

BOOK IV.- STAFF REPRESENTATION

(*Law of 23 July 2015*)

“Title one – Delegations

Chapter One – Establishment of delegations

Section 1.– Staff delegations

Article L. 411-1

(1) Every undertaking, regardless of the nature of its activities, legal form and business sector, shall be required to arrange for the appointment of staff delegates if it employs, during the 12 months preceding the first day of the month in which notices of elections are posted, at least 15 employees bound by an employment contract.

The same shall apply to any public sector employer which employs, during the 12 months preceding the first day of the month in which notices of elections are posted, at least 15 employees bound by an employment contract other than those whose employment relationships are covered by a particular status not within the scope of private law, in particular by a public law or a similar status, including civil servants and public employees.

For the purposes of application of this Title, employees who have entered an undertaking by virtue of a transfer of an undertaking, of an establishment or of part of an undertaking or part of an establishment within the meaning of Book 1, Title II, Chapter VII, shall be deemed to form part of that undertaking with effect from their date of entry into service with the initial employer.

(2) All employees of the undertaking who are bound by an employment contract, with the exception of those covered by the provisions of an apprenticeship contract, shall be taken into account in calculating numbers of staff employed in an undertaking.

Employees working part time, whose working time is equal to or greater than sixteen hours per week, shall be taken into account in full for the calculation of numbers of staff employed in the undertaking.

In the case of employees whose working time falls short of the threshold referred to in the foregoing subparagraph, staff numbers shall be calculated by dividing the total number of hours recorded in their employment contracts by the legally prescribed or contractual duration of their work.

Employees covered by a fixed term contract and employees made available to an undertaking shall be taken into account in calculating the staff numbers of an undertaking pro rata to the time that they are present in the undertaking in the period of 12 months preceding the compulsory date of preparation of the electoral lists.

However, employees under a fixed term contract and employees made available by another undertaking shall be excluded from the calculation of staff numbers where they replace an employee who is absent or an employee whose employment contract has been suspended.

Article L. 411-2

For the computation of staff employed by a temporary-work agency, account shall be taken, first, of the permanent employees of that undertaking and, second, of the employees who have been bound to it by assignment contracts for a total period of at least 10 months during the year preceding the date of computation.

Section 2. - Divisional delegations

(The Law of 23 July 2015 replaces this title by the one set out below for all new social elections of a company and by the time of the 2018 social elections at the latest)

"Section 2. – Delegations at the level of the economic and social entity

(Law of 13 May 2008)

"Article L. 411-3. (The Law of 23 July 2015 replaces this article for all new social elections of a company and by the time of the 2018 elections at the latest)

If the establishment comprises at least three divisions, there shall be established at the request of the principal delegation for each division, within the three months following the appointment of the principal delegation, a divisional delegation, provided however that the division concerned regularly employs at least 100 employees.

The head of the undertaking shall determine and define the limits of the divisions making up the establishment in agreement with the principal delegation.

In the event of disagreement, the head of the undertaking or the principal delegation may appeal to the Minister whose terms of reference include Employment, who will give a decision on the substance after hearing the opinion of the Director of the Inspectorate of Labour and Mines. An appeal against that decision may be filed with the Administrative Court, which shall give a decision at last instance and as a trial court.

Each divisional delegation shall be elected in the same way as the principal delegation and shall comprise one full member and one alternate member per 50 employees, provided however that the total number may not exceed five."

(Law of 23 July 2015 – No later than at the time of the 2018 social elections)

"Article L. 411-3

(1) Where several 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 for the economic and social entity may be established at the request of at least two delegations of the entity.

Such requests, which must be made within a period of three months following the elections of the staff delegations, shall be addressed to the respective employers of the entities concerned.

In the event of a dispute as to the merits of the application by one or more employers or by one or more delegations deciding by a majority, the matter may be brought before the mediation authorities provided for in Article L. 417-3.

The delegation at the level of the economic and social entity shall represent the interests of all the employees of the various undertakings of an economic and social entity.

It shall have no other tasks than the exchange of information between the various staff delegations from which it derived.

It shall comprise full delegates and alternate delegates 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 determined by reference to the number of employees thereof

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

The members of the delegation at the level of the economic and social entity shall be elected by the staff delegations under the relative majority system by a secret list-based ballot, from among the members which make them up.

(2) If the undertakings making up an economic and social entity include one or more undertakings employing fewer than 15 employees and not having a staff delegation, there shall be appointed, by all the employees of that undertaking or those undertakings, a representative who shall take part in the meetings of the delegation at the level of the economic and social entity.

That representative shall be allowed one-half of the training hours provided for in Article L. 415-9.

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

The Inspectorate of Labour and Mines shall set the date of those elections which will take place in accordance with the relative majority system.

In the event of a dispute as to the merits of the application by one or more employers or by one or more employees, the matter may be brought before the mediation authorities provided for in Article L. 417-3.

The delegation thus elected shall be subject to the same legal provisions as the staff delegation referred to in Article L. 411.1, with the exception of those provided for in sections 3, 4, 5 and 6 of Chapter IV and its members shall have the same rights and duties as the members thereof, with the exception of the right to training which, in all cases, shall not exceed the entitlement of the alternate delegate."

Section 3. – Central delegations

(The Law of 23 July 2015 repeals this title for all new social elections of a company and by the time of the 2018 social elections at the latest)

(Law of 13 May 2008)

"Article L. 411-4. (The Law of 23 July 2015 repeals this article for all new social elections of a company and by the time of the 2018 elections at the latest)

Where several establishments within the meaning of Article L. 411-1 form a single undertaking, a central delegation shall be set up.

The central delegation shall represent the interests of all the employees of the various establishments of one and the same undertaking.

It shall comprise three full delegates and three alternate delegates for each of the separate establishments.

The members of the central delegation shall be elected by the principal delegations of the establishment by a secret list-based ballot, in accordance with the rules on proportional representation, from among the members making them up.”

Section 4.- Young employee delegates

(The Law of 23 July 2015 repeals this title for all new social elections of a company and by the time of the 2018 elections at the latest)

“Article L. 411-5. (The Law of 23 July 2015 repeals this article for all new social elections of a company and by the time of the 2018 elections at the latest)

(1) The representation of young employees of the establishment shall be as follows:

- 1 delegate, if the establishment regularly employs at least 5 young employees;
- 2 delegates, if the establishment regularly employs more than 25 young employees;
- 3 delegates, if the establishment regularly employs more than 50 young employees;
- 4 delegates, if the establishment regularly employs more than 100 young employees.

For each young employee delegate, an alternate delegate shall be elected who shall automatically take up office in place of the full delegate definitively in the cases provided for in Article L. 415-3 and temporarily in the cases provided for in Article L. 415-4.

(2) Adolescents of both sexes who have not attained the age of 21 and who have worked in the undertaking for at least six months, on the day of the election, shall be eligible to vote and eligible to become young employee delegates.

The nationality conditions applicable to the electorate, both active and passive, shall be those laid down in Articles L. 413-3 and L. 413-4.

(3) The task of young employee delegates shall be to advise the head of the undertaking and the principal delegation on all matters relating to the working conditions and protection of young employees, and matters relating to apprenticeship.

They shall be entitled to have such matters entered on the agenda of the principal delegation.

(4) Young employee delegates shall be authorised to attend meetings of principal delegations where the latter are considering matters relating to adolescent employees.

A spokesperson for the young employee delegates shall attend all meetings of the principal staff delegations.

(Law of 23 July 2015)

“Chapter II. - Composition of the staff delegation

Article L. 412-1,

(1) Without prejudice to the provisions of Article L. 411-1, the numerical composition of the staff delegations shall be based on 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 for each full group of 500 employees where the number of employees exceeds 5,500.

(2) Staff delegations shall also include the same number of alternate members as full members.

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

Article L. 412-2.

(1) In undertakings employing at least 51 employees in the 12 months prior to the first day of the month on which notices of the elections are posted, advisers, whether or not on the staff of the undertaking, may participate, for the examination of matters decided upon at meetings of the staff delegations, in an advisory capacity, where a majority of the delegates so request, provided that their number may not exceed one-third of the members making up the delegation.

(2) In undertakings employing between 51 and 150 employees during the 12 months prior to the first day of the month on which notices of the elections are posted, trade unions enjoying general or sectoral national representativity by virtue of the provisions of Articles L. 161-4 and L. 161-7 and which include at least one-third of the persons actually elected shall be entitled to nominate advisers.

In undertakings employing more than 150 employees during the 12 months prior to the first day of the month on which notices of the elections are posted and, if appropriate, by way of exception to the limit provided for in paragraph 1, trade unions enjoying general or sectoral national representativity referred to above and which have secured at least 20% of the persons elected at the most recent elections shall each be entitled to nominate advisers.

