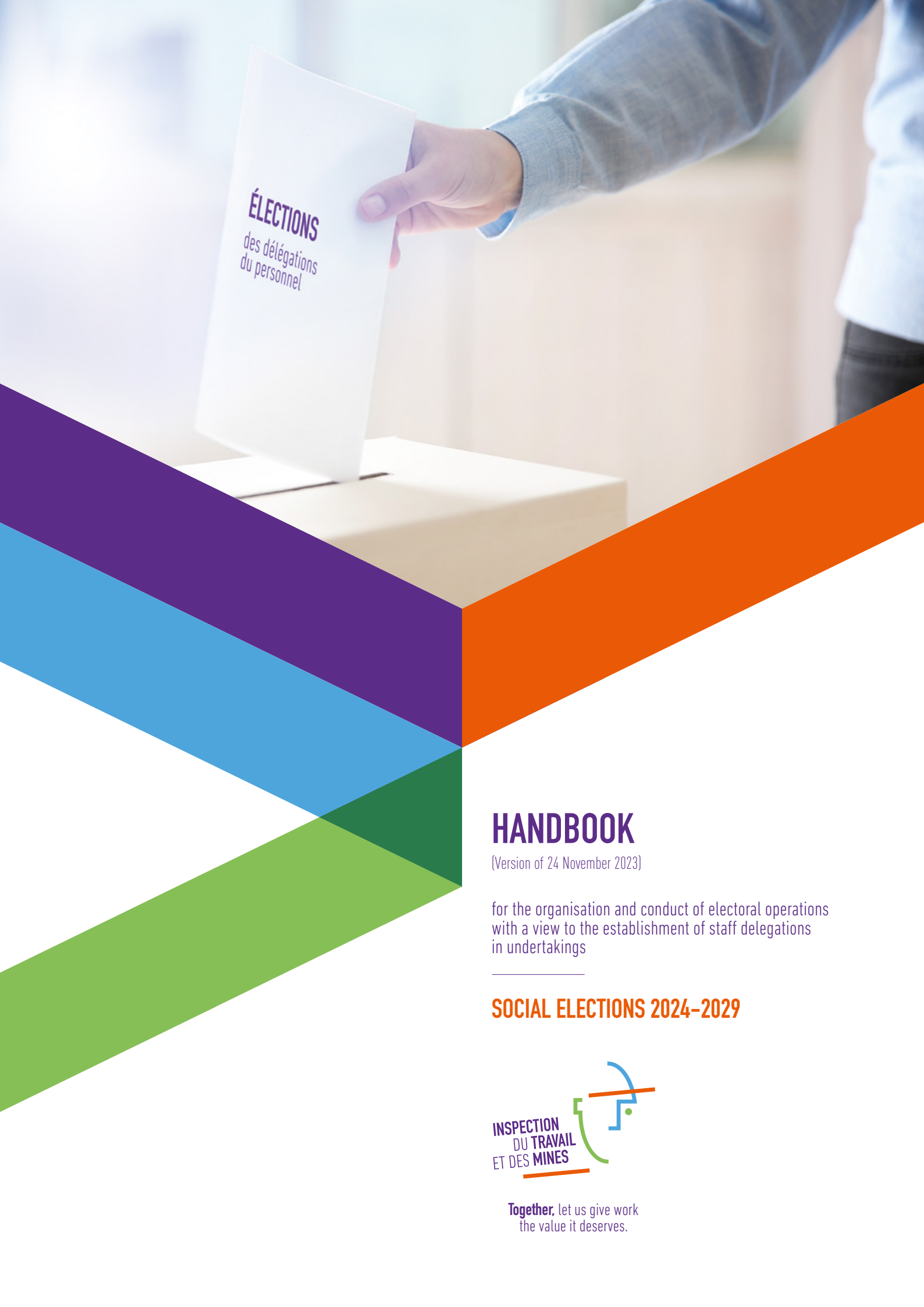




ÉLECTIONS
des délégations
du personnel

HANDBOOK

(Version of 24 November 2023)

for the organisation and conduct of electoral operations
with a view to the establishment of staff delegations
in undertakings

SOCIAL ELECTIONS 2024-2029



Together. let us give work
the value it deserves.

CONTENTS

TIMETABLES	3	7. POST-ELECTORAL ASPECTS COMMON TO THE TWO VOTING SYSTEMS	47
1. GENERAL OBSERVATIONS	10	7.1. Minutes	47
1.1. Who must undertake social elections?	10	7.2. Publication and display of election results	49
1.2. Above what threshold is it necessary for social elections to be held?	10	7.3. What is to be done if an elected candidate declines to take up office?	49
1.3. On what date must social elections be held?	12	8. ENTRY INTO OFFICE OF THE NEW DELEGATION	50
1.4. Who has the responsibility of organising social elections?	12	8.1. First meeting	50
1.5. How many staff delegates have to be elected?	13	8.2. Second meeting	54
1.6. Who has the responsibility of organising social elections?	14	9. ELECTORAL DISPUTES	55
2. PREPARATORY PHASE	15	9.1. Time limits for complaints	55
2.1. Computation of the undertaking's workforce	15	9.2. Jurisdiction	55
2.2. Electorate	20	9.3. Appeals against decisions of the director of the ITM	55
2.3. Postal voting	24	9.4. Effect of annulment of elections	55
3. PRE-ELECTORAL OPERATIONAL PHASE	25	10. SOCIAL ELECTIONS IN TEMPORARY EMPLOYMENT AGENCIES	56
3.1. Display of notice of election	26	10.1. Undertakings concerned	56
3.2. Drawing up of electoral lists	26	10.2. Computation of the workforce	56
3.3. Filing of electoral lists and of the notice concerning the time limit for complaints	27	10.3. Period for computation of the workforce	56
3.4. Candidatures	27	10.4. Voters among temporary staff	57
3.5. Preparation of voting slips	29	10.5. Members of temporary staff eligible to stand for election	57
3.6. Setting up of the polling station or electoral office	30	10.6. Voters and persons standing for election for the permanent employees of temporary employment agencies	57
4. THE FUNCTIONING OF THE ELECTORAL OFFICES	31	11. POSTAL VOTING	60
4.1. Phase préparatoire	31	11.1. Employees concerned	60
4.2. Phase d'élection	32	11.2. Request for authorisation for postal voting	60
4.3. Le dépouillement – généralités	34	11.3. Decision of Minister	60
5. THE FUNCTIONING OF THE ELECTORAL OFFICES	36	11.4. Organisation of postal vote	61
5.1. Preparatory phase	36	12. NUMBER OF LISTS	63
5.2. Election phase	38	13. FORMS	64
5.3. The count – general observations	39		
6. VOTING IN ACCORDANCE WITH THE RELATIVE MAJORITY SYSTEM	40		
6.1. Presentation of candidatures	40		
6.2. Electoral operational phase	43		
6.3. Post-electoral operational phase	43		

TIMETABLE

FOR THE ATTENTION OF UNDERTAKINGS WORKING FROM MONDAY TO FRIDAY OR ON A CONTINUOUS BASIS

09/02/2024

- Display of date, place and time of start and end of ballot.
- Final date for submitting a request for ministerial approval for postal voting by absent employees.

FROM 20/02 TO 22/02/2024

Time limit for submission of any complaints concerning the alphabetical lists.

06/03/2024

Registration of candidatures via the electronic platform.

12/03/2024

Setting up the polling station / Opening of ballot / Ballot / Closing of ballot / Ballot count / Drawing up and communicating the minutes to the ITM via the electronic platform.

FROM 16/03 TO 02/04/2024

Period for the filing of objections concerning the electorate and the propriety of the electoral operations.

NO LATER THAN 12/04/2024

Convening of the constituent meeting of the delegation by the employee who obtained the largest number of votes in the ballot.

WITHIN 5 DAYS FOLLOWING THE CONSTITUENT MEETING

Minutes of the constituent meeting will be dispatched to the head of the undertaking and the ITM.

01/02/2024

Date of computation of workforce.

19/02/2024

- Final date for filing the alphabetical lists of employees.
- Display of notice to the effect that any complaint against the list must be submitted to the head of the undertaking and, for information, to the ITM within 3 working days after the list is filed.
- Display of a notice announcing the elections and a notice concerning the time limit for complaints to the ITM via the electronic platform.

26/02/2024

- Final date and time for the filing of candidatures.
- In the event of the total lack of or of an insufficient number of candidates, extension by 3 days of the period for submitting candidatures.
- If the election is conducted in accordance with the proportional representation system, final date for application to the director of the ITM for a serial number.

01/03/2024

Dispatch of voting slips by registered letter to persons voting by post. Display of candidatures in the undertaking in the event of postal voting.

07/03/2024

Display of candidatures in the undertaking in the absence of postal voting.

FROM 13/03 TO 15/03/2024

Display, by the head of the undertaking, of the list of elected delegates (full and alternate delegates).

AS FROM 03/04/2024

Inauguration of the delegation may not take place before Wednesday, 3 April 2024 and, in the event of an objection, before a decision is given by the director of the ITM.

WITHIN 3 DAYS FOLLOWING THE CONSTITUENT MEETING

Communication of the surnames, forenames and national registration numbers of the president, the vice-president, the secretary, the equality delegate, the health and safety delegate and the members of the board.

WITHIN THE 5 DAYS FOLLOWING THE COMMUNICATION OF THE DELEGATES TO THE HEAD OF THE UNDERTAKING

The head of the undertaking shall disclose to the ITM via the electronic platform the surnames, forenames and the national registration numbers of the president, vice-president, the secretary, the equality delegate, the health and safety delegate and the members of the board.

TIMETABLE

FOR THE ATTENTION OF UNDERTAKINGS WORKING FROM TUESDAY TO SATURDAY

10/02/2024

- Display of date, place and time of start and end of ballot.
- Final date for submitting a request for ministerial approval for postal voting by absent employees.

FROM 20/02 TO 22/02/2024

Time limit for submission of any complaints concerning the alphabetical lists.

06/03/2024

Registration of candidatures via the electronic platform.

12/03/2024

Setting up the polling station / Opening of ballot / Ballot / Closing of ballot / Ballot count / Drawing up and communicating the minutes to the ITM via the electronic platform.

FROM 16/03 TO 30/03/2024

Period for the filing of objections concerning the electorate and the propriety of the electoral operations.

NO LATER THAN 12/04/2024

Convening of the constituent meeting of the delegation by the employee who obtained the largest number of votes in the ballot.

WITHIN 5 DAYS FOLLOWING THE CONSTITUENT MEETING

Minutes of the constituent meeting will be dispatched to the head of the undertaking and the ITM.

01/02/2024

Date of computation of workforce.

17/02/2024

- Final date for filing the alphabetical lists of employees.
- Display of notice to the effect that any complaint against the list must be submitted to the head of the undertaking and, for information, to the ITM within 3 working days after the list is filed.
- Display of a notice announcing the elections and a notice concerning the time limit for complaints to the ITM via the electronic platform.

26/02/2024

- Final date and time for the filing of candidatures.
- In the event of the total lack of or of an insufficient number of candidates, extension by 3 days of the period for submitting candidatures.
- If the election is conducted in accordance with the proportional representation system, final date for application to the director of the ITM for a serial number.

01/03/2024

Dispatch of voting slips by registered letter to persons voting by post. Display of candidatures in the undertaking in the event of postal voting.

07/03/2024

Display of candidatures in the undertaking in the absence of postal voting.

FROM 13/03 TO 15/03/2024

Display, by the head of the undertaking, of the list of elected delegates (full and alternate delegates).

AS FROM 02/04/2024

Inauguration of the delegation may not take place before Tuesday, 2 April 2024 and, in the event of an objection, before a decision is given by the director of the ITM.

WITHIN 3 DAYS FOLLOWING THE CONSTITUENT MEETING

Communication of the surnames, forenames and national registration numbers of the president, the vice-president, the secretary, the equality delegate, the health and safety delegate and the members of the board.

WITHIN THE 5 DAYS FOLLOWING THE COMMUNICATION OF THE DELEGATES TO THE HEAD OF THE UNDERTAKING

The head of the undertaking shall disclose to the ITM via the electronic platform the surnames, forenames and the national registration numbers of the president, vice-president, the secretary, the equality delegate, the health and safety delegate and the members of the board.

GLOSSARY OF ABBREVIATIONS USED

FTC	Fixed term contract
OEC	Open-ended contract
EIC	Employment initiation contract
ESC	Employment-support contract
ITM	Inspectorate of Labour and Mines
GDR	Grand Ducal Regulation
Forms with the abbreviation M – No	Forms relating to elections under the relative majority system
Forms with the abbreviation P – No	Forms relating to elections under the proportional representation system

TIMETABLE FOR STAFF DELEGATION ELECTIONS TO BE HELD ON 12 MARCH 2024

FOR THE ATTENTION OF UNDERTAKINGS WORKING FROM MONDAY TO FRIDAY OR ON A CONTINUOUS BASIS

1) Thursday 1 February 2024 (the first day of the month in which notices announcing the elections are displayed)

Date of computation of the workforce used as a basis for determining the number of delegates to be elected.

2) Friday 9 February 2024 (at least one month before the elections)

- a) Display, by the head of the undertaking or his delegate, of a notice announcing the date, place and time of opening and closing of the ballot and the number of delegates to be elected, the place where interested parties may ascertain the names of candidates, the conditions for standing for election and the number of employees taken into account in calculating the numbers of staff employed in the undertaking. The notice of elections is available via the corresponding procedure on the MyGuichet electronic platform.

- b) Final date for the submission, if appropriate, by the head of the undertaking or staff delegation, of a request for ministerial authorisation for postal voting by absent employees.

3) Monday 19 February 2024 in the evening (3 weeks before the day of the elections)

- a) Final date for the submission, by the head of the undertaking or his delegate, of the alphabetical lists of employees meeting the conditions to qualify as voters and to stand for election, for the purposes of consultation.
- b) Display of notice to the effect that any complaint against the list must be submitted to the head of the undertaking and, for information, to the ITM within 3 working days after the list is filed.
- c) Display of a notice announcing the elections and a notice concerning the time limit for complaints to the ITM via the electronic platform.

4) From Tuesday 20 February to Thursday 22 February 2024 (within 3 working days following the filing of the list)

Time limit for submission, to the head of the undertaking, of any complaints concerning the alphabetical lists.

