undertaking, any links that it may have with other undertakings, foreseeable economic developments, the employment structure, and the policies in relation to ongoing vocational training, health and safety in the workplace and equal treatment.

Art. L. 416-2. (1) The subject-matter of the deliberations of the staff delegation shall be fixed by an agenda to be drawn up by the delegation's board and communicated to the members at least five days before the meeting.

(2) The board shall be required to include on the agenda points specified in a request submitted by at least one third of the members of the delegation, by no later than three working days before the meeting. Where, in such a case, the request is submitted after the agenda has been communicated to the members of the delegation, its chair must notify the members of its content within 24 hours.

Art. L. 416-3. (1) Meetings of the staff delegation shall take place upon being called in writing by its chair.

(2) The chair of the staff delegation must call a meeting of the delegation at least six times per year.

(3) He or she shall in addition be required to call a meeting of the delegation whenever at least one third of the full members of which it is composed request him or her in writing so to do; the persons making such a request shall specify the points which they wish to have included on the agenda of the meeting.

For the purposes of applying the immediately preceding subparagraph, fractions equal to or greater than one half shall be rounded up to the immediately higher unit, and fractions which are less than one half shall be rounded down to the immediately lower unit.

(4) The head of the undertaking or his/her representative may be invited by the staff delegation to take part in its deliberations, but without being able to participate in the voting.

(5) The Minister responsible for employment matters may call meetings of the staff delegation, for such purposes as he/she thinks fit. He/she may also delegate an official of his/her choice to attend such meetings; the observations of such official shall be heard.

The head of the undertaking or his/her representative must be invited to attend the meetings provided for by this paragraph.

Art. L. 416-4. Meetings of delegations shall take place in camera.

Art. L. 416-5. (1) Decisions and resolutions of the staff delegation shall be adopted by a majority of the members present.

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

The minutes of the meeting shall be read and approved upon the opening of the next meeting; a copy thereof shall be sent to the head of the undertaking.

The delegation's board shall be responsible for the publication of a communiqué, to be displayed on the notice board referred to in Article L. 414-16(1).

Art. L. 416-6. A delegate's functions shall be purely honorary. However, the employer shall defray the accommodation and travel expenses incurred by members of the staff delegation relating directly to the exercise of their mandate within the undertaking, apart from those incurred in relation to the utilisation of the training leave referred to in Article L. 415-9.

By the same token, the employer shall facilitate moves between the units of the undertaking, where necessary by making available to delegates a suitable means of transport.

Art. L. 416-7. Meetings and consultations of staff delegations shall take place in suitable premises within the undertaking, with the employer bearing the cost of the furnishings and equipment of those premises, including computer hardware and access to the available internal and external means of communication, and the office expenses and heating and lighting costs.

Where the delegation includes one or more released delegates in accordance with the provisions of Article L. 415-5(3), the head of the undertaking shall be required in addition to make suitable premises permanently available to that delegate/those delegates, together with the equipment and, where necessary, the staff needed for the secretariat thereof.

## Chapter VII. – Final provisions

Art. L. 417-1. The internal rules of the undertaking or establishment may not be such as to hinder the performance by staff delegates of their mission in conformity with this Title.

The provisions of this Title shall not preclude agreements containing clauses which are more favourable to employees.

Art. L. 417-2. The *Inspection du travail et des mines* shall be tasked with overseeing the application of the provisions of this Title and of the measures for the implementation thereof.

Art. L. 417-3. (1) Where disputes arise under Articles L. 411-3, L. 412-2, L. 414-2(7), L. 414-9 to L. 414-13 and L. 416-1 to L. 416-7 and are certified as unresolved within one month following a call for the *Inspection du travail et des mines* to intervene on the basis of Article L. 612-1, they may, within one month following the date of issue of the relevant certificate, be brought before a mediation board set up in the context of a collective agreement, either at the level of the undertaking or at sectorial level, or within the framework of an agreement for interprofessional dialogue.

That mediation board shall be chaired by a mediator designated by mutual agreement of the parties in the collective employment agreement or in the agreement for interprofessional dialogue.

It may arrange to be assisted in that task by a representative of the employer and by a representative of the delegation.

The collective agreement or the agreement for interprofessional dialogue shall also fix the procedure to be followed, the time-limits to be observed, the defrayal of expenses and the other modalities for applying this paragraph.

(2) Where the undertaking is not covered by a mediation board in accordance with paragraph (1), the parties may, within one month following the date of issue of the certificate provided for by the first subparagraph of paragraph (1),

refer the matter to the Director of the *Inspection du travail et des mines*, who shall summon them to attend a meeting within five days with a view to the designation of a mediator.

In that event, the mediator shall be chosen, by common accord between the parties, from a list drawn up for a period of five years, comprising six persons proposed by the Minister responsible for employment matters and adopted by the Government in council.

If the parties are unable to agree on who is to act as mediator, the mediator shall be designated by a drawing of lots from the names on the list provided for in the immediately preceding subparagraph.

The mediator may be joined by one or more experts. He or she shall be assisted by an official to be made available by the *Inspection du travail et des mines*, who shall be responsible for provision of the services of an administrative secretariat.

(3) Where a mediation triggered pursuant to paragraph (2) does not result in an agreement within three months from the designation of the mediator, the latter shall draw up a formal record of disagreement and send it for information to the parties and to the Director of the *Inspection du travail et des mines*.

(4) The modalities for the application of this Article may be laid down by Grand-Ducal Regulation.

Art. L. 417-4. (1) Disputes relating to the electorate and/or the regularity of the electoral operations shall fall within the competence of the Director of the *Inspection du travail et des mines*, whose decision may be the subject of an appeal before the administrative courts ruling as a court adjudicating on the substance.

(2) Save in so far as may be otherwise determined, any disputes arising from the application of this Title and from the regulations for its implementation other than those referred to in paragraph (1) and in Articles L. 414-9 to L. 414-13 shall fall within the jurisdiction of the *Tribunal du travail* [Labour Court].

Art. L. 417-5. Any deliberate act designed to impede the setting-up of a staff delegation or a delegation at the level of an economic and social entity, or the unfettered designation of its members, or its proper functioning, or the designation of an equality delegate, or the designation of a health and safety delegate, or the performance of their tasks, shall be punishable by a fine of between 251 and 15,000 euros.

Any person who does not fulfil the obligations laid down in Articles L. 414-17 and L. 415-2 shall be liable to the penalties provided for by Article 458 of the Criminal Code.

Where an offence is repeated within two years following a final conviction, the penalties provided for in the preceding subparagraphs may be doubled; in addition, in the case of an offence as referred to in the first subparagraph, the offender may be sentenced to a term of imprisonment of between eight days and three months.