The delegation shall appoint advisers who shall be entitled to attend meetings of the delegation, if appropriate on the basis of the nominations submitted to it in accordance with the foregoing subparagraphs.

If the total number to be appointed exceeds that of the advisers thus nominated, the staff delegation may approve additional advisers within the limits of paragraph 1.

To that end, trade unions enjoying general or sectoral national representativity referred to above and who have gained at least one-third of the persons actually elected shall be entitled to submit nominations.

(3) The delegation may decide to appoint an external expert where it considers that the matter is of decisive importance for the undertaking or the employees. Unless there is a prior agreement to the contrary, funding by the undertaking shall be limited to one expert and may not exceed for each "year of office" and for each expert a percentage of the total annual wage bill of the employees, declared by the employer to the Joint Social Security Centre during the year prior to the decision on the mandate, to be determined by Grand Ducal Regulation. The head of the undertaking must be informed in advance of the nature of the mandate thus conferred.

(4) In undertakings with a staff delegation, the latter may decide, at the request of the delegates or of the head of the undertaking, to entrust specific matters to joint examination by an employers' professional organisation and a trade union enjoying general or sectoral national representativity by virtue of the provisions of Articles L. 161-4 and L. 161-7.

For the application of the foregoing paragraphs, fractions equal to or greater than one-half shall be rounded up to the immediately higher unit; fractions lower than one-half shall be rounded down to the immediately lower unit."

(Law of 23 July 2015)

"Chapter III.- Appointment of staff delegates

Section 1. - Appointment procedures

Article L. 413-1.

(1) Full and alternate staff delegates shall be elected by secret ballot, in accordance with the rules on proportional representation, by the employees of the undertaking, from a list of candidates put forward either by a trade union which enjoys general national representativity by virtue of the provisions of Article L. 161-4 or by a number of employees of the undertaking representing at least 5% of the total workforce, provided that the number thereof shall not exceed 100.

However, in undertakings with fewer than 100 employees, the ballot shall be based on the relative majority system.

Trade unions enjoying sectoral representativity shall be authorised to present lists in the sectors in which their representativity 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 in Article L.161-3, to the extent to which that organisation represented an absolute majority of the members who made up the previous delegation.

(2) No list may include more candidates than there are posts of full members and alternates to be filled.

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

(4) The rules on voting and electoral disputes shall be the subject of a Grand Ducal Regulation.

(5) At the request of the head of the undertaking or the staff delegation, the Minister whose terms of reference include Employment may, under conditions and in accordance with procedures to be determined by him, authorise postal voting by employees absent from the undertaking on the day of the vote for reasons relating to the organisation of work in the undertaking or by reason of sickness, occupational accident, maternity or leave.

(6) If the number of candidatures lodged does not exceed the number of full and alternate delegates to be elected and if the candidates agree to appoint the full and alternate delegate or delegates and agree upon the order in which the alternate or alternates will be called upon to replace the full delegate or delegates, the latter shall be declared elected automatically.

(Law of 10 August 2018)

"The head of the undertaking or his delegate shall draw up a record thereof which he will make available, no later than on the date set for the elections, on the electronic platform of the Inspectorate of Labour and Mines intended for that purpose.

(7) If no candidates present themselves, the head of the undertaking or his delegate shall draw up a record to that effect which he will make available, no later than on the date set for the elections, on the electronic platform of the Inspectorate of Labour and Mines intended for that purpose, and the Inspectorate will carry out an inquiry within the undertaking."

On a proposal from the Director of the Inspectorate of Labour and Mines, the full delegates and, if appropriate, the alternate delegates shall then automatically be appointed by order of the Minister whose terms of reference include Employment, from among the eligible employees of the establishment, within two months following the date of the elections.

Article L. 413-2.

(1) The members of the staff delegations shall be appointed for a period of five years and may be re-elected.

(2) The staff delegations shall be renewed in their entirety between February 1st and March 31st of each fifth calendar year on a date set for all the renewals by the Minister whose terms of reference include Employment, which shall be published in the Official Journal of the Grand Duchy of Luxembourg.

(3) However, the Minister whose terms of reference include Employment may, after hearing the opinion of all the trade unions which enjoy general or sectoral national representativity by virtue of the provisions of Articles L. 161-4 and L. 161-7 and which are represented within the delegation elected, arrange for full renewal of a staff delegation outside the period referred to in paragraph 2, provided that there is no longer a sufficient number of full members on a list and there are no longer alternate members to fill the vacant post or posts.

Similarly, elections must be organised outside the period referred to in the said paragraph 2 where the staff of the undertaking attains the prescribed minimum number for the establishment of a staff delegation.

The term of office of the staff delegation established or renewed under the conditions laid down in subparagraphs 1 and 2 will expire with that of the delegations appointed in accordance with paragraph

2, unless its term of office would thereby become less than one year; in the latter case, the term of office shall be extended for a further period of five years.

(4) The staff delegation appointed shall continue to perform its functions until the end of its term of office, in the composition which derived from the elections, notwithstanding any change in staff numbers.

(5) In the event of transfer of an undertaking, an establishment, part of an undertaking or part of an establishment, within the meaning of Book 1, Title II, Chapter VII, the status and the function of the staff delegation shall continue to exist as before, provided that the establishment retains its autonomy.

If the undertaking, establishment, part of an undertaking or part of an 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 transferred employees.

The delegation thus enlarged shall, within the month following the transfer, proceed to appoint a chairman, a vice-chairman, a secretary and a bureau, in accordance with Article L. 416-1. The exceptional composition of the staff delegation shall come to an end when the delegation is next renewed.

If the employees of the undertaking, the establishment, the part of the undertaking or part of the establishment which does not retain its autonomy are taken on by an entity which has no staff delegation, the staff delegation of the transferred entity shall operate as a joint delegation.

Section 2. - Electoral conditions

Article L. 413-3

All employees, regardless of nationality, who have reached the age of 16 years, linked to the establishment by an employment contract or an apprenticeship contract and having been employed in the undertaking for at least six months on the day of the election shall participate in the election of the staff delegates.

Article L. 413-4

(1) In order to be eligible, the employees must fulfil the following conditions:

1. be aged at least 18 years on the day of the election;
2. have been employed in the undertaking without interruption for the 12 months prior to the first day of the month on which notice of the elections is posted;
3. either be of Luxembourg nationality or be authorised to work on Luxembourg territory.

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

Article L. 413-5

Employees employed half-time simultaneously in more than one undertaking shall be eligible only in the undertaking in which they are employed for the longest period of weekly working time; in the event that the periods of work are of equal duration, they shall be eligible in the undertaking in which they prove the greatest seniority of service.

In the event that the undertaking in which the employee would be eligible does not fall within the scope of the legal obligation to establish a staff delegation, the employee shall be eligible in the undertaking which is subject to that obligation.

Article L. 413-6.

A temporary employee and employees made available may not claim electoral rights or the right to be elected to the office of staff delegate or staff representative on the board of directors of the user undertaking.

However, a temporary employee and an employee made available may, within the user undertaking, exercise the rights to complain, the right to consult staff delegates and the right of access to personnel files concerning him or her in accordance with the provisions of the present title.”

(Law of 23 July 2015)

Chapter IV. - Rights and obligations of the staff delegation

Article L. 414-1.

Without prejudice to more precise or restrictive conditions laid down in Articles L. 414-2, L. 414-3 and L. 414-5 to L. 414-7, the following meanings shall apply:

- information: the transmission by the employer of data to the staff delegation in order to enable them to take cognizance of the subject under review and to examine the same, this being done at an appropriate time, in an appropriate manner and including content that is appropriate, in order to enable in particular the delegation to carry out an adequate examination and, if appropriate, to prepare for consultation;
- consultation: an exchange of views and the establishment of a dialogue between the staff delegates and the employer, taking place at an appropriate time, by appropriate means and including content which is appropriate, on the basis of information provided by the employer in accordance with the provisions of the foregoing indent, and of the opinion which the staff delegation is entitled to formulate, in such a manner as to enable the staff delegation to hold meetings with the employer and obtain a reasoned reply to any opinion that it may issue, and in particular with a view to reaching, if appropriate, an agreement upon the decisions falling within the employer's powers.

(2) The social partners may, at any time and at the appropriate level, including at the level of the undertaking, freely define by a negotiated agreement the procedures for informing and consulting employees. Those agreements may include implementing provisions different from those in Articles L. 414-3 and L. 414-5 to L. 414-7, provided that the principles laid down in paragraph 3 of the present article are observed.

(3) At the time of defining and implementing the procedures for information and consultation, the employer and the representatives of the employees shall work in a spirit of cooperation and respect for their reciprocal rights and obligations, having regard both to the interests of the undertaking and to those of the employees.