5) Monday 26 February 2024 at 6 p.m. (15 calendar days before the opening of the ballot)

a) Final date and time for the filing of candidatures.

b) In the event of the total lack of or of an insufficient number of candidates, extension by 3 days of the period for submitting candidatures until Thursday 29 February 2024 at 6 p.m.

c) If the election is conducted in accordance with the proportional representation system, final date for application to the director of the ITM for a serial number.

6) Wednesday 6 March 2024 (no later than 4 working days before the ballot)

Registration via the electronic platform of valid candidatures specifying the surname, forename, profession, national registration number, nationality and sex of the candidates.

Recommendation: registration via the electronic platform not later than 29 February 24 in case of elections with postal vote.

7) A. In the case of election by postal voting: Friday 1 March 2024 (10 days before the ballot/see order)

a) No later than Friday 1 March 2024, dispatch by registered post to electors voting by post of the voting slips with a notice containing instructions for the elections.

b) Display of candidatures in the undertaking from Friday 1 March to Monday 11 March 2024.

B. In the case of elections without postal voting: Thursday 7 March 2024 (the last 3 working days before the ballot)

Display of candidatures in the undertaking from Thursday 7 March to Monday 11 March 2024.

In the case of ballots spread over several days, in particular between 10 and 12 March 2024, the display of candidatures must be brought forward accordingly. The close of the ballot and counting must take place on 12 March 2024.

8) Tuesday 12 March 2024 – day of the ballot

a) Constitution of the electoral office.

b) Opening of the ballot at the time set in the displayed notice announcing the elections.

c) Ballot.

d) Close of the ballot at the time set in the displayed notice announcing the elections.

e) Ballot count (immediately after close of the ballot).

f) Drawing up of minutes of the electoral operations via the electronic platform.

g) Communication of the minutes to the ITM via the electronic platform.

9) From Wednesday 13 March to Friday 15 March 2024 (for 3 consecutive days following the ballot)

Display, by the head of the undertaking, of the list of elected delegates (full and alternate delegates).

10) From Saturday 16 March to Tuesday 2 April 2024 (within the 15 days following the last day of display of the results)

Period for the filing, by registered post addressed to the director of the ITM, of objections concerning the electorate and the propriety of the electoral operations.

11) As from Wednesday 3 April 2024 (not before expiry of the period of 15 days following the last day of display of the results)

Inauguration of the delegation may not take place before Wednesday, 3 April 2024 and, in the event of an objection, before a decision is given by the director of the ITM.

12) No later than Friday 12 April 2024 (within the month following the day of the elections)

Convening of the constituent meeting of the delegation by the employee who obtained the largest number of votes in the ballot. If there are no elections (in the event of automatic election), the constituent meeting will be convened, under the same conditions, by the oldest full delegate.

13) Within 3 days following the constituent meeting

Communication in writing by the president of the delegation to the head of the undertaking of the surnames, forenames and national registration numbers of the president, the vice-president, the secretary, the equality delegate, the health and safety delegate and the members of the board.

14) Within 5 days following the constituent meeting

Minutes of the constituent meeting recording the appointment of the electoral office, the election of the president, the vice-president, the secretary, the board, the equality delegate, the health and safety delegate and the implementation of Article L. 415-5 of the Labour Code shall be forwarded to the head of the undertaking and to the ITM.

15) Within the 5 days following communication to the head of the undertaking of the functions of the delegates

The head of the undertaking shall disclose to the ITM via the electronic platform the surnames, forenames and the national registration numbers of the president, the vice-president, the secretary, the equality delegate, the health and safety delegate and the members of the board.

Please note that the time limits will be extended to the next following working day where the last relevant day is a Sunday, statutory holiday or a day when the undertaking does not work.

FOR THE ATTENTION OF UNDERTAKINGS WORKING FROM TUESDAY TO SATURDAY

1) Thursday 1 February 2024 (the first day of the month in which notices announcing the elections are displayed)

Date of computation of the workforce used as a basis for determining the number of delegates to be elected.

2) Saturday 10 February 2024 (at least one month before the elections)

- a) Display, by the head of the undertaking or his delegate, of a notice announcing the date, place and time of opening and closing of the ballot and the number of delegates to be elected, the place where interested parties may ascertain the names of candidates, the conditions for standing for election and the number of employees taken into account in calculating the numbers of staff employed in the undertaking. The notice of elections is available via the corresponding procedure on the MyGuichet electronic platform.
- b) Final date for the submission, if appropriate, by the head of the undertaking or staff delegation, of a request for ministerial authorisation for postal voting by absent employees.

3) Saturday 17 February 2024 in the evening (3 weeks before the day of the elections)

- a) Final date for the submission, by the head of the undertaking or his delegate, of the alphabetical lists of employees meeting the conditions to qualify as voters and to stand for election, for the purposes of consultation.
- b) Display of notice to the effect that any complaint against the list must be submitted to the head of the undertaking and, for information, to the ITM within 3 working days after the list is filed.
- c) Display of a notice announcing the elections and a notice concerning the time limit for complaints to the ITM via the electronic platform.

4) From Tuesday 20 February to Thursday 22 February 2024 (within the 3 working days following the filing of the lists)

Time limit for submission, to the head of the undertaking, of any complaints concerning the alphabetical lists.

5) Monday 26 February 2024 at 6 p.m. (15 calendar days before the opening of the ballot) l'ouverture du scrutin)

- a) Final date and time for the filing of candidatures.
- b) In the event of the total lack of or of an insufficient number of candidates, extension by 3 days of the period for submitting candidatures until Thursday 29 February 2024 at 6 p.m.
- c) If the election is conducted in accordance with the proportional representation system, final date for application to the director of the ITM for a serial number.

6) Wednesday 6 March 2024 (no later than 4 working days before the ballot)

Registration via the electronic platform of valid candidatures specifying the name, forename, profession, national registration number, nationality and sex of the candidates.

Recommendation: registration via the electronic platform not later than 29 February 24 in case of elections with postal vote.

**7) A. In the case of election by postal voting:
Friday 1 March 2024
(10 days before the ballot/see order)**

- a) No later than Friday 1 March 2024, dispatch by registered post to electors voting by post of the voting slips with a notice containing instructions for the elections.
- b) Display of candidatures in the undertaking from Friday 1 March to Monday 11 March 2024.

**B. In the case of elections without postal voting:
Thursday 7 March 2024
(the last 3 working days before the ballot)**

Display of candidatures in the undertaking from Thursday 7 March to Saturday 9 March 2024.

In the case of ballots spread over several days, in particular between 10 and 12 March 2024, the display of candidatures must be brought forward accordingly. The close of the ballot and counting must take place on 12 March 2024.

8) Tuesday 12 March 2024 – day of the ballot

- a) Constitution of the electoral office.

- b) Opening of the ballot at the time set in the displayed notice announcing the elections.

- c) Ballot.

- d) Close of the ballot at the time set in the displayed notice announcing the elections.

- e) Ballot count (immediately after close of the ballot).

- f) Drawing up of minutes of the electoral operations via the electronic platform.

- g) Communication of the minutes to the ITM via the electronic platform.

9) From Wednesday 13 March to Friday 15 March 2024 (for 3 consecutive days following the ballot)

Display, by the head of the undertaking, of the list of elected delegates (full and alternate delegates).

10) From Saturday 16 March to Saturday 30 March 2024 (within the 15 days following the last day of display of the results)

Period for the filing, by registered post addressed to the director of the ITM, of objections concerning the electorate and the propriety of the electoral operations.

11) As from Tuesday 2 April 2024 (not before expiry of the period of 15 days following the last day of display of the results)

Inauguration of the delegation may not take place before Tuesday, 2 April 2024 and, in the event of an objection, before a decision is given by the director of the ITM.

12) No later than Friday 12 April 2024 (within the month following the day of the elections)

Convening of the constituent meeting of the delegation by the employee who obtained the largest number of votes in the ballot. If there are no elections (in the event of automatic election), the constituent meeting will be convened, under the same conditions, by the oldest full delegate.

13) Within 3 days following the constituent meeting

Communication in writing by the president of the delegation to the head of the undertaking of the surnames, forenames and national registration numbers of the president, the vice-president, the secretary, the equality delegate, the health and safety delegate and the members of the board.

14) Within 5 days following the constituent meeting

Minutes of the constituent meeting recording the appointment of the electoral office, the election of the president, the vice-president, the secretary, the board, the equality delegate, the health and safety delegate and the implementation of Article L. 415-5 of the Labour Code shall be forwarded to the head of the undertaking and to the ITM.

15) Within the 5 days following communication to the head of the undertaking of the functions of the delegates

The head of the undertaking shall disclose to the ITM via the electronic platform the surnames, forenames and the national registration numbers of the president, vice-president, the secretary, the equality delegate, the health and safety delegate and the members of the board.

Please note that the time limits will be extended to the next following working day where the last relevant day is a Sunday, statutory holiday or a day when the undertaking does not work.

DISCLAIMER

The information provided in this presentation support is not exhaustive, but of general nature. It must not be considered as legal advice, in any case, and cannot, under any circumstance, replace specific and personal advice that may need to be sought for specific cases.

The information provided in this presentation is merely informative and reflects the ITM's opinion on certain aspects, based on the information received from users. As such, the ITM's liability cannot be engaged for any inaccuracies, gaps or omission in the document, that may occur now and in any updates, as the case may be.

Plain language and translations are provided for the sake of information only. Only the legal texts published in official form are legally binding.

1. GENERAL OBSERVATIONS

1.1. WHO MUST UNDERTAKE SOCIAL ELECTIONS?

ESSENTIAL POINTS

- The obligation to elect staff delegates applies to all private-sector and public sector undertakings from the time at which they fulfil the requisite workforce conditions.

Any undertaking, whatever the nature of its business, its legal form and its area of business shall be required to arrange for staff delegates to be appointed if the prescribed threshold is reached.

Thus, the setting up of a staff delegation relates not only to commercial companies but also, for example, to foundations, the liberal professions, not-for-profit activities, etc.

Public employers are also affected where they employ, under an employment contract, at least 15 employees who are subject to labour law and are not covered by a public-law status.

 Legal basis: Article L. 411-1 of the Labour Code

Since 1 January 2016, in accordance with the provisions of the Law of 23 July 2015 reforming social dialogue within undertakings, elections of staff delegations are to be organised at the level of the undertaking and no longer that of the establishment.

This will, in accordance with the opinion of the Council of State of 2 July 2013 (draft law N° 6545), make it possible to organise social dialogue at the level at which the decisions within the purview of the delegations are actually taken and implemented.

According to the relevant literature (Jean-Luc Putz, *"Le nouveau statut de la délégation du personnel"*), the level at which, by default, a staff delegation is now established will be that of the undertaking and no longer that of the establishment and the concept of undertaking is extended, for the application of the law on staff delegations, so as to include either the economic and legal unit in the case of an undertaking comprising only one establishment or the economic and legal unit formed by separate establishments.

1.2. ABOVE WHAT THRESHOLD IS IT NECESSARY FOR SOCIAL ELECTIONS TO BE HELD?

ESSENTIAL POINTS

- The establishment of staff delegations is compulsory only as from a particular workforce threshold calculated over a reference period: at least 15 employees over 12 months.
- For calculation of the workforce, according to the circumstances, certain employees will be taken into account entirely, partially or not at all.

The minimum threshold required for the organisation of elections is 15 employees over 12 months.

The undertaking must employ “*during the 12 months prior to the first day of the month of display of the notice announcing the elections*” at least 15 employees.

The period to be taken into account for the calculation of staff numbers is set, for the elections to take place on 12 March 2024, as 1 February 2023 to 31 January 2024.

In the absence of a legal basis, the ITM does not require that it should be the same employees who are employed throughout the reference period of 12 months.

The ITM considers the number of employees employed by the employer throughout that period of 12 months. If that number is at least equal to 15 on the first day of that reference period of 12 months and continues to be throughout the reference period, at all times, and is still that figure on the last day of the reference period, then the employer in question must establish a staff delegation.

→ Example

An undertaking is to be regarded as required to arrange for the election of a staff delegation if, on 1 February 2023, it had at least 15 employees under contract and, between that date and 31 January 2024, that number continues to be at least 15 employees.

The workforce is calculated by taking account of “*all the employees of the undertaking bound by an employment contract*”. Thus, the following are taken into consideration (see also the table on page 17):

- heads of undertaking and managers/directors are included in this computation if they are themselves employees of the undertaking, that is to say in a subordinate relationship;
- employees employed full-time;
- part-time employees, if their weekly working time exceeds or is equal to 16 hours. If the weekly working time is less than 16 hours, an average must be calculated;
- employees under a fixed term contract, employees made available and temporary employees, pro rata to the time they have

spent in the undertaking during the 12 months preceding the first day of the month on which the notice announcing the elections is displayed.

The following in particular are excluded from the computation:

- employees on a fixed term contract and temporary staff replacing an absent employee or an employee whose contract of employment has been suspended;
- apprentices;
- pupils, students and trainees.

 Legal basis: Article L. 411-1 of the Labour Code

Employees under contract with a service company outside the undertaking are not to be included in the calculation of workforce numbers (either for the threshold of 15 employees or for the number of delegates to be elected), regardless of the regularity or otherwise of their presence in the undertaking. The latter are not to be regarded as being made available within the meaning of Article L. 411-1 of the Labour Code.

On the other hand, employees made available to an undertaking under a temporary loan of manpower in accordance with article L. 132-1 et seq of the Labour Code are to be regarded as made available.

It should also be noted that employees made available and temporary employees cannot claim entitlement to vote or eligibility for the functions of staff delegate in the user undertaking. However, employees made available and temporary employees may, in the user undertaking, exercise the right to complain, the right to consult staff delegates and the right to have access to personnel files concerning them.

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

1.3. ON WHAT DATE MUST SOCIAL ELECTIONS BE HELD?

A. Date set by the Minister of Labour = legal date

In principle, social elections take place every 5 years on a date set by the Minister of Labour in a ministerial order.

The next social elections will take place on **12 March 2024** (ministerial order of 13 October 2023 setting the date for the renewal of staff delegations for the period 2024 to 2029; Official Journal (Memorial B N° 3590) of 20 October 2023).

B. A date other than 12 March 2024

Social elections may take place on another date in the following cases:

- If the social elections have been annulled, new elections will have to be organised on another date.
- If an undertaking reaches the prescribed threshold of 15 employees over 12 months, the employer must organise social elections ("early social elections").
- If the number of members on a list is no longer sufficient and there are no further alternate members to fill the vacant post or posts, the Minister of Labour may in certain circumstances decide that the delegation is to be renewed.
- If an undertaking no longer has any delegates at all, it must carry out a renewal.

Please note : Undertakings that meet the conditions for having to hold early social elections or that have to conduct social elections because the delegates are no longer sufficient or because there are no more delegates are invited to contact the ITM to receive the codes needed to activate the dedicated professional area on MyGuichet.

1.4. WHO HAS THE RESPONSIBILITY OF ORGANISING SOCIAL ELECTIONS?

Social elections enabling staff delegates to be appointed are organised and directed by the head of the undertaking or by a person to whom he has delegated that task, who may even be a person outside the undertaking (for example, a fiduciary, a member of a law firm, etc.).

Delegations elected on a date other than the legal date set by the Minister of Labour shall be renewed on the legal date for the social elections, unless the term of office would as a result be less than one year, in which case the term of office of the delegates shall be extended until the next legal date for social elections

 Legal basis: Article L. 413-2 (2) and (3) of the Labour Code and article 1st (3) of the GDR of 11 September 2018

➔ Example

Undertaking A reached the threshold of 15 employees over a period of 12 months in October 2022 and organised social elections at that time.

At the time of the next social elections set for March 2024, that delegation will be renewed because its term of office will exceed one year.

Undertaking B reached the threshold of 15 employees over a period of 12 months in July 2023 and organised social elections at that time.

At the time of the next social elections set for March 2024 it will not have to organise renewal of its delegation since its term of office will be less than one year.

In this case, the term of office of the delegation will be extended until the next social elections in 2029.

It is to be noted that even where the organisation of social elections is delegated, the head of the undertaking remains at all times responsible for their organisation.

 Legal basis: Article 1 of the GDR of 11 September 2018

1.5. HOW MANY STAFF DELEGATES HAVE TO BE ELECTED?

The number of full and alternate staff delegates to be elected in each undertaking varies according to the staff numbers employed in that undertaking.

In order to determine the number of full and alternate delegates to be elected, it is necessary to calculate the workforce of the undertaking on the first day of the month in which the notice announcing the date of the election is displayed. For this calculation, it is no longer necessary to take account of a period of 12 months prior to the first day of the month of the display of the notice announcing the elections.

All the employees of the undertaking are taken into account in accordance with the arrangements described below (page 15 et seq) – with the exception of apprentices – if they are under an employment contract on the first day of the month in which notice of the elections is displayed.

The number of alternate delegates to be elected must correspond to the number of full delegates to be elected. There must be as many full delegates as alternate delegates.

Numerical composition of the staff delegations

EMPLOYEES REPRESENTED	NUMBER OF DELEGATES		EMPLOYEES REPRESENTED	NUMBER OF DELEGATES	
	FULL	ALTERNATES		FULL	ALTERNATES
15 - 25	1	1	1.001 - 1.100	14	14
26 - 50	2	2	1.101 - 1.500	15	15
51 - 75	3	3	1.501 - 1.900	16	16
76 - 100	4	4	1.901 - 2.300	17	17
101 - 200	5	5	2.301 - 2.700	18	18
201 - 300	6	6	2.701 - 3.100	19	19
301 - 400	7	7	3.101 - 3.500	20	20
401 - 500	8	8	3.501 - 3.900	21	21
501 - 600	9	9	3.901 - 4.300	22	22
601 - 700	10	10	4.301 - 4.700	23	23
701 - 800	11	11	4.701 - 5.100	24	24
801 - 900	12	12	5.101 - 5.500	25	25
901 - 1.000	13	13	Above 5,500	+1 per block of 500	+1 per block of 500

 Legal basis: Article L. 412-1 of the Labour Code

A change in workforce numbers will not have any impact on maintenance of the delegation established, which will continue to function until the end of its term of office.

 Legal basis: Article L. 413-2 (4) of the Labour Code

1.6. WHAT IS THE PROCEDURE FOR APPOINTING STAFF DELEGATES?

ESSENTIAL POINTS

- In undertakings employing fewer than 100 employees, the ballot is carried out on the basis of a relative majority.
- In undertakings employing at least 100 employees, the ballot is carried out in accordance with the proportional representation rules.

The procedures for appointing full and alternate delegates depend on the size of the undertaking.

SIZE OF THE UNDERTAKING (BY NUMBER OF EMPLOYEES)	NUMBER OF FULL MEMBERS TO BE ELECTED	METHOD OF ELECTION
From 15 to 99	1 to 4	Relative majority system
= 100	4	Proportional representation rules
> 100	5 and more	Proportional representation rules

 Legal basis: Article L. 413-1 of the Labour Code



2. PREPARATORY PHASE

ESSENTIAL POINTS

- Elections for the appointment of staff delegates are organised and directed by the head of the undertaking or by a delegate appointed by him for that purpose.
- Lists of tasks to be carried out during the preparatory phase:
 1. Calculation, for the purposes of displaying the election notices (which must take place at least one month before the elections), of the workforce of the undertaking, as a basis for determining:
 - whether it is appropriate to arrange for elections to be held;
 - the number of full and alternate delegates to be elected;
 - the electoral method to be followed
 2. Establishment (for filing 3 weeks before the elections) of the alphabetical lists of employees allowed to stand for and/or vote in elections.

2.1. COMPUTATION OF THE UNDERTAKING'S WORKFORCE

The appointment of staff delegates is not compulsory unless the threshold of at least 15 employees is reached during the 12 months prior to the first day of the month on which the notice announcing elections is displayed.

A. In what context is it necessary to count employees to determine whether the prescribed threshold is reached?

The context for counting the workforce of 15 employees, which triggers the obligation to appoint staff delegates, is the undertaking.

B. How must the employees of the undertaking be counted?

To determine the workforce of an undertaking, it is not a matter of adding up the number of employees as if each one represented one unit.

A different approach is appropriate depending upon the various categories of employees of the undertaking.

a) Employees representing one unit

Employees with an open-ended contract (OEC) employed for at least 16 hours a week

Each employee represents one unit for determination of the workforce of the undertaking in which he is employed, with the exception of apprentices.

Heads of undertaking and managers/directors are taken into account in this computation if they are themselves employees of the undertaking, that is to say in a subordinate relationship vis-à-vis the undertaking.



b) Employees taken into account pro rata to their time of attendance

Employees with a fixed-term contract (FTC), temporary staff, employees made available

Employees with an FTC, temporary employees and employees made available to the undertaking, with the exception of those replacing an absent employee or one whose employment contract has been suspended, shall be taken into account in calculating the workforce pro rata to their time of attendance at the undertaking during the 12 months prior to the first day of the month in which the notice is displayed.

This average is calculated on the basis of hours of attendance in order to reflect exactly the number of such employees in the undertaking.

c) Employees taken into account pro rata to their working time

Part-time employees employed for less than 16 hours a week

Part-time employees represent one unit if they work 16 hours a week or more.

For work of shorter duration, the number to be taken into account for part-time employees working less than 16 hours per week is determined by application of the following formula:

Sum of working hours stipulated in the part-time work contracts

Legal or contractual duration of work

 Legal basis: Article L. 411-1 of the Labour Code

Example of workforce computation:

CATEGORY OF STAFF	ATTENDANCE AT THE UNDERTAKING	TAKEN INTO ACCOUNT FOR COMPUTATION OF THE WORKFORCE	OBSERVATIONS:
Number of employees under a full-time employment contract + Number of part-time employees whose individual working time is: ≥ 16 hours/week	230	230	Account is taken of all employees, including managers/directors and heads of department, provided that they are not freelance. (OEC, sickness leave, maternity leave, parental leave included)
Number of hours per week worked by part-time employees whose individual working time is: < 16 hours/week	667 heures	16	$667 : 40 = 16.68 = 16$ The number of hours worked per week is to be divided by the number of legal or contractual hours' work applicable in the undertaking concerned.
Time of attendance in working hours of staff with an FTC, temporary staff or employees made available otherwise than to fill in for sickness leave, maternity leave or parental leave, etc., during the last 12 months prior to the first month of display of the notice.	45,885 heures	24	The following averages are applied: hours worked per month: 208 hours/month (for the usual case where, in the undertaking, working hours are 40 hours/week. months worked per year: 12 months hours of leave per year: 200 hours/year the division is thus effected as follows: $(173 \times 12) - 208 = 1,868$ hours $45,885 : 1,868 = 24.56 = 24$ <i>(To be adjusted for cases where a collective agreement provides for a different work duration or for different annual leave.)</i>
TOTAL	/	270	The total results from the addition of the results obtained above (N.B. when the result is a decimal it is rounded to the number immediately below)

Summary

COMPUTATION OF WORKFORCE NUMBERS WITH A VIEW TO DETERMINING THE NUMBER OF DELEGATES TO BE ELECTED	
CATEGORIES OF EMPLOYEES	TAKEN INTO ACCOUNT
Employees with an OEC ≥ 16 hours/week	All
Employees with an OEC < 16 hours/week	Add all the hours in a week and divide the result by 40
Employees with an FTC, staff made available (temporary staff, seconded employees)	Add all the hours in a period of 12 months and divide by 1,868

C. Special case of transferred employees

Employees who have joined an undertaking following a transfer, on the basis that their seniority will be recognised, are to be regarded as if they had formed part of the staff of that undertaking from the start, that is to say since their entry into service with the transferring undertaking.

D. Special case of employees under a coordinating employment contract or a multi-employer contract

At the present time, no provision of the Labour Code provides for the possibility of establishing multi-employer contracts. However, in a case (CSJ of 29 October 1998, N° 19279 of the list), the Cour d'Appel held that, since the employer is identified through an analysis of a subordinate relationship, it is permissible for one and the same employee in certain exceptional circumstances to have more than one employer at the same time.

Consequently, according to the case law, an employee may, under the same employment contract, have more than one employer provided that the existence of a genuine subordinate employment relationship is verified in the case of each employer.

So far as concerns social elections, it is necessary to distinguish the following:

a) Multi-employer contract with single affiliation to the joint Social Security Centre

What is involved here is a single coordinating employment contract which is entered into between several employers (between whom close links exist) and an employee who is affiliated via a single employer to social security schemes.

In a contract of that kind, among the different employing undertakings (which, economically, amount to only one principal), only one is dedicated as the "representative" company and that company will thus be regarded as the undertaking which must organise the social elections.

In any such case, the employees would be taken into account only within that single "representative" undertaking.

b) Multi-employer contract with several affiliations to the joint Social Security Centre

In this case, separate employment contracts are concluded with an entity of a group and a single employee.

If the various employing undertakings economically represent only one principal and only one entity is designated as the "representative" undertaking, the latter is to be regarded as the actual principal.

If the various employing undertakings economically represent more than one principal and/or there is no entity designated as the "representative" undertaking, the situation can be assimilated to that of a part-time employee taken on by more than one employer.

In the latter case, each of the head of the employers enjoys the various powers granted to any employer. All the employers are on the same level.

In this hypothetical situation, the conditions regarding employees' right to vote and to stand for election would be regulated in the same way as for part-time employees by reference to their duration of work with each of the employers.

E. Employees not taken into account in the workforce

- apprentices;
- employees on reintegration traineeship;
- employees working under an employment initiation contract (EIC);
- employees under an employment-support contract (ESC);
- pupils, students and trainees.

Summary

EMPLOYEES TO BE TAKEN INTO ACCOUNT IN THE WORKFORCE	
CATEGORIES OF EMPLOYEES	TAKEN INTO ACCOUNT IN THE WORKFORCE
Employees serving a probationary period	yes
Full-time employees	yes
Part-time employees ≥ 16 hours per week	yes
Part-time employees < 16 hours per week	pro rata to working time
Employees serving out notice (resignation or laying off)	yes
absent employees (sickness leave, recreational leave, maternity leave)	yes
Employees whose employment contract is suspended (parental leave, unpaid leave of absence)	yes
Employees under a fixed-term contract (FTC) replacing an absent employee	no
Employees under an FTC not replacing an absent employee	Yes pro rata to time in attendance
Employees made available to replace an absent employee	no
Employees made available but not replacing an absent employee	yes pro rata to time in attendance
Employees of the undertaking seconded abroad	yes
Employees of a foreign undertaking seconded to a Luxembourg undertaking	no
Seasonal employees	pro rata to time in attendance
Pupils	no
Students	no
Trainees	no
Apprentices	no
Employees on reintegration traineeship;	no
Employees contracted under EIC / ESC	no
Employees made available under a temporary loan of manpower	yes
Employees made available for the provision of specific services	no
Pre-retired employees whose contract has not been rescinded	yes, if ≥ 16 hours per week pro rata to working time yes < 16 hours per week
Pre-retired employees whose contract has been rescinded	no
Employees under a coordinating or multi-employer contract	yes, if ≥ 16 hours per week pro rata to working time yes < 16 hours per week if a single entity is designated as the representative undertaking to be taken into account, within the representative undertaking if there is no representative undertaking to be taken into account, within the various employing undertakings

F. Period during which the workforce number must have been reached

a) In the context of the setting up of staff delegations

The setting up of staff delegations is compulsory only if a workforce of at least 15 employees is reached during the 12 months prior to the first day of display of the notice announcing the elections, that is to say from 1 February 2023 to 31 January 2024.

 Legal basis: Article L. 411-1 of the Labour Code

b) For the purpose of determining the number of full and alternate delegates to be elected

To determine the number of full and alternate delegates to be elected, the reference point shall be the first day of the month in which the notice announcing the date of the elections is displayed.

For this calculation, it is not required to take account of a period of 12 months prior to the first day of the month in which the notice announcing the elections is displayed.

Account shall be taken of all the employees of the undertaking in accordance with the procedures set out above – with the exception of apprentices – who are under an employment contract on the first day of the month in which the notice of elections is displayed.

 Legal basis: Article L. 412-1 of the Labour Code

Example

Undertaking A has employed 12 employees for several years. Following a transfer of undertaking, it takes over 3 employees (all with seniority exceeding one year).

The undertaking will be obliged to immediately set up a staff delegation because, over a period of 12 months, it will have employed a workforce of at least 15 employees.

Undertaking B employs 14 employees and recruits 12 employees.

The undertaking will be obliged to set up a staff delegation only in 12 months if it still employs at least 15 employees.

2.2. ELECTORATE

A. Elector-employees – voting employees

ESSENTIAL POINTS

- In order to be an elector, it is necessary to be an employee of the undertaking, have reached the age of 16 and have worked for at least 6 months in the undertaking as at the day of the election.

a) Conditions applicable to the electorate

In order to be an elector: every employee

- without distinction as to nationality,
- having reached the age of 16,
- bound to the undertaking by an employment contract or an apprenticeship contract and employed in the undertaking for at least 6 months.