(4) The provisions of paragraphs 1 to 3 above and those of Articles L. 414-3 and L. 414-5 to L. 414-7 shall not adversely affect the information and consultation procedures provided for by the legislation on the representation of employees on boards of directors and supervisory committees, on collective dismissals, on the maintenance of employees' rights in the event of transfer of an undertaking, on the European works council, on the involvement of employees in the European Company, the European

Cooperative Society and the Company deriving from a cross-border merger and by any other legal provision.

Section 1. - General powers and duties

Article L. 414-2.

(1) The general task of the staff delegation shall be to safeguard and defend the interests of the salaried staff of the undertaking regarding conditions of work, job security and social status.

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

1. to foresee and settle, in a spirit of cooperation, any differences, whether individual or collective, which may arise between the employer and the salaried staff;
2. to submit to the employer any claim, whether individual or collective;
3. if the above differences are not settled, to bring before the Inspectorate of Labour and Mines any complaint or observation concerning application of the legal, regulatory, administrative and contractual provisions concerning working conditions and the rights and protection of employees in the exercise of their profession.

(3) In the performance of its duties, the staff delegation shall ensure strict compliance regarding equality of treatment within the meaning of Title V of Book II with regard to access to employment, vocational training and promotion, and also remuneration and working conditions.

(4) The head of the undertaking shall be required to communicate to the staff delegation the information necessary for the proper performance of its tasks, thereby enlightening its members regarding the progress and life of the undertaking, including recent developments and the probable development of its activities, and also its economic situation.

That communication will be made at the request of the delegation or monthly in undertakings with at least 150 employees.

In other undertakings, such communication will take place at the meetings with the management of the undertaking 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 information needed to inform its members concerning:

1. health and safety risks and protective and preventative measures and activities concerning both to the undertaking in general and to each type of work post or function;
2. the protective measures to be taken and, if necessary, the protection equipment to be used;
3. the evolution of absence rates.

The information under 1 and 2 must also be communicated to any employer of employees of external undertakings engaged in work in the undertaking, which must forward such information to its staff delegation.

(6) Where an undertaking employs fewer than 150 employees in the 12 months preceding the first day of the month in which notices of elections are posted, the management shall be required to inform the staff delegation in writing, at least once per year, of the economic and financial evolution of the undertaking, and of its recent and future activities.

For that purpose, it shall submit to the staff delegation a comprehensive report on the activity of the undertaking, its turnover, its overall production and operating results, orders placed, the development of the structure and the amount of staff remuneration and any investments made.

(7) Where the members of the staff delegation consider that the information provided is not sufficient to carry out the tasks defined in paragraph 2 above and in Article L. 414-3, they may request additional information from the head of the undertaking within the limits of the information which must be provided to them pursuant to the present Title.

Section 2. – Information and consultation concerning the life of the undertaking

Article L. 414-3.

As regards information and consultation, the staff delegation shall have the following tasks:

1. to give its opinion and make proposals on any matter relating to the improvement of working and employment conditions and the social circumstances of the salaried staff of the undertaking;
2. to give its opinion on the drawing up or amendment of the internal regulations of the undertaking and to strictly supervise the implementation of those regulations;
3. to propose amendments to the internal regulations, on which the management board, or, if appropriate, the participants in the meeting provided for in Article L. 414-10 must take a decision, before the expiry of a period of two months, which must be notified immediately to the delegation;
4. in undertakings whose salaried staff exceeds 100 employees, to participate in the training of apprentices in the undertaking and the management of apprenticeship centres, if any exist;
5. to cooperate in the setting up and implementation of any initial vocational training scheme, and in particular apprenticeship schemes;
6. to promote the integration of persons who have become disabled following accidents and handicapped persons and to endeavour to create posts which are appropriate to their physical and intellectual capacities;
7. to participate in protection at work and the working environment and in the prevention of accidents at work and occupational illnesses;
8. to participate in the implementation of the policy of prevention of mobbing and violence at work;
9. to give its opinion before the setting up, modification or repeal of any supplementary pension scheme;
10. to give its opinion on issues relating to working time;
11. to give its opinion on ongoing vocational training plans;
12. to participate in the management of measures in favour of young people and to advise the employer on all matters relating to the working conditions and protection of young employees;
13. to collaborate in the implementation of internal reclassifications;
14. to promote efforts to reconcile family life with professional life.

(2) The head of the undertaking shall be required to inform and consult the staff delegation and the equality delegate concerning the situation, structure and probable development of employment within the undertaking and any anticipatory measures envisaged, in particular in the case of threats to employment; he must in particular provide half yearly for that purpose to the staff delegation and the equality delegate statistics broken down according to sex concerning recruitment, promotion, transfers, dismissals, remuneration and training of employees of the undertaking.

(3) The head of the undertaking shall be obliged to inform and consult the staff delegation on decisions liable to give rise to important changes in the organisation of work or in employment contracts, including those referred to in the provisions concerning the legislation on collective dismissals, the maintenance of employees' rights in cases of transfers of undertakings and on recourse to temporary employees.

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

(5) The head of the undertaking shall be required to inform and consult the staff delegation concerning the management of social support measures introduced in the undertaking for the benefit of employees or their families, including measures designed to provide or facilitate accommodation for employees.

To that end, the staff delegation shall receive a management report from the head of the undertaking at least once a year.

If employees make a financial contribution to social support measures, the said management report must be formally approved by the staff delegation."

(Law of 9 May 2008)

"Section 4. Information and consultation concerning the life of the undertaking

(The Law of 23 July 2015 replaces this title by the one set out below for all new social elections of a company and by the time of the 2018 social elections at the latest)

"Section 3. - Information and consultation regarding technical, economic and financial matters"

Article L. 414-4. *(The Law of 23 July 2015 replaces this article for all new social elections of a company and by the time of the 2018 elections at the latest)*

(1) The head of the undertaking shall be required to communicate to the delegation information capable of enlightening its members concerning the progress and the life of the undertaking, including recent developments and the probable development of the activities of the establishment and of the undertaking and of its economic situation. This communication shall take place monthly in undertakings which have a joint works council; in other undertakings, it shall take place at the meetings with the management of the establishment referred to in Article L. 415-6 (1).

Where the undertaking is constituted in the form of a company limited by shares, the management or administration shall be required to inform the staff delegation in writing, at least once a year, of the economic and financial development, and the recent and probable activities of the establishment and of the undertaking. For that purpose, it shall submit to the delegation, after presentation thereof to the joint works council of the undertaking, if there is one, a comprehensive report on the activity of the undertaking, its turnover, its overall production and operating results, orders placed, the development of the structure and the amount of staff remuneration and any investments made.

(2) The head of the undertaking shall be required to communicate to the delegation all information necessary to enlighten its members concerning:

1. health and safety risks and protective and preventative measures and activities concerning either the undertaking or the establishment in general and each type of work post or function;
2. the protective measures to be taken and, if necessary, the protective equipment to be used.

The same information must be communicated to any employer of employees of external undertakings and establishments working in the undertaking, which must forward the information to its staff delegation.

(3) The head of the undertaking shall be required to inform and consult the staff delegation and the equality delegate concerning the situation, structure and probable development of employment within the undertaking and any anticipatory measures envisaged, in particular in the case of threats to

employment; he must in particular provide half yearly for that purpose to the staff delegation and the equality delegate statistics broken down according to sex concerning recruitment, promotion, transfers, dismissals, remuneration and training of employees of the undertaking.

(4) The head of the undertaking shall be obliged to inform and consult the staff delegation on decisions liable to give rise to important changes in the organisation of work or in employment contracts, including those referred to in the provisions concerning the legislation on collective dismissals, the maintenance of employees' rights in cases of transfers of undertakings and on recourse to temporary employees.

(Law of 11 November 2009)

"(5) The head of the undertaking shall be required to inform and consult the staff delegation and the equality delegate concerning the conclusion of employment support contracts, employment initiation contracts and employment initiation contracts - practical experience."

(Law of 23 July 2015 – No later than at the time of the 2018 social elections)

"Article L. 414-4.

The provisions of the present section shall apply to undertakings employing in the 12 months prior to the first day of the month in which notice of the elections is posted at least 150 employees."