Date of appraisal of such conditions: the day of the election.

 Legal basis: Article L. 413-3 of the Labour Code

b) Special cases

• Suspension of the employment contract

Suspension of the employment contract has no impact on the employee's status as an elector, regardless of the cause of the suspension (sickness, occupational accident, maternity leave, parental leave, sabbatical leave, etc.).

• Seconded employees

Employees seconded abroad are electors in the undertaking from which they originate. Employees seconded to Luxembourg cannot vote (active electorate) or be elected (passive electorate) in social elections.

• Temporary employees and employees made available

Temporary employees 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.

 Legal basis: Article L. 413-6 of the Labour Code

- **Transfer of undertaking**

Seniority continues to accrue in the event of a transfer of undertaking. Seniority in the service of the earlier employer (the transferor) is taken into account with the new employer (the transferee).

 Legal basis: Article L. 127-3 of the Labour Code

- **Employees serving out notice**

Employees serving out notice, whether or not the notice is accompanied by dispensation from work, are to be regarded as electors if they fulfil the other preconditions for voting.

Arrangements must be made for postal voting for employees dispensed from work during their period of notice.

- **Employees on fixed-term contracts (FTC)**

Employees on an FTC shall be electors if they fulfil the other preconditions for voting.

- **Apprentices**

Apprentices shall be electors if they fulfil the other preconditions for voting.

 Legal basis: Article L. 413-3 of the Labour Code

- **Pre-retired employees**

Employees granted pre-retirement, whose contract of employment has been rescinded and who no longer work, may not take part in social elections. On the other hand, employees granted pre-retirement whose contract of employment has not been rescinded and who continue to work for their employer shall be electors if they fulfil the other preconditions for voting.

- **Relatives, executives, managers and heads of personnel**

Relatives of the head of the undertaking, executives, managers and heads of personnel are to be regarded as electors if they fulfil the other preconditions for voting.

- **Employees on a coordinating employment contract or multi-employer contract**

In the event that a single undertaking has been designated as representative undertaking (see page 18), employees on a coordinating employment contract or multi-employer contract are to be regarded as employees of that single representative undertaking.

In such circumstances, employees shall be electors for social elections within that representative undertaking if they fulfil the other preconditions for voting.

If no representative undertaking is designated, employees are to be regarded as part-time employees with the different employing undertakings. In this case, they shall be electors for social elections within the various undertakings if they fulfil the preconditions for voting.

- **Members of an electoral office**

Both the president and the assessors may exercise the right to vote if they fulfil the other preconditions for the exercise of that right.

The ITM recommends endeavouring to ensure that, when a principal electoral office or one or more additional electoral offices are set up, the members of the electoral offices are assigned to the offices where it is envisaged that they will cast their votes, failing which they should be added by the head of the undertaking or his delegate to an alphabetical list used as a checklist at the office of which they are members. It must not be forgotten to remove them from the checklists on which those persons were initially included.

The ITM also recommends that the members of an electoral office should exercise their voting right when the number of electors present in the electoral office in question allows this, by asking, for example, that electors waiting at the door of the office kindly wait a few moments.

It is imperative that the members of the electoral offices who wish to exercise their right to vote do so during the official opening hours of the polling station.

If an assessor (an alternate, for example) were to perform duties (to replace an absent colleague) in an electoral office, in relation to the checklists on which he is not included, this fact should immediately be drawn to the attention of the president of the principal electoral office during the preparatory phase (see "The functioning of the electoral offices, preparatory phase", page 31).

The president of the principal office will then take care to remove that person from the checklists of the office where he was included before adding him to the list of the office in which he is to carry out his duties. This of course also applies, where appropriate, to a person replacing a president of an additional electoral office.

These matters (and also the mere fact that a member of the office has had to be replaced) should be mentioned in the minutes of the offices concerned.

c) Must every elector exercise his voting right?

No, it is a right and not an obligation. An elector who does not wish to exercise his right to vote is released from doing so without any further formality.

The members of the electoral offices are recommended not to do anything (for example by making telephone calls) to encourage electors to come and vote.

B. Eligible employees – the right to stand for election

ESSENTIAL POINTS

- To be eligible, it is necessary to be an employee of the undertaking, have reached the age of 18, have worked uninterruptedly during the 12 months prior to the first day of the month in which the notice announcing the elections is displayed and to be either a Luxembourgish or to be authorised to work on Luxembourg territory.
- Relatives by blood or marriage up to the fourth degree of the head of the undertaking, managers, directors and the person in charge of the personnel department of the undertaking are not eligible.

a) Conditions for eligibility

The following persons may be eligible: any employee who

- is aged at least 18;
- have at least 12 months' seniority preceding the first day of the month in which the notice announcing the elections is posted;
- is a Luxembourgish or authorised to work on Luxembourg territory;
- is not a relative by blood or marriage up to the fourth degree of the head of the undertaking;
- is not an apprentice;
- is not a manager, director and/or person responsible for the personnel department of the undertaking (a director/manager is understood to be the person empowered to recruit or dismiss an employee and not a director/manager of a department or a technical director/manager).

Dates for appraisal of the relevant conditions:

- For seniority: the first day of the month in which the notice announcing the elections is displayed;
- For age: as at the day of the election.

 Legal basis: Article L. 413-4 of the Labour Code

b) Special cases

- **Suspension of the employment contract**
Suspension of the employment contract has no impact on the employee's eligibility status,



regardless of the cause of the suspension (sickness, occupational accident, maternity leave, parental leave, etc.) if he fulfils the other eligibility conditions.

- **Part-time employees in more than one undertaking**

Employees working part time simultaneously in more than one undertaking are eligible only in the undertaking in which they are employed for the longest weekly period of work.

In the event of equal working periods, they shall be eligible in the undertaking in which they prove the longest period of seniority in service.

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

 Legal basis: Article L. 413-5 of the Labour Code

- **Temporary employees and employees made available**

Temporary employees 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, where an employee, after having worked in an undertaking on the basis of a loan of manpower contract or a contract for making employees available, receives on completion of his assignment an employment contract with the same undertaking, the time of attendance in the undertaking during his temporary contract is to be taken into account for computation and for the calculation of seniority.

 Legal basis: Article L. 413-6 of the Labour Code

- **Transfer of undertaking**

Seniority continues to accrue in the event of a transfer of undertaking. Seniority in the service of the previous employer (the transferor) is taken into consideration by the new employer (the transferee).

 Legal basis: Article L. 127-3 of the Labour Code

- **Employees serving out notice**

Employees serving out notice, whether or not there is an accompanying dispensation from work, shall be eligible if they fulfil the other preconditions to stand as a candidate.

The fact that an employee serving out notice is elected as a member of the staff delegation does not, however, have any effect on the expiry of his employment contract at the end of the period of notice.

- **Employees on fixed-term contracts (FTC)**

Employees on FTC's shall be eligible if they fulfil the other preconditions to stand as a candidate.

The fact that an employee on an FTC is elected as a member of the staff delegation does not, however, have any effect on the expiry of his contract.

- **Relatives by blood or marriage up to the fourth degree of the head of the undertaking**

Relatives by blood or marriage up to the fourth degree of the head of the undertaking may not be elected as full or alternate members of a staff delegation.

 Legal basis: Article L. 413-4 (2) of the Labour Code

- **Executives, managers and heads of personnel**

Directors, managers and the person in charge of the of the personnel department of the undertaking cannot be elected as full or alternate members of a staff delegation.

The ITM takes the view that employees designated as a director or manager, but not genuinely vested with decision-making powers regarding personnel, are eligible and that it is appropriate to exclude any employee exercising the functions of director or manager who has genuine decision-making power over personnel and whose function would imply a possible conflict of interest with an appointment as staff representative.

 Legal basis: Article L. 413-4 (2) of the Labour Code

- **Employees on a coordinating employment contract or multi-employer contract**

In the event that a single undertaking has been designated as representative undertaking (see page 15), employees on a coordinating employment contract or multi-employer contract are to be regarded as employees of that single representative undertaking. In this case, employees shall be eligible within that representative undertaking if they fulfil the other preconditions to stand as candidates.

If no representative undertaking is designated, employees are to be regarded as part-time employees with the different employing undertakings.

In this case, employees shall be eligible only in the undertaking in which they are employed for the longest weekly period of work.

In the event of equal working periods, they shall be eligible in the undertaking in which they prove the longest period of seniority in service.

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

2.3. POSTAL VOTING

ESSENTIAL POINTS

- Postal voting enables employees absent on the day of the ballot to vote.
- Postal voting may be applied for to the Minister of Labour no later than one month before the date of the elections.
- A ministerial authorisation laying down the arrangements for postal voting shall be issued.

For employees of an undertaking who, it is envisaged, will be absent on the day of the ballot – for reasons associated with the organisation of work in the undertaking (for example, a business trip or duties abroad) and outside the undertaking (by reason of sickness, occupational accident, maternity or leave on various grounds) – postal voting may be applied for to the Minister of Labour (see forms M-02 or P-02 annexed hereto).

The ITM takes the view that part-time employees, employees providing services to user undertakings and apprentices who are not present in their undertaking on the day of the ballot may be granted a postal vote.

Time limit for applying for a postal vote

An application for authorisation for postal voting must be submitted by the head of the undertaking or by the staff delegation to the Ministry of Labour at least one month in advance.

The Minister of Labour will give his decision in the form of an order.

Please also refer to point 11 of this handbook for information on the implementation of postal voting.



Legal basis: : Article L. 413-1(5) of the Labour Code
Article 16 of the GDR of 11 September 2018

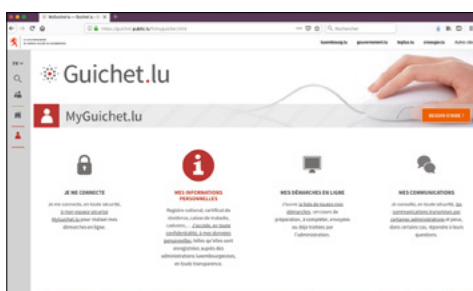
3. PRE-ELECTORAL OPERATIONAL PHASE

The new provisions on social elections indicate that the following **five administrative steps** must henceforth without fail be taken by electronic means via the interactive and secure electronic platform MyGuichet.lu:

- election notice concerning organisational arrangements for social elections;
- notice concerning the time limit for complaints about electoral lists;
- disclosure of candidates;
- declaration of the results of electoral operations;
- declaration of the functions of the staff delegation.

The two access codes which are notified to the undertakings during January 2024 enable them to take the above-mentioned administrative steps concerning social elections using MyGuichet.lu.

Those access codes are to be reported in the business eSpace at MyGuichet.lu in the tab "My business data", and then it is necessary to click on the « Social elections » field and on the «Registration of activation codes » field.



A first access code is intended for the undertaking concerned and the other code is intended for the agent in cases where an external undertaking/person is used for the organisation and monitoring of the electoral process. That undertaking/person will be able to take the steps relating to the above-mentioned social elections, on behalf of the undertaking concerned, but will not have access to any other information relating to the undertaking concerned.

The access code enables the MyGuichet business eSpace to be certified. It is sufficient for that space to be certified on one occasion only to facilitate the taking of the various steps. It is of no importance whether the five administrative steps are carried out by the undertaking or by its agent. If an undertaking's agent initiates a step, he must himself complete it. The instructing undertaking will no longer have access to the steps being carried out in connection with the social elections but will be able to access them when they have been sent. It is to be noted that the agent of an undertaking does not have access to the other information relating to the undertaking.

It is to be noted that all the other administrative steps relating to the social elections (application for a number for a trade union/group of employees, application for postal voting, compilation of alphabetical lists, receipt of candidatures, etc.) will have to be carried out in accordance with the arrangements laid down by the relevant legal provisions or regulations.

For further information concerning the various steps to be taken, please consult the information portal Guichet.lu:

www.guichet.lu/elections_sociales

Finally, the texts and information concerning the social elections are also available on the ITM website: www.itm.lu.



3.1. DISPLAY OF NOTICE OF ELECTION

ESSENTIAL POINTS

- A notice of election must be displayed at least one month before the ballot.
- The notice of election must contain all relevant information concerning the ballot.
-  The head of the undertaking will use in advance the secure and interactive MyGuichet electronic platform in order to register the information concerning the election notice, so that the document serving as an election notice can then be generated and printed.
-  Disclosure of the information concerning the election notice to the ITM when this step is taken, via the MyGuichet electronic platform.
- Display of the election notice marks the start of the electoral operations. .

At least one month before the elections, the head of the undertaking or his delegate must give notice to the employees of the undertaking of:

- the date of the elections,
 - the place of the elections,
 - the times at which electoral operations will start and finish, (between the start and end of the operations there must be sufficient time – at least one hour – for every elector to be able to vote).
 - the number of staff delegates to be elected (full and alternate),
 - the place where interested parties may ascertain the names of the candidates,
 - the conditions for standing as a candidate,
 - **Important** : the number of employees taken into account in calculating the number of staff employed in the undertaking:
- a) the number of employees working at least 16 hours per week;
 - b) the number of employees on a contract for less than 16 hours a week and the total duration of weekly working time stipulated in their contracts;
 - c) the number of employees on fixed-term contracts and of employees made available to the undertaking and their hours of attendance at the undertaking during the 12 months prior to the compulsory date for the drawing up of the electoral lists.

Please note : the head of the undertaking must organise the elections so that every employee is physically able to go to the polling station during his working timetable without loss of remuneration.

The display of the election notice marks the start of the electoral operations.



Legal basis: Article 3 (1) of the GDR of 11 September 2018

Neither the provisions of the Labour Code, nor those of the GDR impose requirements on the head of the undertaking regarding the place and mode of display of the notice.

However, all employees must be in a position to inspect the displayed notices. The display of the election notice may therefore be reported by electronic means (in particular when employees are away on short- or long-term assignments).

 The information concerning the election notice is to be forwarded to the ITM via the MyGuichet electronic platform (which can be consulted on the website www.guichet.lu).

Given that the election notice must be displayed at least one month before the elections, the registration of information relating thereto on MyGuichet, and the generation and printing of the election notice with a view to its display must take place no later than at that date.

Disclosure of the election notice to the ITM shall take place at the same time by dispatching the information concerning the election notice via the MyGuichet electronic platform.

It is not required to forward the election notice as an attachment to the ITM.

3.2. DRAWING UP OF ELECTORAL LISTS

The head of the undertaking or his delegate shall prepare for each ballot the alphabetical list (electoral list) of the employees who fulfil the conditions to vote and to stand for election.

(see forms M-04 or P-04 annexed hereto)



Legal basis: Article 2 of the GDR of 11 September 2018

3.3. FILING OF ELECTORAL LISTS AND OF THE NOTICE CONCERNING THE TIME LIMIT FOR COMPLAINTS

ESSENTIAL POINTS

- The electoral lists must be filed 3 weeks before the ballot.
- A notice concerning the time limit for complaints about electoral lists must be displayed on the same day as the filing (3 weeks before the ballot).
-  The employer will use in advance the MyGuichet secure and interactive electronic platform in order to record the information concerning the notice on time limits for complaints, which will enable the document serving as a notice concerning time limits for complaints to be generated and printed.
- Disclosure of information concerning the notice on time limits for complaints to the ITM at the time that step is taken, at the latest 3 weeks before the elections, via the MyGuichet electronic platform.

3 weeks before the day of the elections, the alphabetical lists, known as electoral lists, must be filed so that interested parties can inspect them.

No later than the same day, a notice will be displayed informing employees that any complaint against those lists must be submitted to the head of the undertaking, and for information to the ITM, within 3 working days following the filing of those lists.

 **Please note:** thus, complaints against electoral lists must be submitted not only to the head of the undertaking but must also be sent for information to the ITM.

 On the day that the alphabetical lists are filed, that is to say no later than 3 weeks before the elections, information concerning the notice on time limits for complaints must be forwarded to the ITM via the MyGuichet electronic platform (which can be consulted on the website www.guichet.lu).

The notice concerning the time limit for complaints will be notified to the ITM by the transmission of information concerning the election notice via the MyGuichet electronic platform.

It is not required to forward the notice concerning the time limit for complaints as an attachment to the ITM.

 Legal basis: Article 3 (2) of the GDR of 11 September 2018

We advise entering on the electoral lists the surnames and forenames of all the employees of the undertaking concerned (directors, managers, heads of personnel, apprentices, new recruits) and to use columns entitled "Voting elector" and "Candidate for election" to give information about the electoral status of those various employees. (see forms M-04 or P-04 annexed hereto).

3.4. CANDIDATURES

A. Filing of candidatures

The lists or individual candidatures must be submitted to the head of the undertaking or his delegate no later than the 15th calendar day preceding the day of commencement of the ballot, 6 p.m. Please refer to point 5.1 ("majority system") and point 6.1 ("proportional representation system") for more information regarding the filing of candidatures..

(See forms M-06 or P-06 annexed hereto)

If no valid candidature has been submitted within that period or if the number of candidatures falls short of the number of posts to be filled, the head of the undertaking or his delegate shall grant an additional period of 3 days and give notice thereof to the electors, and where appropriate to the submitters of lists.

 Legal basis: Articles 4 (4) and 8 of the GDR of 11 September 2018

B. Display of candidatures

Upon expiry of the prescribed period for candidatures to be filed, the head of the undertaking or his delegate shall draw up the list of candidates and display that list on the various media (including electronic media) accessible to the staff and reserved for that purpose.

⚠ Important : no later than 4 working days before the elections, the head of the undertaking or his delegate shall register the valid candidatures and report the name, forename, profession, national registration number, nationality and sex of the candidates on the MyGuichet electronic platform.

Recommendation : in case of elections with postal vote, registration via the electronic platform not later than 11 days before the ballot.

On the same day as candidatures are registered, the ITM shall return to the head of the undertaking a list of candidates via the electronic platform, enabling him to display the candidatures, and a form of voting slip for optional use.

Valid candidatures must be displayed for the last 3 working days before the ballot, except in the case of postal voting, in which case the time limit is 10 calendar days.

The notice displayed will also reproduce the instructions to electors.

 Legal basis: Articles 7 and 9 of the GDR of 11 September 2018

➔ Relative majority system

If the election is conducted in accordance with the relative majority system, the notice will reproduce, on the same sheet and in large characters, the surnames, forenames and professions of all the candidates who are or have been validly declared. The candidates shall be classified in alphabetical order.

➔ Proportional representation system

If the election is conducted in accordance with the proportional representation system, the notice will reproduce, on the same sheet and in large characters, the surnames, forenames and professions of the candidates on all the valid lists that have been registered.

For each list, the order of presentation of the candidates shall be maintained.

The list shall bear the serial number allocated to the professional organisation which presents it, in accordance with the provisions of the Grand Ducal

Regulation of 13 July 1993 concerning the allocation of a unique serial number to lists of candidates presented by the same professional organisation, the same trade union or group of employees for elections of professional chambers, sickness funds and staff delegations.

Trade union organisations and groups of employees referred to in Article L. 413-1 of the Labour Code who have not requested or obtained the allocation of a serial number in accordance with the above-mentioned Grand Ducal Regulation must use the serial number attributed to them on request by the director of the ITM.

C. Printing of minutes

When notice has been given of the candidatures on the MyGuichet electronic platform, minutes recording the information declared shall be generated automatically by the ITM and then returned so as to be available for printing in the undertaking's business eSpace. Depending on the case, they will be:

- either blank minutes recording the count for the principal office and, if appropriate, blank minutes recording the count for the additional electoral office or offices; these minutes will be used on the day of the elections in the principal office and in the additional offices.
- or minutes recording automatic elections; in such circumstances, a document to be used for the display of the results will also be available.
- or minutes recording the absence of candidatures; this document may also serve as a notice to be displayed for the staff of the undertaking.

3.5. PREPARATION OF VOTING SLIPS

ESSENTIAL POINTS

Voting slips must be

- identical to the display of candidatures,
- identical to each other,
- stamped on the reverse side.

After drawing up the list of candidates and displaying the candidatures, the head of the undertaking or his delegate will immediately prepare the voting slips.

The voting slips shall be identical to the notice displayed except that they may be of smaller dimensions and will not reproduce the instructions to electors.

They shall indicate the number of full delegates and alternate delegates to be elected.

A form of voting slip for optional use will be available after the details of the candidates have been disclosed on the MyGuichet electronic platform.

The slips used for the same ballot must be identical to each other as regards

- the paper,
- the format and
- printing.

No other voting slip may be used.

➔ Example

In particular, the following cases constitute irregularities: where the voting slips are:

- in different languages;
- of different colours;
- numbered;
- in the case of certain originals and other copies.

Voting slips must be stamped on the reverse before the ballot using a stamping device made available by the head of the undertaking.

➔ Relative majority system

Where the election is conducted in accordance with the relative majority system, a single box will be provided following the surnames and forenames of each candidate. There will be no upper box.

➔ Proportional representation system

Where the election is required to be conducted in accordance with the proportional representation system, there will be a box reserved for the vote at the top of each list. Two other boxes will be provided following the surnames and forenames of each candidate. The upper box shall be black and have in the middle a small circle in the colour of the paper.

3.6. SETTING UP OF THE POLLING STATION OR ELECTORAL OFFICE

ESSENTIAL POINTS

The principal electoral office and every additional office shall be

- set up in the Grand Duchy of Luxembourg on the day of the ballot
- composed of a president and 2 designated assessors
- assessors: neither outgoing full nor alternate delegates or new candidates
- possible designation of an observer

On the day of the elections, a principal electoral office will be set up and, if appropriate, additional electoral offices, each comprising a president and 2 assessors. Any observer who may be designated will not be a member of the electoral office.

Please note : the principal electoral office and the additional electoral offices must be set up in the Grand Duchy of Luxembourg.

The head of the undertaking or his delegate will fulfil the functions of president of the principal electoral office.

A representative of the employer will chair each additional office.

On each occasion 2 employees, to be designated by the outgoing delegation, will perform the functions of assessors.

In the absence of any designation by the outgoing delegation and in the event of a new delegation being set up, the assessors shall be appointed from among the electors by the head of the undertaking or, if there is an objection, by the director of the ITM.

Neither the full and alternate delegates of the outgoing delegation, nor the new candidates for posts of staff delegates may sit as assessors in any of the electoral offices. Even though the regulation excludes those persons only from the post of assessor, it is strongly recommended by the ITM that the post of president of an electoral office should not be awarded to a candidate or to an outgoing member of the delegation.

The members of the electoral office shall be required to faithfully record the votes cast and to observe secrecy regarding votes.

If a principal electoral office and several additional offices are set up, the results of the counts from the various offices shall be grouped together in the principal office which is responsible for summarising the votes and allocating posts. No result of an individual office may be published.

Please note : the electoral office or offices must be fully occupied throughout the electoral operations, so as to avoid any possible abuse..

 Legal basis: Articles 13 and 14 of the GDR of 11 September 2018

Can an observer or a witness be appointed in an electoral office ?

Important : each list presented by a trade union organisation proving general national representativity or a trade union organisation proving representativity in a particularly important sector of the economy may, at the time of filing the list, appoint an observer for each polling station, who may be present at electoral operations and whose role will consist of overseeing the propriety of electoral operations.

The duties of the observer will commence on the day of filing of the list on which his name appears and come to an end on the date of signature of the minutes.

This observer may be a member of the staff of the undertaking concerned who does not appear as a candidate on any of the electoral lists filed but who meets the conditions to stand as a candidate or another representative duly mandated by one of the trade unions referred to in the foregoing subparagraph.

An outgoing delegate may be an observer if he is not a candidate.

No other observer or witness shall be permitted, at the time either of voting or of the ballot count, with the exception of officials sent by the Minister of Labour or by the director of the ITM.

 Legal basis: Article 5 (6) of the GDR of 11 September 2018

4. THE FUNCTIONING OF THE ELECTORAL OFFICES

4.1. PREPARATORY PHASE

A. Facilities required

Each office president must make sure that his station is equipped with the required facilities:

- voting booths (failing which, a place to which the elector can withdraw in order to vote, without leaving the office);
- a sufficiently large ballot box to contain all the voting slips;
- several copies of the instructions to electors to be displayed visibly (one in each booth, one at the entry to the office);
- pens/pencils that can be used for voting (at least one for each booth);
- a table and chairs for the president and the 2 assessors;
- as a matter of choice, 1 or 2 checklists recording the employees allowed to come and vote in the office in question ("as a matter of choice" since the important point is to have all electors listed and to ensure that those allowed to vote by post are clearly identified).
- envelopes, to enclose the voting slips. The envelopes will indicate the number of slips contained in each of them;
- the voting slips must be folded in four at right angles and be stamped on the outside. There must be a number of voting slips sufficient to ensure a reserve to cover cases of crossings out (10-15%);
- empty envelopes to be used, after the event, for unused voting slips, blank or void voting slips and valid voting slips;
- materials for the count:

a) count forms

(see forms M-13-1 or P-14-1 annexed hereto)

b) blank minutes to record the count for each of the electoral offices, that is to say for the principal office and each of the additional offices (the forms for the minutes will be made available to the employers via the MyGuichet electronic platform following the disclosure of candidatures; forms are annexed for information);

In addition, for the principal electoral office:

- c) A computer that can be connected to MyGuichet for recordal of the results on the MyGuichet electronic platform, for the printing of the minutes giving a general description of the elections and for communication of the results to the ITM;
- d) Ensure that the president of the electoral office can access the company's professional social election space on MyGuichet to report the results;
- e) Activation codes sent to the employer by registered post, in the event that the business eSpace has not yet been certified by the person chairing the electoral office (the employer or his agent);

B. Verifications

We recommend that the president and the assessors should be present in the electoral office at least 30 minutes before the opening of the office so as to carry out the preparatory work, during which time the office will remain locked:

1. the president will verify that the assessors fulfil the legal conditions to perform that task. In case of need or if an assessor is absent, an alternate assessor will immediately be called in;
2. the members of the office will count the voting slips. The ITM recommends to record that number in the minutes. The members of the office will verify that the slips have all been stamped on the back, failing which the slip must be destroyed. This fact is to be mentioned in the minutes;
3. the president will verify, before closing the ballot box, that it is empty and he will show it to the assessors (to ensure neutrality as between the members of the office);
4. the members of the office will display copies of the instructions to electors;
5. the members of the office will verify that for each booth/voting screen a pen or a well-sharpened pencil is available;

6. in the event that electoral operations take place in more than one session, the ballot box must be sealed between sessions and must be kept in a locked location;
7. the ballot box must be constructed in such a way that no voting slip or slips can be withdrawn from it before the polling station closes. It must remain closed from the start to the end of the electoral operations. It will only be opened upon definitive closure of the polling station, at the time indicated on the displayed notice. The ballot box must facilitate observance of voting secrecy.

A sealed cardboard box may be used as a ballot box. On the other hand, an ordinary A4 envelope would not sufficiently guarantee the observance of voting secrecy at the ballot box.



4.2. ELECTION PHASE

At the time indicated on the displayed notice, the polling station will be opened.

➔ Example

The opening time of the ballot indicated in the election notice shall be 2 p.m. to 4 p.m.. The head of the undertaking may not open the office at 1.30 p. m. to allow employees completing their shifts at that time to vote. In such circumstances, the election would be vitiated.

A. Presentation of electors

Each elector who presents himself will indicate his name and must be able, if appropriate, to identify himself by producing an identity card, passport, badge or any other document containing a photo.

The assessors will verify that the elector is in fact entered on the electoral lists of their office and mark him down as present.

 Legal basis: Article 15 (1) of the GDR of 11 September 2018

Special cases

a) May an elector who has been granted a postal vote cast a vote at the ballot box ?

Where a person presents himself in an electoral office and does not appear on the checklists of that office, it will be necessary to verify whether he is marked down as an elector granted a postal vote.

In this case, he must produce to the president of the electoral office the letters received with regard to postal voting, or at least the envelope containing the voting slip. Those documents must be destroyed immediately and the elector will be added to the electoral lists as a voter.

If those documents are not produced, the additional office must verify with the principal office whether the elector has sent in his envelope. If he has not done so, the elector will be allowed to vote at the ballot box and will be added to the checklists as a voter. This fact must be mentioned in the minutes of both the principal office and the additional office.

b) Will an elector who presents himself at the wrong electoral office be allowed to vote ?

An elector who presents himself at the wrong electoral office will be asked to go to the office for which he is registered.

If the 2 offices are at different addresses, the office where the elector has presented himself will contact the principle electoral office, which will then verify that the elector has not yet taken part in the vote in the office at which he was listed and will, if appropriate, ask that he be removed from the checklists of that office before once again contacting the office which initiated the request.