"Article L. 414-5. (The Law of 23 July 2015 replaces this article for all new social elections of a company and by the time of the 2018 elections at the latest)

(1) Without prejudice to more precise or restrictive conditions laid down in Article L. 414-4, the following meanings shall apply:

- information: the transmission by the employer of data to the staff delegation in order to enable it to take cognizance of the subject under review and to examine the same, this being done at an appropriate time, in an appropriate manner and including content that is appropriate, in order to enable in particular the delegation to carry out an adequate examination and, if appropriate, to prepare for consultation;
- consultation: an exchange of views and the establishment of a dialogue between the staff delegates and the employer, taking place at an appropriate time, by appropriate means and including content which is appropriate, on the basis of information provided by the employer in accordance with the provisions of the foregoing indent, and of the opinion which the staff delegation is entitled to formulate, in such a manner as to enable the staff delegation to hold meetings with the employer and obtain a reasoned reply to any opinion that it may issue, and in particular with a view to reaching, if appropriate, an agreement upon the decisions falling within the employer's powers.

(2) The social partners may, at any time and at the appropriate level, including at the level of the undertaking or establishment, freely define by a negotiated agreement the procedures for informing and consulting employees. Those agreements may include implementing provisions different from those in Article L. 414-4 of the Labour Code, provided that the principles laid down in paragraph 1 of the present article are observed.

(3) At the time of defining and implementing the procedures for information and consultation, the employer and the representatives of the employees shall work in a spirit of cooperation and respect for their reciprocal rights and obligations, having regard both to the interests of the undertaking or the establishment and to those of the employees.

(4) The provisions of Articles L. 414-4 and L. 414-5 (1) to (3) shall not adversely affect the information and consultation procedures provided for by the legislation on joint works councils, on the

representation of employees on boards of directors and supervisory committees, on collective dismissals, on the maintenance of employees' rights in the event of transfer of an undertaking, on the European works council, on the involvement of employees in the European Company, the European Cooperative Society and the Company deriving from a cross-border merger.

(Law of 23 July 2015 – No later than at the time of the 2018 social elections)

"Article L. 414-5.

(1) The head of the undertaking must inform, and consult the staff delegation prior to any important decision relating to:

1. the construction, conversion or extension of production or administration facilities;
2. the introduction, improvement, renewal or conversion of equipment;
3. the introduction, improvement, renewal or conversion of working methods and production processes, with the exception of secret manufacturing processes.

(2) The head of the undertaking shall be required to inform the staff delegation on the impact of the measures listed in paragraph 3 concerning working conditions and the working environment.

(3) In general, the head of the undertaking must inform and consult the staff delegation, at least once a year, regarding the present and foreseeable workforce requirements in the undertaking and measures relating in particular to training, advanced training and vocational re-education which may, in certain cases, derive therefrom for the employees of the undertaking."

Section 5. - Posting of delegation communications

(The Law of 23 July 2015 repeals this title for all new social elections of a company and by the time of the 2018 social elections at the latest)

"Article L. 414-6. (The Law of 23 July 2015 replaces this article for all new social elections of a company and by the time of the 2018 elections at the latest)

(1) The posting of communications, reports and positions of the staff delegation and the equality delegate shall be made without restriction on notice boards reserved for that purpose, in so far as they have a direct relationship with the powers and duties reserved to it by law.

(2) The delegates elected from a list submitted by a trade union organisation that is representative at national level may in addition:

1. freely post on notice boards reserved for that purpose trade union communications that are different from those referred to in paragraph (1); an example of such trade union communication shall be forwarded to the head of the undertaking at the same time as they are posted;
2. freely distribute trade union publications and tracts to employees of the establishment within the boundaries thereof and at places to be agreed upon with the head of the undertaking;
3. proceed, where applicable, with the collection of trade unions subscriptions within the establishment, provided that they do not adversely affect the functioning of the establishment.

The same shall apply to delegates elected from a list submitted by a trade union organisation meeting the definition in Article L. 161-3, to the extent to which they represent an absolute majority of the members making up the delegation.

(Law of 23 July 2015 – No later than at the time of the 2018 social elections)

"Article L. 414-6

(1) The staff delegation shall without fail be informed and consulted regarding any decision of an economic or financial nature which might have a decisive impact on the structure of the undertaking or on the level of employment.

The foregoing shall apply in particular to decisions concerning the volume of production and sales, programming and orientation of production, investment policy, plans to discontinue or transfer the undertaking or parts of the undertaking, plans to restrict or extend the business of the undertaking, plans for the merger of undertakings and plans for changes to the organisation of the undertaking, the introduction, modification and repeal of any supplementary pension scheme.

(2) The information and consultation provided for in the present article shall without fail relate to the repercussions of the envisaged measures for the volume and structure of the workforce and the employment and working conditions of the staff of the undertaking. They shall also relate to welfare measures, including vocational training and re-education measures adopted or envisaged by the head of the undertaking.

(3) The information and consultation provided for in the present article must in principle precede the envisaged decision. That shall not apply, however, where they are liable to hamper the management of the undertaking or any part of the undertaking or to compromise the implementation of a planned operation. In such cases, the head of the undertaking must, within three days, give the staff delegation all necessary information and explanations.”

Section 6. - Access to employees' personnel files

(The Law of 23 July 2015 repeals this title for all new social elections of a company and by the time of the 2018 elections at the latest)

Article L. 414-7. *(The Law of 23 July 2015 replaces this article for all new social elections of a company and by the time of the 2018 elections at the latest)*

Every employee shall be entitled twice per year, during working hours, to have access to the personnel files relating to him or her; the employee may on such occasions arrange to be assisted by a member of the delegation or by the equality delegate, who shall be required to observe secrecy concerning the content of the personal files to the extent to which they have not been released from that obligation by the employee.

The employee's explanations concerning the content of his or her personal file must be included in the file at the request of the interested party.

(Law of 23 July 2015 – No later than at the time of the 2018 social elections)

“Article L. 414-7.

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

To that end, he shall submit to the staff delegation a comprehensive report on the activity of the undertaking, its turnover, its overall production and operating results, orders placed, the development of the structure and the amount of staff remuneration and any investments made.

(2) Where the undertaking is established in the form of a company limited by shares, a not-for-profit association, a cooperative or a foundation, the management or administration shall be required in addition to communicate to the staff delegation, before presentation thereof to the general meeting of shareholders or the decision-making body, the profit and loss account, the annual balance sheet, the

report of the statutory auditors, if appropriate the report of the board of directors or the management, and any other document submitted to the general meeting of shareholders or the decision-making body.”

(The Law of 23 July 2015 inserts this article for all new social elections of a company and by the time of the 2018 elections at the latest)

“Article L. 414-8.

Where, in the case of a consultation carried out pursuant to Articles L. 414-5, L. 414-6 and L. 414-7 (1), the head of the undertaking and the staff delegation maintain divergent positions, the latter must without fail be brought to the notice of the board of directors or, if appropriate, of the manager or managers.

Where the undertaking is not established in the form of a company limited by shares, the positions referred to in the foregoing subparagraph shall without fail be brought to the attention of the head of the undertaking, if the latter did not participate personally in the deliberations.

In all cases, the head of the undertaking, board of directors, the decision-making body or the manager shall be required to give an account, stating the underlying reasons, of the action taken in response to the positions expressed.”

(The Law of 23 July 2015 inserts this title for all new social elections of a company and by the time of the 2018 social elections at the latest)

“Section 4. – Participation in certain decisions of the undertaking”

(The Law of 23 July 2015 inserts this article for all new social elections of a company and by the time of the 2018 elections at the latest)

“Article L. 414-9.

In undertakings employing, in the 12 months prior to the first day of the month in which notices of the elections are posted, at least 150 employees and without prejudice to the application of other legal or contractual provisions, decisions relating to the following matters must be taken by agreement between the employer and the staff delegation:

1. the introduction or application of technical installations whose purpose is to monitor the behaviour and performance of employees at their work post;
2. the introduction or modification of measures concerning the health and safety of employees and the prevention of occupational illnesses;
3. the establishment or modification of general criteria concerning personnel selection in cases of recruitment, promotion, transfer, dismissal and, where appropriate, the priority criteria for employees to be granted early retirement;
4. the establishment and implementation of any ongoing vocational training programme or collective action;
5. the establishment or modification of general criteria for the assessment of employees;
6. the introduction or modification of internal regulations having regard, where appropriate, to the collective agreements in force;
7. the grant of rewards to employees who, by their initiatives or proposals for technical improvement, have been particularly useful to the undertaking, without prejudice to the laws and regulations governing patents and inventions.

(The Law of 23 July 2015 inserts this article for all new social elections of a company and by the time of the 2018 elections at the latest)

"Article L. 414-10.

A meeting between the employer and the staff delegation, concerning the matters referred to in Article L. 414-9, must take place at least once each quarter.

The purpose of such meetings shall be discussion of the matters provided for in Article L. 414-9 with the aim of reaching an agreement.

The undertaking shall be represented therein by the head of the undertaking or his delegate, who shall be entitled to arrange to be assisted by persons of their choice, provided that the number of representatives of the undertaking may not in any such case exceed that of the staff delegates.

The Chairman of the delegation and the head of the undertaking or his delegate shall agree upon the agenda, which must be disclosed to the members of the staff delegation at least five days before the meeting.

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

Where the parties do not reach agreement on the decisions to be taken in accordance with the agenda, the staff delegation shall authorise the bureau provided for in Article L. 416-1(2) to conduct the negotiations and take a decision with the employer on the matters provided for in Article L. 414-9.

The bureau may arrange to be assisted by a maximum of four advisers as provided for in Article L. 412-2, at least one being appointed by each trade union which enjoys general or sectoral national representativity by virtue of the provisions of Articles L. 161-4 and L. 161-7 and which secured at least 20% of the persons elected in the last elections.

Within a period of 48 hours, the bureau shall notify the staff delegation of the joint decision.

The staff delegation shall, as from that communication, have a period of 48 hours in which to submit a duly reasoned request asking for renegotiation of one or more of the issues to be dealt with."

(The Law of 23 July 2015 inserts this article for all new social elections of a company and by the time of the 2018 elections at the latest)

"Article L. 414-11.

(1) Meetings shall be held behind closed door during service hours.

(2) The head of the undertaking must make suitable premises available and the equipment needed for the meetings."

(The Law of 23 July 2015 inserts this article for all new social elections of a company and by the time of the 2018 elections at the latest)

"Article L. 414-12.

(1) Decisions to be taken concerning Article L. 414-9 shall be adopted by joint agreement between the employer and the staff delegation or between the employer and the bureau, each party being entitled to one vote.

(2) In the event of disagreement regarding any of the measures listed in Article L. 414-9, the dispute may be submitted by the employer, the staff delegation or the bureau to the mediation authorities provided for in Article L. 417-3."

(The Law of 23 July 2015 inserts this article for all new social elections of a company and by the time of the 2018 elections at the latest)

"Article L. 414-13

All the deliberations of meetings shall be recorded in minutes of the session countersigned by the head of the undertaking or his representative and the chairman of the delegation or his representative.

Staff representatives shall be required to report regularly to the delegations operating at the level of the economic and social entity and to the equality delegate concerning the result of the discussions conducted in those meetings.

They shall pass to the equality delegate a list, kept up to date, of the general criteria mentioned in points 3 and 5 of Article L. 414-9, even where the employer claims confidentiality in relation to them in accordance with Article L. 415-2, paragraph 1.

In the latter case, the equality delegate shall be required to observe secrecy concerning such criteria, except where cases of infringement of the principle of equal treatment are brought before the Inspectorate of Labour and Mines.

(Law of 23 July 2015)

"Section 5. – Health and safety delegate"

(Law of 10 August 2018)

"Article L. 414-14.

(1) At the constituent meeting, each staff delegation shall appoint from amongst its members or from amongst the other employees of the undertaking a staff health and safety delegate. Within three days following the constituent meeting, the president of the delegation shall give written notice to the head of the undertaking of the surname and forename and the national registration number of the health and safety delegate."

(2) In the event that the health and safety delegate appointed under paragraph (1) is not an elected member of the delegation, he may attend all meetings of the delegation concerned with the right to speak on an advisory basis.

(3) The health and safety delegate shall record the results of his findings, countersigned by the head of department, in a special register which will remain in the office of the undertaking, where the members of the delegation and the inspection and monitoring staff of the Inspectorate of Labour and Mines may examine it.

In urgent cases, where the findings made call for immediate intervention by the Inspectorate of Labour and Mines, the delegate will be entitled to approach that administration directly, provided that at the same time he informs the head of the undertaking or his representative and the staff delegation.

(4) Each week, the health and safety delegate, accompanied by the head of the undertaking or his representative, may make an inspection visit at the headquarters of the undertaking and in work sites or other places where work is being temporarily carried out by the undertaking.

In the administrative departments, the number of inspection visits may not exceed two a year.

The person in charge of the undertaking to whom the inspection visit relates and the person in charge of the maintenance department shall be present at the inspection visit referred to in the foregoing subparagraphs.

(5) The inspection and monitoring personnel of the Inspectorate of Labour and Mines shall be entitled to arrange to be accompanied, during their inspection visits, by the health and safety delegate; similarly, it may arrange to be assisted in the investigation of accidents.

(6) The health and safety delegate may not suffer any loss of remuneration in respect of his absences from service deriving from inspection visits or assistance given to the inspection and monitoring personnel of the Inspectorate of Labour and Mines.

(7) The head of the undertaking shall be required to consult and report to the health and safety delegate with regard to:

1. the evaluation of risks to health and safety at work, including those concerning groups of employees exposed to particular risks;
2. protective measures to be taken and, if necessary, the protective equipment to be used;
3. declarations to be made to the Inspectorate of Labour and Mines pursuant to Article L. 614-11;
4. any action which may have substantial effects on health and safety;
5. the appointment of employees nominated to concern themselves with protective activities and activities to prevent occupational risks in the undertaking;
6. measures taken in relation to first aid, firefighting and the evacuation of employees, and necessary measures appropriate to the nature of the activities and the size of the undertaking, account being taken of other persons present;
7. measures intended to organise the necessary relations with external services, in particular in relation to first aid, urgent medical assistance, rescue and firefighting;
8. recourse within the undertaking to skills external to the undertaking in order to organise protective and preventative activities;
9. adequate training provided to each employee in the interests of his health and safety;
10. assessment of the risks to the environment which may derive from the undertaking's activities, to the extent to which health or working conditions are concerned;
11. measures taken to promote environmental protection, provided that the health or working conditions of employees are concerned.

Health and safety delegates shall be entitled to ask the employer to take appropriate measures and to submit proposals to him in that regard, so as to mitigate any risk for employees or eliminate sources of danger.

(8) The health and safety delegate shall work in close collaboration with the employee or employees appointed on the basis of Article L. 312-3.

(9) The employer must afford the health and safety delegate free time, known as training leave, to participate, without loss of remuneration, in training actions organised by trade union organisations or by specialised institutions coinciding with normal working hours and designed to perfect knowledge regarding health and safety at work.

Such training leave shall be available in addition to training leave provided for staff delegates and it shall not be deductible from annual holiday leave.

The duration of training leave shall be 40 hours per mandate, plus 10 further hours for a first appointment in the undertaking concerned.

It shall be assimilated to a working period, the associated remuneration expenses being borne by the State, in the case of undertakings whose total number of employees does not exceed 150.

A Grand Ducal Regulation may specify the procedures for training leave and increase the duration thereof in exceptional circumstances attributable to changes occurring in the workplace."

(Law of 23 July 2015)

"Section 6. - Equality delegate"

(Law of 10 August 2018)

"Article L. 414-15

(1) At the constituent meeting, each staff delegation shall appoint from among its full members or alternates, and for its full term of office, an equality delegate. Within three days following the constituent meeting, the president of the delegation shall give written notice to the head of the undertaking of the surname and forename and the national registration number of the equality delegate."

(2) The task of the equality delegate shall be to uphold equal treatment within the meaning of Title IV of Book II with regard to access to employment, vocational training and promotion, and also remuneration and working conditions.

For that purpose, without prejudice to any powers or duties which may be conferred on him by other legal provisions, the equality delegate, acting alone or in concert with the staff delegation, in the fields within the scope of his tasks, shall in particular be authorised:

1. to give his opinion and formulate proposals on any matter directly or indirectly relating to any of the matters referred to above;
2. to propose to the employer actions to raise the awareness of the salaried staff of the undertaking;
3. to prepare and present to the employer a plan of measures designed to promote equality of opportunity between men and women, as covered by the final part of Article L. 241- 4(2);
4. to submit to the employer any individual or collective complaint regarding equal treatment for men and women;
5. to forestall and resolve individual or collective disputes which may arise between the employer and the salaried staff regarding equal treatment for men and women;
6. if the above-mentioned disputes are not resolved, to refer any complaint or observation to the Inspectorate of Labour and Mines;
7. to convene the salaried staff of each sex separately once a year;
8. to ensure equality training for apprentices in the undertaking;
9. to collaborate in the setting up and implementation of any initial vocational training scheme and in particular apprenticeship schemes;
10. to hold advisory sessions in appropriate premises for the salaried staff of the undertaking either outside working hours or during working hours. In the latter case, the equality delegate must reach an agreement with the head of the undertaking as to the timing and organisational arrangements for such consultations, the duration of which shall be deducted from the time-off entitlement referred to in paragraph 4 below;
11. to give his opinion before the creation of any part-time post in the undertaking.