The person concerned will be allowed to vote at the ballot box and the elector will be added to the checklists as a voter. This fact must be mentioned in the minutes of the 2 offices concerned.

What is the appropriate time to place the postal votes in the ballot box?

The ITM recommends that they be inserted on completion of the electoral operations, when there are no more voters. Thus, a person initially marked down as having a postal vote will always have an opportunity to attend and vote in person.

B. The voting procedure at the ballot box

An elector allowed to vote will receive from the president of the electoral office a voting slip folded in 4 at right angles, stamped on the reverse, and will go to an empty booth.

The elector will then cast his vote there, fold the slip into 4, with the stamp on the reverse, show the slip to the president of the office and place it in the ballot box. In no circumstances shall an elector be allowed, after voting, to open his voting slip outside the booth. In this case, the voting slip will be destroyed by the electoral office and the elector will be asked to vote once more.

An elector who has made a mistake when casting his vote will inform the president of the electoral office, hand him his voting slip, which will be immediately destroyed, receive a new voting slip and may then proceed to vote again.

An elector who has placed his slip in the ballot box should leave the electoral office immediately.

The president shall make certain that there are never more electors present in the electoral office than the office can deal with simultaneously.

No proxy voting is allowed. The voting slip must be delivered personally by the elector to the president of the electoral office; it may not be delivered either by third parties or by post.

In the case of postal voting, the voting slip may be delivered by post. The envelope containing the slip may also be delivered personally by the elector, against a receipt, to the president of the electoral office before the close of the ballot.

 Legal basis: Articles 15 et 16 of the GDR of 11 September 2018

a) Ballot rules

Each elector shall have as many votes as there are full and alternate delegates to be elected.

A voting slip containing more votes than the number available to the elector or more than 2 votes for one and the same candidate (circle blacked in and 2 individual votes) shall be void.

Each cross (+ or x) entered in one of the boxes reserved for that purpose following the name of the candidate shall be considered a vote for that candidate.

Any circle that has been blacked in, even incompletely, and any cross, even imperfect, will validly express the casting of a vote, unless there is a manifest intention to render the slip recognisable.

Any cross placed elsewhere than in the box reserved for that purpose will render the voting slip void.

The elector must not make on the voting slip any other entry, signature, crossing out or sign whatsoever.

 Legal basis: Article 17 of the GDR of 11 September 2018

➔ Relative majority system

Where the election is conducted in accordance with the relative majority system, the elector may award only one vote to each of the candidates until all the votes available to him are accounted for.

➔ Proportional representation system

Where the election is conducted in accordance with the proportional representation system, the elector may award 2 votes to each of the candidates until all the votes available to him are accounted for.

An elector who blacks in or ticks the circle of the box appearing at the head of the list is deemed to adopt that list in its entirety and thus to allocate one vote to each of the candidates on that list.

An elector may award all the votes available to him to one of the lists or spread the votes over different lists.

b) What regular checks must be carried out in the electoral office?

During the elections, regular checks must be made:

- that the booths do not contain any tract, paper or anything else other than what has been put there by the electoral office itself,
- that on the notices giving "instructions to electors" no additional words appear; if that is not the case, the notices must be destroyed and replaced immediately,
- the availability and condition of the pen/pencil in the booths,
- that the 2 checklists of the assessors are identical to each other.

4.3. THE COUNT – GENERAL OBSERVATIONS

At the time set for close of the ballot, the ballot box will be opened by the president in the presence of the 2 assessors.

The members of the office will, without unfolding them, count the slips contained in the ballot box and shall enter in the minutes:

- the number of voters (names ticked),
- the number of voting slips.

Before opening the ballot slips, the president shall intermingle them.

 Legal basis: Articles 19 and 20 of the GDR of 11 September 2018

We recommend to record also of the number of unused voting slips in the "observations" section of the minutes recording the count of each office and the minutes giving a general description of the elections, even though it is not compulsory to do so.

Unused voting slip shall be placed in an envelope set aside for that purpose, on which shall be noted the number of such slips. The envelope will be sealed before the ballot box is opened.

If the count is carried out by the principal electoral office and by the additional electoral office or offices:

- The president will open the ballot box, intermingle the slips which will then be counted, without being opened. The number of slips contained in the ballot box shall be entered in the minutes (this number must correspond to the number of voters ticked off by the assessors).
- The voting slips will then be counted (see below, in the description of the voting system used).

If the count is not carried out in the additional office, the president will seal the ballot box and, accompanied by the 2 assessors, will deliver the ballot box, the minutes and the envelopes containing the unused voting slips personally to the president of the principal office (see below, in the description of the voting system used).

If more than one electoral office is set up, the ITM suggests that the counting operations be conducted as follows:

⚠ NOTE: Additional electoral offices may count ballots when their polls are closed, but must maintain secrecy as long as one of the electoral offices remains open to electors.

The count shall be carried out in each electoral office.

Each electoral office (the principal office and the additional offices) shall draw up its minutes recording the count using the forms for minutes which have been sent to the employer via the MyGuichet electronic platform following the communication by electronic means of the names of the candidates.

⚠ Next, each set of minutes shall be delivered to the principal office, which will draw up the minutes giving a general description of the elections on the MyGuichet electronic platform, as part of the electronic declaration of results.

The president of an additional office whose count is complete, accompanied by at least one of the assessors, shall personally deliver to the president of the principal office the envelopes containing the voting slips, divided into valid slips and void slips, the envelope containing the unused slips, the electoral lists on which the assessors have ticked off the names and signed, the sheets recording votes, complaints and decisions of the electoral office in question, and the minutes in the form of a hard copy duly signed by the president and the 2 assessors of the additional electoral office in question.

During those document-delivery operations, the count must be suspended in the principal electoral office.

Only the principal electoral office will be authorised, after collecting the results of the additional offices and undertaking its own count, to add up the results, to allocate the posts and draw up the minutes giving a general description of the elections on the MyGuichet electronic platform. No result of an individual office may be published.

Until expiry of the period for objections, all the documents of the additional offices are to be retained separately so that, in the event of any objection regarding the electorate or the propriety of the electoral operations, the director of the ITM or the judges of the administrative court can reconstruct all the facts.

How to identify void voting slips?

The following slips shall be void:

- slips other than those delivered to the electors by the president of the office for the purposes of elections,
- those which record more votes than there are full and alternate delegates to be elected,
- those whose format and dimensions have been altered,
- those which contain a mark or a sign identifying the author thereof (paper inside, crossing out or any other mark whatsoever).

All those slips, and also blank slips (those which do not record the casting of any vote), will not be taken into account in determining the number of valid votes.

 Legal basis: Article 23 of the GDR of 11 September 2018

5. VOTING IN ACCORDANCE WITH THE RELATIVE MAJORITY SYSTEM

In undertakings with fewer than 100 employees, the ballot will be conducted on a relative majority basis. A delegation will be established for all the personnel by means of a single ballot.

 Legal basis: Article L. 413-1 (1) of the Labour Code

5.1. PRESENTATION OF CANDIDATURES

ESSENTIAL POINTS

- Presentation of candidatures on an individual basis, together with a declaration from the candidate certifying his acceptance of his candidature.
- Presentation to the head of the undertaking or his delegate no later than the 15th calendar day before the ballot at 6 p.m.

Candidates will be presented on the basis of individual candidatures. The following candidatures shall be acceptable, namely those presented by either:

1. trade union organisations proving general national representativity;
2. trade union organisations proving representativity in a particular important sector of the economy;
3. trade union organisations representing an absolute majority of the members making up the outgoing delegation, at the time of the filing of candidatures;
4. 5 electors.

 Legal basis: Article 4 (2) of the GDR of 11 September 2018

Each candidature must be accompanied by a declaration signed by the candidate certifying that he accepts his candidature.

Candidatures must be delivered personally to the head of the undertaking or his delegate no later than the 15th calendar day, at 18h00, before the day on which the ballot is to commence.

Outside that time limit, candidatures will no longer be admitted.

A candidature may not be submitted by electronic mail. The transmission of information by electronic mail does not give rise to any legal consequence. In particular, an employee submitting his candidature by email does not enjoy protection against dismissal.

Please note : an individual candidate who files his candidature must be issued with a receipt mentioning the date and time of its filing and a statement that the filing is valid.

The ITM considers that, where the ballot is conducted in accordance with the relative majority system, an elector may submit several candidates provided that he does not exceed the number of full and alternate candidates to be elected. Similarly, a candidate may submit other candidatures, or even present himself.

A form for filing individual candidatures is available in the forms section.

Form: (see form M-06 annexed hereto)

The head of the undertaking or his delegate shall register the candidatures in the order in which they are submitted. He shall refuse to register candidatures which do not fulfil the prescribed requirements.

 Legal basis: Articles 5(1), 6 and 9 of the GDR of 11 September 2018

Result of the operations

After expiry of the period for filing candidatures, the head of the undertaking or his delegate shall draw up the list of candidates and display the same on the various media accessible to the staff, reserved for that purpose, including electronic media, for the last 3 working days prior to the ballot, except in the case of postal voting where the time limit is extended to 10 calendar days.

Various situations may arise:

A. The number of candidates exceeds that of full and alternate delegates to be elected

This is normal and the elections must be proceeded with.

B. The number of candidates corresponds exactly to that of the full and alternate delegates to be elected

If the candidates agree to appoint the full and alternate delegates and to determine the order in which the alternates are to replace full delegates, those candidates shall be declared elected automatically.

The head of the undertaking or his delegate will prepare minutes thereof and forward them to the ITM no later than on the date set for the elections, via the MyGuichet electronic platform.

If the candidates do not reach agreement, the elections must be proceeded with.

C. The number of candidates falls short of the number of full and alternate delegates to be elected

The head of the undertaking will inform the candidates of that fact and, by the display of a notice, the electors and will grant an additional time limit of 3 days. A copy of the new notice to be displayed, for which a form is included in the forms section, is to be sent to the ITM.

(see form M-07 annexed hereto)

After that 3-day period, one of the following situations may arise

a) The number of candidates exceeds that of the full and alternate delegates to be elected

See point A above.

b) The number of candidates corresponds exactly to the number of full and alternate delegates to be elected

See point B above.

c) The number of candidates falls short of the number of full and alternate delegates to be elected

See point B above.

d) If no candidates are submitted

The head of the undertaking or his delegate must draw up minutes recording the absence of candidatures. Following disclosure of the candidates (and in this case of the absence of candidates), the employer will receive minutes recording the absence of candidatures on the MyGuichet electronic platform. The ITM will then carry out an inquiry within the undertaking.

On a proposal from the director of the ITM, the full delegates and if appropriate the alternate delegates shall then be appointed automatically by an order of the Minister of Labour, from among the eligible employees of the undertaking, within the two months following the date of the elections.



**Majority system: Example:
4 full delegates and 4 alternate delegates to be elected**

DATE	SITUATION	CONSEQUENCE	PROVISIONS
D-15 days before the elections	0 candidates (valid)	Extension by 3 days of the time limit for filing additional candidatures	Art. 8
D-15 days before the elections	≥ 1 to <8 candidates	Extension by 3 days of the time limit for filing additional candidatures	Art. 8
D-15 days before the elections	=8 candidates	If there is agreement: automatic election If there is no agreement: elections to be organised	L.413-1(6)
D-15 days before the elections	>8 candidates	Elections to be organised	
D-12 days before the elections	0 candidates (valid)	Minutes recording the absence of candidatures	L.413-1(7)
D-12 days before the elections	≥ 1 to ≤8 candidates	If there is agreement: automatic election If there is no agreement: elections to be organised	L.413-1(6)
D-12 days before the elections	>8 candidates	Elections to be organised	

5.2. ELECTORAL OPERATIONAL PHASE

A. Conduct of voting

For a detailed description, kindly refer to the chapter "The functioning of the electoral offices, election phase", page 32. The following summary is given for information:

ESSENTIAL POINTS

1. Ticking off, by an assessor (or, better, by both assessors) of the names of the electors who present themselves, on the checklists drawn up by the head of the undertaking for the various offices.
2. Hand-over, by the president, of a voting slip folded in 4 at right angles and stamped on the reverse. A slip which has been damaged inadvertently may be exchanged for a new one, the unusable slip being without fail destroyed immediately.
3. Recordal of the proper placing in the ballot box of the slip used to cast the vote: form properly folded in 4, stamp on the outside.

B. Essential ballot rules to be observed

Every elector will have as many votes as the total number of full and alternate delegates to be elected.

The elector may award only one vote to each of the candidates until all the votes available to him are accounted for. There is no imperative requirement that the elector should use all the votes available to him but he may not exceed that number, and if he does the vote will be void.

Each cross (+ or x) entered in the box reserved for that purpose following the name of the candidate represents a vote for that candidate. Any other sign ("A", "o" or "*" for example) may be interpreted as distinctive signs and would render the voting slip void.

5.3. POST-ELECTORAL OPERATIONAL PHASE

If the count is carried out in each electoral office, only the tasks listed under 3.1. (points 1 to 9) may be carried out by the additional offices.

A. The count properly so-called

Please refer to the section "The count – general observations" on page 35.

1. Opening of the ballot box by the president at the time set for the close of the ballot.
2. Count, by the members of the office, of the voting slips in the ballot box, without their being unfolded. The number of slips in the ballot box, which must correspond to the number of voters ticked off on the lists, will be entered in the minutes.
3. Intermingling of the slips by the president before they are opened.
4. All the slips are to be unfolded and checked to see whether or not they are valid (see "How to identify void voting slips?" on page 35).
5. Disputed/dubious voting slips shall be set aside and passed to the members of the office for examination. If they are deemed invalid, they will be signed by the members of the office (apart from the blank slips).
6. Any comments or complaints against one or more voting slips shall be recorded in the minutes. Those voting slips will then be numbered.
7. The number of blank, void and valid slips is to be recorded in the minutes.
8. Announcement, by the president, of the nominative votes. The 2 assessors shall each separately make an accurate account of the votes and record the same.

A form for a count chart is given in the forms section. (see form M-13 annexed hereto)
9. Ascertainment and entry, in the minutes recording the count by the electoral office, of the number of nominative votes for each candidate.

Which voting slips are void and what is to be done in relation to them ?

The following are deemed to be void slips:

1. Slips other than those delivered by the president of the electoral office;
2. Those which record more votes than there are full and alternate delegates to be elected;
3. Those on which a candidate is awarded more than one vote;
4. Those whose format and dimensions have been altered;
5. Those which contain an identifying mark or sign (paper inside, crossing out or any other mark whatsoever).