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

(4) With a view to accomplishment of the tasks defined in the present article, the time-off entitlement provided for in Article L. 415-5(2) shall be increased at the rate of:

four paid hours per month, if the undertaking employs in the 12 months prior to the first day of the month in which notices are posted announcing the elections between 15 and 25 employees;

six paid hours per month, if the undertaking employs, in the 12 months prior to the first day of the month in which notices are posted announcing the elections between 26 and 50 employees;

eight paid hours per month, if the undertaking employs in the 12 months prior to the first day of the month in which notices are posted announcing the elections between 51 and 75 employees;

ten paid hours per month, if the undertaking employs in the 12 months prior to the first day of the month in which notices are posted announcing the elections between 76 and 150 employees;

four hours per week, if the undertaking employs in the 12 months prior to the first day of the month in which notices are posted announcing the elections more than 150 employees.

This additional time-off entitlement shall be reserved exclusively for the use of the equality delegate.

(5) The employer must afford the equality delegate free time, known as training leave, to participate, without loss of remuneration, in training actions organised by trade union organisations or by specialised institutions, coinciding with normal working hours and designed to perfect economic, legal, social and psychological knowledge conducive to the performance of his tasks.

The equality delegate shall thus be granted two half working days of training leave work per year of office, which may not be deducted from his annual holiday leave. The period of training leave shall be assimilated to a working period, the associated remuneration expenses being borne by the State in the case of undertakings whose total number of employees does not exceed 150.

(6) Where the equality delegate appointed pursuant to paragraph 1 is an alternate member of the delegation, he may participate in all decisions relating to his special mandate and he may attend all meetings of the delegation concerned, with the right to speak on an advisory basis."

(Law of 23 July 2015)

"Section 7. – Posting of delegation communications"

(Law of 23 July 2015)

"Article L. 414-16.

(1) The posting of communications, notices and positions of the staff delegation, the equality delegate and the health and safety delegate shall be effected freely through the various media accessible to the staff, reserved for that purpose, including electronic means, to the extent to which they bear a direct relation to the powers and duties reserved to it by law.

(2) The delegates selected from a list submitted by a trade union which enjoys general or sectoral national representativity under the provisions of Articles L. 161-4 and L. 161-7 may also:

1. freely post trade union communications using the various media reserved for that purpose, separately from those referred to in paragraph 1; a copy of such trade union communications shall be forwarded to the head of the undertaking at the same time as they are posted;
2. freely disseminate trade union publications and tracts to employees of the undertaking within the boundaries thereof and at places to be agreed upon with the head of the undertaking.

The same shall apply to delegates elected from a list submitted by a trade union organisation meeting the definition in Article L. 161-3, to the extent to which they represent an absolute majority of the members making up the delegation.”

(3) The members of the staff delegation shall be entitled to make contact with all employees of the undertaking. To that end, they shall be empowered to move freely within the undertaking, on worksites or other workplaces of a temporary nature and to establish contact with employees after informing the employer thereof. They shall also be entitled to contact them by all means of communication available within the undertaking.”

(Law of 23 July 2015)

“Article L. 414-17

Every employee shall be entitled twice per year, during working hours, to have access to the personnel files relating to him or her; the employee may on such occasions arrange to be assisted by a member of the delegation or by the equality delegate, who shall be required to observe secrecy concerning the content of the personnel files to the extent to which they have not been released from that obligation by the employee.

The employee’s explanations concerning the content of his or her personal file must be included in the file at the request of the interested party.”

(Law of 23 July 2015)

“Chapter V – Status of staff delegate

Section 1. – Obligations of the delegate

Article L. 415-1.

The members of the staff delegation shall in the performance of their duties comply with the internal regulations of the undertaking or establishment.

The members of the staff delegation shall be entitled to leave their work post without reduction of remuneration to the extent necessary for the performance of the tasks entrusted to them by the present Title, after giving notice thereof to the head of the undertaking and provided that this does not adversely affect the proper functioning of the service.

Article L. 415-2.

(1) The members of staff delegations and the advisers and experts referred to in Article L. 412-2 shall be bound by professional secrecy regarding all matters relating to manufacturing processes.

Moreover, they shall be required to keep secret all information that is of a confidential nature and is expressly classified as such by the head of the undertaking or the representative thereof in the legitimate interests of the undertaking, vis-à-vis both the employees and third parties, unless the employees or the third parties are in turn bound by an obligation of confidentiality.

(2) The head of the undertaking may refuse to disclose information or undertake consultations where the nature thereof is such that, according to objective criteria, they would have a serious adverse effect upon the functioning, management or future of the undertaking, cause harm thereto or compromise a planned operation.

(3) Any members of the delegation who regard as improper the classification of information as confidential or the refusal to disclose information or engage in consultations in accordance with the two foregoing subparagraphs may appeal within 15 days to the Director of the Inspectorate of Labour and Mines.

The decision of the Director or his delegate must be sent to the parties no later than the eighth day following the submission of the request. It will be in writing and duly reasoned and shall take account of the interests and needs of the employees and of their representatives and of the economic necessities and constraints of which the head of the undertaking must take account or against the background of the exercise of his authority to manage the undertaking in accordance with the principles of sound and prudent management.

Within 15 days following notification thereof, an appeal for annulment of the decision of the Director of the Inspectorate of Labour and Mines or his delegate may be brought before the Administrative Tribunal.

Section 2. – Term of office

Article L. 415-3.

A delegate's term of office shall end:

1. in the event of non-re-election as a full or alternate member, provided that the newly elected delegation has been installed;
2. where the person concerned ceases to be a member of staff;
3. in the event of resignation;
4. where the trade union organisation which submitted his candidature has informed the head of the undertaking and the delegation that the person concerned has ceased to belong to it;
5. in the event of death;
6. in the event of refusal, non-extension or withdrawal of the authorisation conferring entitlement to work.

Article L. 415-4.

An alternate member shall be called upon to act as a replacement for the full member:

1. where the latter is prevented from acting;
2. where the term of office of the full member has come to an end for any of the reasons listed in Article L. 415-3, points 2 to 6; in such circumstances, the alternate member shall complete the term of office of the full member.

Section 3. – Exercise of the mandate

Article L. 415-5.

(1) In the context of Article L. 415-1, and without prejudice to paragraph (2), the head of the undertaking must grant the delegation members the time necessary for the performance of their functions and remunerate that time as working time.

(2) In undertakings in which the workforce represented does not exceed 149 employees, the head of the undertaking shall grant the delegates a total paid time-off entitlement proportionate to the number of employees that they represent on the basis of an allowance of 40 hours per week per 500 employees.

In undertakings where the staff represented is between 150 and 249, the head of the undertaking shall grant the delegates a total paid time-off entitlement proportionate to the number of employees that they represent on the basis of an allowance of 40 hours per week per 250 employees.

For application of the provisions of the foregoing subparagraphs, fractions of an hour equal to or greater than one-half shall be rounded up to the immediately higher unit; fractions of an hour of less than one-half shall be rounded down to the immediately lower unit.

The time-off entitlement referred to above shall be distributed, in proportion to the votes received, among all the lists which secured at least 20% of the seats at the time of the election.

(3) The head of the undertaking shall be required to release from all work of any kind whatsoever and to grant a permanent release from service with maintenance of wages and, if appropriate, of the right to promotion and advancement to:

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

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

However, where the workforce exceeds 1,000 employees, trade union organisations enjoying national representativity under Article L. 161-4 represented within the delegation and bound to the undertaking by a collective employment agreement, shall each appoint one of the delegates released in accordance with the provisions of the present paragraph.

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

It shall give notice thereof to the head of the undertaking.

(4) The members of the delegation may not receive remuneration lower than that which they would have received if they had actually worked during delegation hours.

(5) An agreement to be reached between the head of the undertaking and the staff delegation shall provide information on the theoretical progression of the careers of delegates benefiting from a time-off entitlement corresponding to at least 50% of their normal working time as compared with a reference group of employees and shall determine the measures necessary with a view to complete reintegration of those delegates in their former posts or in equivalent posts during or upon expiry of their term of office.

The said agreement shall also govern the participation of all delegates in continuing vocational training offered by the undertaking, in particular training relating to the function performed before the mandate was taken up and, if need be, training relating to a new equivalent post to be occupied during or upon expiry of their term of office.

Article L. 415-6.

(1) Staff delegations may meet once a month during service hours, by giving advance notice of at least five working days to the management, unless a shorter period is agreed; they must, however, meet during service hours six times a year at least, and three of the meetings must be with the management of the undertaking.

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

Article L. 415-7.

Once a year, the staff delegation may hold a plenary assembly with the salaried staff of the undertaking. The assembly, which shall be held behind closed doors, shall be convened by the chairman of the delegation.

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

Article L. 415-8.

The staff delegation may schedule consultation hours at the delegation's premises for the salaried staff of the undertaking.

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

(3) Delegations which do not include a released delegate may schedule consultation hours either outside working hours or during working hours; in the latter case, they must reach an agreement in advance with the head of the undertaking as to the timing and organisational arrangements and the grant of consultation hours, which shall be set against the delegation's time-off entitlement.

Article L. 415-9.

(1) The employer shall be required to grant all full staff delegates such free time, known as training time, as may be required for their participation without loss of remuneration in training actions organised by trade union organisations or by specialised institutions, in particular professional chambers, at times coinciding with normal working hours and designed to perfect their economic, social and technical knowledge in their role as employee representatives.

(2) In undertakings employing in the 12 months prior to the first day of the month in which notices are posted announcing the elections between 15 and 49 employees, the full members of staff delegations shall be entitled, each during his term of office, to one working week of training leave, the remuneration expenses relating thereto being borne by the State.

In undertakings employing in the 12 months prior to the first day of the month in which notices are posted announcing the elections between 50 and 150 employees, the full members of staff delegations shall be entitled, each during his term of office, to two working weeks of training leave, the remuneration expenses relating thereto being borne by the State.

In undertakings employing, in the 12 months prior to the first day of the month in which notices are posted announcing the elections of more than 150 employees, the full members of the staff delegations shall each be entitled to one working week of training leave per year of office.

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

Alternate members of the staff delegation shall be granted one-half of the training hours provided for in the present paragraph.

Where those alternate members become full members during their term of office, the part of the training leave already taken in accordance with the foregoing subparagraph shall be deducted from the training leave which they may claim as full delegates.

(3) The duration of the training leave may not be set against the duration of paid annual 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 referred to in paragraph 2, to those delegates who wish to undertake approved traineeships, each year, on the basis of a list agreed upon by the employers' professional organisations and the trade unions enjoying general or sectoral national representativity by virtue of the provisions of Articles L. 161-4 and L. 161-7.

Specific requests may be addressed to the Minister whose terms of reference include Employment, who must officially approve such training.

Section 4. – Special protection

Article L. 415-10.

(1) During their term of office, the full and alternate members of staff delegations and the health and safety delegate may not be subjected to any change to any essential clause of their employment contract rendering applicable Article L. 121-7.

Where appropriate, those delegates may, by an ordinary request to the president of the employment court, who will adjudicate as a matter of urgency and by summary decision, after the parties have been heard or duly convened, request discontinuation of any unilateral amendment of any such clause.

(2) The delegates referred to above may not, on pain of nullity of the measure, be dismissed or convened to a prior meeting, even for serious misconduct, at any time during the period of legal protection.

In the month following dismissal, the delegate may, by an ordinary request to the president of the employment court, who will adjudicate as a matter of urgency and by summary decision, after the parties have been heard or duly convened, request a ruling that the dismissal is void and an order that the employee be retained or, where appropriate, be reintegrated in accordance with Article L. 124-12.

The order of the president of the employment court shall be enforceable on a provisional basis; it shall be amenable to appeal, brought by an ordinary application, within the 40 days following its notification through the registry, before the judge presiding over the chamber of the Appeal Court to which are allocated appeals in matters of employment law. A decision will be given on an urgent basis, after the parties have been heard or duly convened.

A delegate who has not pursued the remedy provided for in paragraph 2 may ask the court to determine cessation of the contract as from the date of notification of the dismissal and an order that the employer pay damages, also taking account of the specific harm suffered as a result of the void dismissal in relation to his status as a delegate enjoying special protection. Any delegate exercising this option shall be regarded as involuntarily unemployed within the meaning of Article L. 521-3 as from the date of the dismissal.

Legal actions to redress any improper termination of an employment contract must be brought before the employment court within a period of three months following notification of the dismissal, failing which they will be time barred.

A choice of one of the two applications referred to in subparagraphs 2 and 4 may not be reversed.

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

(4) In the event of an allegation of serious misconduct, the head of the undertaking shall be authorised, in compliance with the provisions of Article L. 121-6(3), to notify the delegate that he has been laid off. That decision must specifically indicate the act or acts of which the delegate is accused and the circumstances whereby such actions constitute serious grounds.

The act or acts liable to justify a judicial termination on serious grounds may not be invoked later than one month after the day on which they came to the notice of the party invoking them, unless within a month the act concerned has given rise to a criminal prosecution.

The time limit laid down in the foregoing subparagraph shall not apply where a party refers to an earlier act or instance of misconduct in support of a new act or a new instance of misconduct.

During the three months following the date of notification, the delegate shall continue to receive his wages and the allowances and other advantages which he could have claimed if the contract had been maintained. Those wages, allowances and other advantages shall accrue definitively to the delegate.

In the month following the layoff, the delegate may, by an ordinary request to the president of the employment court, who will adjudicate as a matter of urgency and by summary decision, after the parties have been heard or duly convened, request a decision on the continuation or suspension of his wages beyond the period of three months, pending a definitive decision in the proceedings.

A delegate who does not wish to be kept on or, if appropriate, to be reintegrated, may, within three months following notification of the layoff, address to the employment court a request for an order recording termination of the contract and for an order that the employer pay damages, having regard to the specific harm suffered as a result of cessation of the contract in relation to his status as a delegate enjoying special protection. Any delegate exercising this option shall be regarded as involuntarily unemployed within the meaning of Article L. 521-3 at the end of the period laid down in subparagraph 4.

A choice of one of the two applications referred to in subparagraphs 5 and 6 may not be reversed.

(5) An employer may submit a request for judicial termination of the employment contract to the employment court, if appropriate by means of a counterclaim, no later than one month following the date of notification of the notice convening him to appear before the president of the employment court.

Where the employment court refuses to uphold that request, the effects of the exemption shall automatically cease.

Where the employment court upholds the request, the termination shall take effect from the date of notification of the layoff.

An appeal may be brought under the conditions applicable to judgments given by the employment court; it shall be enforceable on a provisional basis, if need be on the basis of the original judgment and before registration.

If the employer does not initiate that procedure within the prescribed time limit, the employee may, within 15 days following the expiry of that period, request by an ordinary application to the president of the employment court, who shall adjudicate as a matter of urgency and by summary decision, after the parties have been heard or duly convened, that an order be issued requiring continuing performance of the contract by all the parties involved or if he does not wish to be kept in employment or, if appropriate, reintegrated, he may file with the employment court a request for a ruling recording termination of the contract and a request that the employer be ordered to pay damages, having regard to the specific harm suffered by him as a result of the cessation of the contract in relation to his status as a delegate enjoying special protection. Any delegate exercising this option shall be regarded as involuntarily unemployed within the meaning of Article L. 521-3 upon expiry of the period set in subparagraph 2.

(6) Where a delegate who has been laid off occupies a new remunerated post, whether salaried or otherwise, the employer may apply to the president of the employment court for suspension of the payment of wages.

(7) A delegate whose contract has been terminated by the employment court and for whom the president of the employment court has ordered continuing payment of wages pending a definitive decision on the proceedings may, if he is ordered to reimburse to his employer the wages received in the meantime, apply to the Director of the Agency for the Development of Employment to be retroactively granted an unemployment benefit within the limits provided for in Article L. 521-11 but not beyond the day on which a definitive decision is given in the proceedings.

Before he becomes entitled to receive the retroactive unemployment benefit, the delegate must produce proof of total or partial reimbursement of the wages received. In the absence of proof of full compliance with the order made and at the request of the employer and of the delegate, the Director of the Agency for the Development of Employment shall transfer the amount of the unemployment benefit due to the delegate directly to the employer and shall do so until the amount covered by the order made and not yet settled is covered.

This grant of the full unemployment benefit is an entitlement, unless the delegate has had an order made against him in criminal proceedings which has become res judicata, in relation to the same facts as those invoked to justify the layoff. If that order is made after the payment of all or part of the full unemployment benefit, he must reimburse the amounts paid in that regard to the Employment Fund.

Article L. 415-11.

The provisions of Article L. 415-10 shall be applicable to dismissals of former members of delegations and former health and safety delegates for the six months following the expiry or cessation of their mandate and to persons seeking appointment as members of staff delegations as from the submission of their candidatures and for a period of three months. In the event of objections to elections followed by new elections, that period shall be extended until the date of the new elections.

Article L. 415-12.

Throughout the duration of that procedure, the release time granted to the delegate shall be transferred, if appropriate, to the remainder of the delegation in office which shall distribute the same amongst its members."

(Law of 23 July 2015)

"Chapter VI.– Organisation and functioning"

"Article L. 416-1. (The Law of 23 July 2015 replaces this article for all new social elections of a company and by the time of the 2018 elections at the latest)

(1) The staff delegation shall appoint from among its members, by secret ballot and in accordance with relative majority rules, a chairman, a vice-chairman and a secretary; in the event of a tie, the oldest person shall be elected.