All those void slips and the blank slips shall not be taken into account in determining the number of valid votes or for the award of posts.

B. Allocation of posts

Operations for the allocation of posts (to be undertaken **only** by the principal office):

- The candidates having obtained the largest number of votes will be elected.
- Any tie will be decided in favour of the older candidate (age since birth and not time served in the undertaking).
- Drawing up of minutes giving a general description of the elections on the MyGuichet electronic platform.

Regarding the end of the operations, kindly refer to page 49, post-electoral aspects common to the two voting systems.

6. VOTING IN ACCORDANCE WITH THE PROPORTIONAL REPRESENTATION SYSTEM

In undertakings with 100 employees or more, a single delegation will be set up on the basis of elections in accordance with the proportional representation system.

6.1. PRESENTATION OF CANDIDATURES

ESSENTIAL POINTS

- Presentation of candidatures in the form of a list accompanied by a declaration from the candidate certifying his acceptance of his candidature.
- Each list will include the appointment of an agent.
- Each list will bear a name.
- Possibility of appointing an observer.
- Presentation to the head of the undertaking or his delegate no later than the 15th calendar day before the ballot at 6 p.m. or
- by a letter sent by registered post at least 2 days before that time limit expires

In the case of an election in accordance with the proportionality system, candidatures will be submitted in the form of **lists**.

Each individual candidature shall be regarded as forming a list by itself.

The following candidatures shall be admissible, namely those submitted by either:

1. trade union organisations proving general national representativity;
2. trade union organisations proving representativity in a particular important sector of the economy;
3. trade union organisations representing an absolute majority of the members making up the outgoing delegation, at the time of the filing of candidatures;
4. the group or groups of employees of the undertaking representing at least 5% of the workforce to be represented, subject to an upper limit of 100 employees.

 Legal basis: Article 4 (1) of the GDR of 11 September 2018

Where a list is presented under a composite name by one or more trade union organisations proving general national representativity jointly with a trade union organisation meeting the definition in Article L. 161-3 of the Labour Code, the latter shall be exempted from compliance with the conditions laid down in point 3 above.

Every list must be accompanied by a declaration signed by the candidate or candidates certifying that they agree to stand.

Every list of candidates shall include the appointment of an agent whom the submitters of the list have chosen in order to hand over the list personally to the head of the undertaking or his delegate.

Please note : the agent who delivers the list personally to the head of the undertaking or his delegate must be issued with a receipt mentioning the date and time of filing, the serial number of the list and a statement that the list has been validly filed.

On expiry of the time limit ending with the 15th calendar day before the ballot at 18h00, no further candidatures shall be admissible.

Each list must bear a name.

In the event that different lists have identical names, the agents will be invited to indicate the requisite distinguishing features, failing which those lists will be designated by a sequential letter by the head of the undertaking or his delegate; this designation must be made before the expiry of the period prescribed for declarations of candidacy.

The list shall indicate, **in alphabetical order**, the surnames, forenames and profession of the candidates and the name of the trade union organisation or group of electors submitting the list.

No person may appear on more than one list, either as candidate or as submitter, or as agent.

Article 5 (4) of the GDR provides that "No person may appear on more than one list, either as candidate or as person submitting a list, or as agent."

By virtue of the judgment of the Administrative Court of 25 January 2000 (N° 11270 C of the list), that legal provision does not in any way prevent a person from appearing on the same list as candidate, as submitter and as agent, but it merely prohibits one and the same person from appearing on more than one list. Thus, a candidate may at the same time be a candidate, submitter and agent on his list.

If identical declarations regarding candidates entered on lists are filed, the one bearing the earliest date will be the only valid one. If the dates are the same, all those candidatures shall be void. The candidature is to be struck out and not the entire list.

A list may not include more candidates than there are full and alternate posts to be filled.

The lists must be delivered by the agent no later than the 15th calendar day before the day of the elections at 18h00 to the head of the undertaking or his delegate or else by registered postal letter at least 2 days before the end of that period, the postmark being conclusive.

On the expiry of that period, candidatures will no longer be accepted.

A form for filing a list candidature is included in the forms section.

(see form P-06 annexed hereto)

Important : each list presented by a trade union organisation proving general national representativity or a trade union organisation proving representativity in a particularly important sector of the economy may, at the time of filing, appoint an observer who will be entitled to be present during the electoral operations and whose role will consist in overseeing the propriety of the electoral operations.

This observer may be a member of the staff of the undertaking concerned who does not appear as a candidate on any of the electoral lists filed but who meets the conditions to stand as a candidate or another representative duly mandated by one of the trade unions referred to in the foregoing subparagraph.

The duties of the observer will commence on the day of filing of the list on which his name appears and will come to an end on the date of signature of the minutes.

The employer or his delegate shall register the lists in the order in which they are submitted. He shall refuse to register candidates appearing on a list who do not meet the prescribed requirements. If all the candidates do not meet the requirements, he shall refuse to register the list.

 Legal basis: Article 6 of the GDR of 11 September 2018

A. What about the list numbers? Who obtains one, who requests one and who allocates them?

The allocation of a list number follows a drawing of lots by the Prime Minister in the presence of the trade union delegates, in particular:

- the trade unions that are most representative at national level, who obtain a serial number on a first drawing of lots;
- a second drawing of lots will take place as between the other professional organisations, trade unions or groups who have submitted a request.

The allocation of a serial number in accordance with these provisions is not open to appeal under the rules concerning electoral disputes.

The Prime Minister will notify the Minister whose terms of reference include labour of the serial numbers allocated. The list numbers will appear at the end of the document ("List numbers", page 77) and the minutes for the drawings of lots shall be available on our website.

Trade union organisations and groups of employees who have not requested or obtained a serial number in accordance with the Grand Ducal Regulation of 13 July 1993 concerning the award of a single serial number for lists of candidates must use the serial number allocated to them, on request, by the director of the ITM.

Form: An appropriate form is included in the forms section.

(see form P-08 annexed hereto)

B. Result of the foregoing operations

After expiry of the time limit for filing lists of candidates and after termination thereof by the head of the undertaking, the following different situations may arise:

a) The number of candidates exceeds that of full and alternate delegates to be elected

This is normal and the elections must be proceeded with.

b) The number of candidates corresponds exactly to the number of full and alternate delegates to be elected

If the candidates reach an agreement to appoint the full and alternate delegate or delegates and agree upon the order in which the alternate delegate or delegates will be called on to replace full delegates, they shall be declared elected automatically.

If there is no agreement, the elections must be proceeded with.

See point a above.

c) The number of candidates falls short of the number of full and alternate delegates to be elected

The head of the undertaking will give notice of that fact to the agents for the lists filed (which may then be supplemented) and will inform the electors by the display of a notice and grant an additional period of 3 days. A copy of the new notice to be displayed, for which a form is included in the forms section, is to be sent to the ITM. (see form P-07 annexed hereto)

On the expiry of that three-day period, one of the following cases will arise:

1. The number of candidates exceeds that of the full and alternate delegates to be elected

See point a above.

2. The number of candidates corresponds exactly to the number of full and alternate delegates to be elected

See point b above.

3. The number of candidates falls short of the number of full and alternate delegates to be elected

See point b above.

4. If no candidates are submitted

The head of the undertaking or his delegate must draw up minutes recording the absence of candidatures. Following disclosure of the candidates (and in this case of the absence of candidates), the employer will receive minutes recording the absence of candidatures on the MyGuichet electronic platform. The ITM will then carry out an inquiry within the undertaking.

**Proportional system
7 full delegates and 7 alternate delegates to be elected**

DATE	SITUATION	CONSEQUENCE	PROVISIONS
D-15 days before the elections	0 candidatures (valid)	Extension by 3 days of the time limit for filing additional candidatures	Art. 8
D-15 days before the elections	≥ 1 to <14 candidature(s)	Extension by 3 days of the time limit for filing additional candidatures	Art. 8
D-15 days before the elections	=14 candidatures	If there is an agreement: automatic elections If there is no agreement: elections to be organised	L.413-1(6)
D-15 days before the elections	> 14 candidatures	Elections to be organised	
D-12 days before the elections	0 candidatures (valid)	Minutes recording the absence of candidatures	L.413-1(7)
D-12 days before the elections	≥ 1 to ≤14 candidature(s)	If there is an agreement: automatic elections If there is no agreement: elections to be organised	L.413-1(6)
D-12 days before the elections	>14 candidates	Elections to be organised	

6.2. ELECTORAL OPERATIONAL PHASE

A. Conduct of voting

For a detailed description, kindly refer to the chapter “The functioning of the electoral offices, election phase”, page 22.

ESSENTIAL POINTS

- Ticking off, by an assessor (preferably by the 2 assessors using separate lists) of the names of the electors who present themselves, on the checklists prepared by the head of the undertaking for the various electoral offices.
- Hand-over, by the president, of a voting slip folded in 4 at right angles and stamped on the reverse. A slip which has been damaged inadvertently may be exchanged for a new one, the unusable slip being without fail destroyed immediately.
- Recordal of the proper placing in the ballot box of the slip used to cast the vote: form properly folded in 4, stamp on the outside.

B. Essential ballot rules to be observed

Every elector will have as many votes as the total number of full and alternate delegates to be elected.

The elector may choose between:

1. Awarding, by means of a cross (+ or x), **1 or 2 votes** to each of the candidates on one, or more than one or all the lists until all the votes available to him are accounted for. The elector is not under any obligation to use all the votes available to him. However, he may not exceed the number of votes available, and if he does so, his slip will be void.
2. Adoption of a list by marking, using a cross (+ or x), or blacking in the circle in the voting box at the top of a list. In this case, the elector adopts that list and thereby awards a vote to each of the candidates appearing on it.

If the number of candidates on that list falls short of the number of votes available to the elector, the elector may apportion the remainder of his votes to candidates on that same list, or another list, without thereby exceeding the maximum number of 2 votes per candidate.

Any circle blacked in, even incompletely, and any cross, even imperfect, in the place reserved for it shall validly express the casting of a vote except where there is a manifest intention on the part of the elector to make the voting slip recognisable by that means.

6.3. POST-ELECTORAL OPERATIONAL PHASE

A. The count properly so-called

If the count is carried out in each electoral office, only the steps below numbered 1 to 15 may be taken by the additional offices.

Please refer to the section “The count – general observations” on page 34.

1. Opening of the ballot box by the president.
2. Count by the president, without unfolding them, of the slips contained in the ballot box. The number of slips in the ballot box, which must correspond to the number of voters ticked off on the lists, will be entered in the minutes.
3. Intermingling of the slips by the president before they are opened.
4. All the slips are to be unfolded and checked to see whether or not they are valid (see “*How to identify void voting slips?*” on page 35).
5. Disputed/dubious voting slips shall be set aside and passed to the members of the office for examination. If they are deemed invalid, they will be signed by the members of the office (apart from the blank slips).
6. Any comments or complaints against one or more voting slips shall be recorded in the minutes. Those voting slips will then be numbered.
7. Voting slips that are not objected to or are considered valid will then be divided into 3 categories:
 - a) the piles of slips comprising only list votes (one pile per list);
 - b) the pile comprising list votes and nominative votes (this is only possible if there are incomplete lists, that is to say lists not comprising as many candidates as there are full and alternate delegates to be elected). It will be necessary to verify that the number of votes allocated on the voting slips does not exceed the number of votes authorised, otherwise those slips will be declared void and points 5 and 6 above will have to be reviewed;

- c) the pile comprising only nominative votes. It will be necessary to verify that the number of votes allocated on the voting slips does not exceed the number of votes authorised, otherwise those slips will be declared void and points 5 and 6 above will have to be reviewed.
8. The number of blank, void and valid slips are to be recorded in the minutes.
9. A count will be made of the number of list vote slips (pile (a) above) for each list and the assessors will note the number on the count forms (form in the forms section). Blacking in of the box at the top of a list will be valid for as many votes as there are candidates on that list.
10. Where appropriate, pile (b) will be subdivided by lists and a count will be made of the number of voting slips per list and the assessors will note those numbers on the count forms (the blacking in of the box above a list represents as many votes as there are candidates on that list). Next, the president will announce the additional nominative votes on those slips. The 2 assessors will accurately count the nominative votes and each will separately make a note on the same count forms as previously.
11. Announcement, by the president, of the nominative votes in pile (c). The 2 assessors will accurately count the votes and each will separately make a note on the same count forms as previously.
12. A regular check is advisable, comparing the votes recorded by the 2 assessors. Similarly, if the number of voting slips to be counted exceeds a specified number, a count in stages with intermediate results is advised.
13. It will be necessary to undertake a double count:
- for each candidate:** the number of votes obtained by a candidate is the sum of the individual votes obtained, together with the number of list votes cast by blacking in of the boxes above the lists to which the candidate belongs. This count will be used to classify candidates within each of the lists;
 - for each list:** the total votes obtained by the candidates on that list (see calculation at (a) above). This count will be used to calculate the number of posts for the list.
14. Ascertainment and entry in the minutes by the members of the electoral office of the number:
- of votes for each candidate (a);
 - of votes obtained by each list (b).
15. Logging in the minutes of complaints and decisions of the members of the office other than those mentioned above.

B. Allocation of posts

Operations for the allocation of posts (to be undertaken **only** by the principal office):

- Calculation of the number representing 5% of the votes validly cast and exclusion of the lists where the number of votes obtained falls short of that figure.
- Determination of the electoral number (EN) using the formula:

EN = Whole number immediately above the quotient arrived at by the following division:

$$EN = \frac{\text{Sum of valid votes on all the lists}}{\text{Number of full delegates to be elected} + 1}$$

Note

It is only if this quotient operation gives a decimal number that it will be necessary, to determine (EN), to round it to the whole number immediately greater than this quotient !

- Determination of the number of posts (NP) for each list using the formula:

$$NP = \frac{\text{Number of votes obtained by the list}}{EN}$$

This formula, by adjusting on each occasion the number of votes received by the relevant list, will of course have to be reapplied for each list which, after exclusion of the lists which did not succeed in attracting at least 5% of the valid votes (see 1 above), will remain in contention.

Formulaire: Un modèle de tableau de dépouillement est annexé dans la partie formulaires.

(voir modèle P-14 en annexe)

 Note

the NP is never rounded up and account will be taken only of the **whole number** of the quotient used to calculate it.