(2) For the dispatch of day-to-day business and the preparation of its meetings, the delegation shall also appoint from amongst its membership, by a secret list-based ballot in accordance with the rules on proportional representation, a bureau made up as follows:

3 members, where the delegation comprises at least 9 members;

5 members, where the delegation comprises at least 12 members;

7 members, where the delegation comprises at least 16 members;

9 members, whether delegation comprises at least 22 members.

(3) The chairman, the vice-chairman and the secretary shall automatically form part of the bureau of the delegation.

In delegations comprising fewer than nine members, the chairman or the vice-chairman shall automatically form part of the bureau of the delegation.

(Law of 23 July 2015 – No later than at the time of the 2018 social elections)

"Article L. 416-1

(1) At the constitutive meeting, which shall be convened in the month following the elections by the employee who obtained the largest number of votes in the ballot, the staff delegation shall elect from amongst its full members, by secret ballot and in accordance with majority voting rules, a chairman, a vice-chairman and a secretary; in the event of a tie, the oldest candidate shall be elected.

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

A Grand Ducal Regulation shall determine, in order, the compulsory items to be included on the agenda of the constitutive meeting and the conduct thereof.

(2) For the dispatch of day-to-day business and the preparation of its meetings, the staff delegation shall appoint from amongst its full members, by a secret list-based ballot in accordance with the rules on proportional representation, a bureau who shall comprise, in addition to the chairman, the vice-chairman and the secretary:

1 member, where the delegation comprises at least 8 members;

2 members, where the delegation comprises at least 10 members;

3 members, where the delegation comprises at least 12 members;

4 members, where the delegation comprises at least 14 members.

For tasks performed by it under Articles L. 414-9 to L. 414-13, the bureau shall be enlarged by at least one staff delegate, in proportion to the votes obtained, from each list that is represented in the staff delegation but is not represented in the bureau under paragraph 2.

(Law of 10 August 2018)

“(3) Within three days following the constituent meeting, the president of the delegation shall give written notice to the head of the undertaking of the surnames, forenames and national registration numbers of the vice-president, of the secretary and of the officers of the bureau.

Within five days following the notice referred to in subparagraph 1, the head of the undertaking is required:

1. to register on the electronic platform intended for that purpose, by filling in the template made available by the Inspectorate of Labour and Mines on that platform, the surnames, forenames and national registration numbers:
 - a) of the president;
 - b) of the vice-president;
 - c) of the secretary;
 - d) of the officers of the bureau;
 - e) of the health and safety delegate referred to in Article L. 414-14, paragraph 1;
 - f) of the equality delegate referred to in Article L. 414-15, paragraph 1;
2. to sign the printed form and arrange for it to be signed by the president of the delegation;
3. to send the duly completed and signed form to the Inspectorate of Labour and Mines via the electronic platform intended for that purpose.”

(4) At the first meeting after the constitutive meeting of the staff delegation, the elected members shall be given information by the head of the undertaking concerning the structure of the undertaking, any links it has with other undertakings, foreseeable economic development, the structure of employment, policies concerning continuing vocational training, health and safety at work and equal treatment.”

(Law of 23 July 2015)

“Article L. 416-2.

(1) The subject matter of the deliberations of the staff delegation shall be determined in an agenda to be drawn up by the bureau of the delegation and notified to the members at least five days before the meeting.

(2) The bureau shall be required to include on the agenda any matters specified in a request submitted by at least one-third of the members of the delegation, no later than three business days before the meeting. If in such a case the application has been submitted after disclosure of the agenda to the members of the delegation, the chairman must give notice thereof to the members within 24 hours.

Article L. 416-3.

(1) The staff delegation shall meet when convened in writing by its chairman.

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

(3) He shall also be required to convene the delegation whenever at least one-third of its full members make a request to that effect in writing; the applicants shall indicate the matters which they wish to be included on the agenda for the meeting.

For application of the provisions of the foregoing subparagraph, fractions equal to or greater than one-half shall be rounded up to the immediately higher unit; fractions lower than one-half shall be rounded down to the immediately lower unit.

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

(5) The Minister whose terms of reference include Employment may convene the staff delegation, for such purposes as he considers appropriate; he may also delegate to attend the meetings an official of his choice, whose observations must be heard.

The head of the undertaking or his representative must be invited to attend the meetings provided for in the present paragraph.

Article L. 416-4.

Meetings of delegations shall be held behind closed doors.

Article L. 416-5.

(1) The decisions and resolutions of the staff delegation shall be passed by a majority of the members present.

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

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

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

Article L. 416-6.

The functions of the delegates shall be purely honorary. However, the employer shall bear the costs of accommodation and travel incurred by members of the staff delegation in direct relation to the exercise of their mandates in the undertaking, with the exception of those incurred in connection with the taking of training leave referred to in Article L. 415-9.

Similarly, the employer shall facilitate travel between the units of the undertaking, if need be making available to the delegates an appropriate means of transport.

Article L. 416-7.

The meetings and consultations of the staff delegations shall take place within the undertaking in appropriate premises, the provision of which, including data-processing equipment and access to the available internal and external means of communication, and office costs and costs of heating and lighting, shall be borne by the employer.

(2) Where the staff delegation includes one or more delegates released in accordance with Article L. 415-5(3), the head of the undertaking shall also be required to make available to it permanent appropriate premises, the equipment and, if need be, the personnel needed for its secretariat."

(Law of 23 July 2015)

"Chapter VII.— Final provisions

Article L. 417-1.

The internal regulations of the undertaking or establishment may not impede the performance of the staff delegation's tasks in accordance with the present Title.

The provisions of the present Title shall not constitute an obstacle to agreements including clauses that are more favourable to employees.

Article L. 417-2.

The Inspectorate of Labour and Mines shall be responsible for overseeing the application of the provisions of the present Title and the measures implementing them.

Article L. 417-3.

(1) Any disputes deriving from 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 certified as being unresolved in the month following any intervention by the Inspectorate of Work and Mines on the basis of Article L. 612-1, may, in the month following the date of issue of the said certificate, be brought before a mediation committee established within the framework of a collective agreement, either at undertaking level or at sectoral level, or by virtue of an agreement concerning inter-professional dialogue.

That Committee shall be chaired by a Mediator appointed by agreement between the parties to the collective employment agreement or to the agreement concerning inter-professional 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 concerning inter-professional dialogue shall also determine the procedure to be followed, the time limits to be observed, the allocation of costs and the other arrangements for applying the present paragraph.

(2) Where the undertaking is not covered by a mediation committee in accordance with paragraph 1 the parties may, in the month following the date of issue of the certificate provided for in paragraph 1(1), bring the matter before the Director of the Inspectorate of Labour and Mines, who shall convene them within five days with a view to appointing a mediator.

In such circumstances the mediator shall be chosen, by agreement between the parties, from a list drawn up for a period of five years, comprising six persons nominated by the Minister whose terms of reference include Employment and resolved upon by the Government in Council.

If the parties do not agree as to who should be the mediator, the latter shall be appointed by the drawing of lots on the basis of the list referred to in the foregoing subparagraph.

The mediator may arrange to be assisted by one or more experts. He shall be assisted by an official to be made available by the Inspectorate of Labour and Mines to provide administrative secretarial services.

(3) Where the mediation initiated under paragraph 2 does not result in an agreement within three months following the appointment of the mediator, the latter shall prepare a record of disagreement which he will forward for information to the parties and to the Director of the Inspectorate of Labour and Mines.

A Grand Ducal Regulation may determine the arrangements for the application of the present article.

Article L. 417-4.

(1) Objections relating to electoral rights and the conformity of electoral operations shall fall within the purview of the Director of the Inspectorate of Labour and Mines; his decision may be subject to an appeal brought before the administrative courts sitting as trial courts.

(2) Provided that no contrary decision is given, objections arising from the application of the present Title and its implementing regulations other than those referred to in paragraph (1) and in Articles L. 414-9 to L. 414-13 shall be within the jurisdiction of the Employment Court.

Article L. 417-5.

Any intentional action hindering either the constitution of the staff delegation, of a delegation at the level of the economic and social entity or the unrestricted appointment of its members or the proper functioning thereof, or the appointment of an equality delegate, or the appointment of a health and safety delegate, or the exercise of the latter's tasks, shall be punishable by a fine of EUR 251 to EUR 15,000.

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 in Article 458 of the Criminal Code.

In the event of repeated infringements within a period of two years following a final conviction, the maximum amount of the penalties referred to in the foregoing subparagraphs may be doubled; in the event of an infringement of the kind referred to in the first subparagraph, a penalty of imprisonment from 8 days to 3 months may be imposed."

(Law of 23 July 2015)