4. If the total of (full) posts thus distributed (see 3) falls short of the number of full posts to be allocated, it will then be necessary to undertake a **supplementary allocation** of posts. That supplementary allocation will be made using the following formula for each of the lists remaining in contention (which have exceeded 5% of the votes validly cast):

Number of votes obtained by the list

Number of posts already received by that list +1

The list with the largest quotient takes the post.

In the event of a tied quotient, the post is allocated to the list which received the most votes.

 Note

Only one post is **allocated** per calculation. If necessary, this procedure will have to be repeated until all the posts to be filled are accounted for.

Form: For the allocation of posts, a pre-printed form facilitates the operation.

(see form P-15 annexed hereto)

To help you understand the calculation, an example is given below. A calculation simulator on our website will help you check these calculations.

 Note

Both for the president and the assessors in a principal electoral office, it is highly recommended that the persons concerned familiarise themselves with those calculations before the day of the elections.

General remarks:

A list will have allocated to it exactly as many alternate posts as the full posts allocated to it.

For each list, the respective posts will be allocated to the candidates who obtained the largest number of votes.

Any tie will be decided in favour of the older candidate (age since birth and not time served in the undertaking).

If a list obtains more representatives than the number of candidates presented, the number of posts remaining to be filled shall be apportioned between the other lists. For that purpose, a new pro rata allocation will take place (see supplementary allocation under 4 above). This is done by analogy with Article 257 of the electoral law of 18 February 2003.

Which voting slips are void and what is to be done in relation to them ?

The following are deemed to be void slips:

1. slips other than those delivered by the president of the electoral office;
2. those which record more votes than there are full and alternate delegates to be elected;
3. those on which a candidate is awarded more than 2 votes (list vote + 2 nominative votes);
4. those whose format and dimensions have been altered;
5. those which contain an identifying mark or sign (paper inside, crossing out or any other mark whatsoever)

All those void slips and the blank slips shall not be taken into account in determining the number of valid votes or for the award of posts.

Example of calculation

Number of employees as at 1 February 2024	240
To be elected	6 delegates + 6 alternates
Number of voters registered	196 employees
Electors (voting)	174
Number of void voting slips	14
Number of votes validly cast	1844
Electoral number	$1844 : (6+1) = 263.43 \rightarrow 264$
Minimum votes required per list	5% of 1844 = 92.2 $\rightarrow$ 93

First allocation of posts

NAME OF LIST	TOTAL NUMBER OF VOTES FOR THE LIST/ ELECTORAL NUMBER	DELEGATES	ALTERNATES
List A	$815 : 264 = 3.08$	3	3
List B	$261 : 264 = 0.98$	0	0
List C	77	0	0
List D	$501 : 264 = 1.89$	1	1
List E	$187 : 264 = 0.71$	0	0
Total		4	4

Additional posts

NAME OF LIST	NUMBER OF VOTES OBTAINED FOR THE LIST / (NUMBER OF SEATS ALREADY OBTAINED + 1)	QUOTIENT
List A	$815 : 4$	203.75
List B	$261 : 1$	261
List D	$501 : 2$	250.5
List E	$187 : 1$	187

NAME OF LIST	NUMBER OF VOTES OBTAINED FOR THE LIST / (NUMBER OF POSTS ALREADY OBTAINED + 1)	QUOTIENT
List A	$815 : 4$	203.75
List B	$261 : 2$	130.5
List D	$501 : 2$	250.5
List E	$187 : 1$	187

Final result

NAME OF LIST	DELEGATES	ALTERNATES
List A	3	3
List B	1	1
List C	0	0
List D	2	2
List E	0	0
Total	6	6

7. POST-ELECTORAL ASPECTS COMMON TO THE TWO VOTING SYSTEMS

7.1. MINUTES

ESSENTIAL POINTS

The various stages for drawing up the minutes of the principal office and those, where applicable, of the additional offices, and the minutes giving a general description of the elections:

- connection to the MyGuichet electronic platform, where appropriate using the activation codes sent to the employer by registered post in cases where the business eSpace has not yet been certified by the person presiding over the electoral office (the employer or his agent);
- printing of the blank minutes recording the count of the principal electoral office and, where appropriate, of the additional electoral offices (already available at the time of the disclosure of candidatures);
- handwritten recording at the time of the ballot of all necessary information on a blank sheet of paper;
- handwritten recording by each electoral office (principal and additional) of the information gathered on the blank sheet in the relevant minutes recording the count;
- signature, forthwith, by the president and the assessors of the relevant minutes recording the count;
- where appropriate, forwarding, forthwith, of the minutes of the additional offices to the president of the principal electoral office;

- registration by the principal electoral office of the information gathered in the minutes recording counts on the MyGuichet electronic platform at the stage of declaring the results in order to prepare the minutes giving a general description of the elections;
- printing of the minutes giving a general description of the elections (a PDF document which is generated at the stage when the results are declared);
- signature of the minutes giving a general description of the elections;
- forwarding of the results via the MyGuichet electronic platform (the stage of declaring results) to the ITM and copies of the minutes of the principal office, where appropriate of the additional offices and the minutes giving a general description of the elections as attachments to the ITM.

Minutes will be drawn up and signed forthwith by the president and the assessors of the principal office and, where appropriate, by the additional offices regarding the electoral operations and the results of the ballot.

Please note : the above-mentioned minutes will be copied to every trade union which presented a list.

Where appropriate, the presidents of the additional electoral offices will forward the minutes forthwith to the president of the principal electoral office.

The head of the undertaking or his delegate fulfilling the functions of president of the principal electoral office shall draw up minutes giving a general description in respect of the electoral operations by recording on the MyGuichet electronic platform the results of the ballot, grouping the requisite information into the tables below and contained in the minutes of the principal electoral office and, where appropriate, in the minutes of the additional electoral offices.

The minutes giving a general description

⚠ Important : communication of the results to the ITM by means of a dedicated electronic procedure (declaration of results) via the MyGuichet electronic platform.

The head of the undertaking or his delegate fulfilling the functions of president of the principal electoral office shall communicate the results of the ballot and the signed minutes giving a general description of the elections, the minutes of the principal electoral office and, where appropriate, the minutes of the additional electoral offices in the form of attachments to the ITM via the MyGuichet electronic platform on the actual day of the elections.

The minutes recording the electoral operations and the results of the ballot shall contain the following information:

• **Relative majority system and proportional representation system**

- a) the name of the undertaking;
- b) the corporate style of the undertaking;
- c) the national registration number of the employer;
- d) the registered office of the undertaking;
- e) where appropriate, the postal address of the site;
- f) the date of the elections;
- g) the number of full posts and alternate posts to be filled;
- h) the number of registered electors according to the alphabetical list of employees;
- i) the opening time of the electoral office;
- j) the closing time of the electoral office;
- k) the number of electors who took part in voting;
- l) the number of voting slips destroyed during the electoral operations;

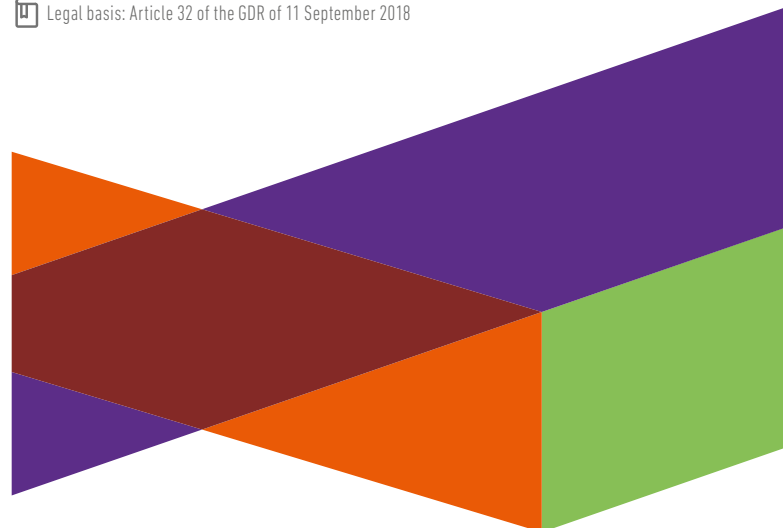
- m) the number of electors allowed to cast postal votes;
- n) the number of postal voters;
- o) the number of voting slips in the ballot box;
- p) the number of void slips and blank slips;
- q) the number of valid voting slips;
- r) the number of votes validly cast;
- s) the surnames and forenames of the candidates;
- t) the national registration number of the candidates;
- u) the sex of the candidates;
- v) the nationality of the candidates;
- w) details of the candidate's title following the elections (full delegate, alternate delegate, not elected);
- x) the number of votes obtained by the candidate;
- y) the surname, forename and national registration number of the president of the electoral office;
- z) the surname, forename and national registration number of the electoral office assessors.

• **Proportional representation system**

The minutes will additionally record the following information:

- a) the trade union organisation referred to in paragraph 1 of Article 5 which presented the candidate;
- b) the names of the lists;
- c) the number of votes obtained by the list;
- d) the number of full posts per list.

 Legal basis: Article 32 of the GDR of 11 September 2018



7.2. PUBLICATION AND DISPLAY OF ELECTION RESULTS

 the document generated automatically by the ITM and received by the undertaking following the declaration of results on the MyGuichet electronic platform may be used for display of the results in the undertaking.

During the 3 days following the ballot, it is compulsory to display the names of the full delegates and alternate delegates elected and of the candidates not elected. It is not necessary to publish the minutes, but only the result of all the lists and all the candidates.

The above information must also be displayed when delegates are elected automatically.

The display of the notice, even if there was no vote (as in the case of automatic election), must also be effected for at least 3 consecutive days following the ballot.

Communications shall be displayed openly on the various media accessible to the personnel, reserved for that purpose, including electronic media.

Relative majority system

The surnames and forenames of the full and alternate delegates elected, of the candidates not elected and the number of votes obtained by them will be displayed in the undertaking for the 3 days following the day of the ballot.

Proportional representation system

Les noms et prénoms des délégués effectifs et suppléants élus, des candidats non-élus, leur nombre de voix obtenues ainsi que, le cas échéant, l'organisation syndicale qui a présenté le candidat, sont affichés dans l'entreprise durant les 3 jours consécutifs à celui du scrutin.

7.3. WHAT IS TO BE DONE IF AN ELECTED CANDIDATE DECLINES TO TAKE UP OFFICE?

If an elected candidate declines to take up office, he must give notice to the president of the electoral office no later than the sixth day following the day of publication of the election results.

He shall then be replaced by the person on the list who, after him, obtained the largest number of votes and the number of alternates shall be supplemented, where appropriate, by the candidate not elected who obtained, after him, the largest number of votes.

These facts are to be brought to the notice of the staff in the same form and within the same time limits as those provided for publication of the result of the elections.

During the 3 days following the end of the sixth day after publication of the election result, it will be compulsory to display the refusal of the appointment by the candidate concerned and the name of his replacement.

We recommend that a copy of the notice displayed be sent by email (contact@itm.etat.lu) or by post to the ITM.

On the expiry of that six-day period, the number of alternates can no longer be supplemented.

A candidate refusing his appointment as a full delegate will not be included among the alternate delegates but will forfeit his mandate entirely and all the associated rights and duties.

For that purpose, the use of electronic means of data transmission (e-mail or fax) is authorised.

 Legal basis: Article 34 of the GDR of 11 September 2018

 Legal basis: Article 33 of the GDR of 11 September 2018

8. ENTRY INTO SERVICE OF THE NEW DELEGATION

The inauguration of the new delegation may not take place until 15 days after the last day of display of the ballot result or, where there is an objection, before the decision of the director of the ITM.

8.1. FIRST MEETING

A. Convening

The first meeting of the staff delegation, also known as the constituent meeting, shall be convened by the employee who obtained the largest number of votes in the ballot, within one month following the elections.

If there are no elections and where automatic election has taken place (because the number of candidatures was equal to or did not exceed the number of delegates to be elected), the constituent meeting will be convened, under the same conditions, by the oldest full delegate.

"Within one month" means that the constituent meeting must be convened no later than the day of the month following that of the elections with the same ordinal number as the day of the elections. In other words, the constituent meeting must be convened no later than the day of the month following that of the elections whose date corresponds to that of the elections.

→ Example

If the ballot takes place on 12 March 2024, the constituent meeting must be convened no later than 12 April 2024.

 Legal basis: Article L. 416-1 of the Labour Code

B. Agenda

The agenda of the constituent meeting of the staff delegation must include the following items in the following order:

1. appointment of an electoral office comprising at least 2 members and at least one member of each trade union represented within the staff delegation;
2. election of the president;
3. election of the vice-president;
4. election of the secretary;
5. election of the board;
6. election of the equality delegates;
7. election of the health and safety delegate;
8. implementation of Article L. 415-5 of the Labour Code (relating to the time-off entitlement).

Minutes of the constituent meeting covering points 1 to 8 and signed by the members of the electoral office will be forwarded to the head of the undertaking and to the ITM no later than 5 days after the date of the meeting.

 Legal basis: GDR of 15 December 2017 implementing Article L. 416-1 of the Labour Code

Thus, at the constituent meeting, the staff delegation shall appoint from among its full members, by secret ballot and on a relative majority basis:

- a president,
- a vice-president, and
- a secretary.

In the event of tied votes, the oldest person will be elected.

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 secret ballot on a list basis in accordance with proportional representation rules:

- a board.

The board will be composed, in addition to the president, the vice-president and the secretary, of:

- 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.

Composition of the board

SIZE OF THE UNDERTAKING (BY NUMBER OF EMPLOYEES)	SIZE OF THE DELEGATION (BY NUMBER OF DELEGATES)	ADDITIONAL MEMBERS OF THE BOARD	COMPOSITION OF THE BOARD
15 to 25	1	/	president/secretary
26 to 400	2 to 7	/	president, vice-president and secretary
401 to 600	8 or 9	1	president, vice-president and secretary + 1 member
601 to 800	10 or 11	2	president, vice-president and secretary + 2 members
801 to 1000	12 or 13	3	president, vice-president and secretary + 3 members
> 1000	14 or more	4	president, vice-president and secretary + 4 members

For its tasks in the context of Articles L. 414-9 to L. 414-13 of the Labour Code (co-decision power), the board 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 board for the dispatch of day-to-day business.

➔ Examples

Example 1

In an undertaking with 320 employees, the staff delegation comprises 7 full delegates, of whom 4 were elected from a list from trade union "A" (57% of the votes) and 3 from a list from trade union "B" (43% of the votes).

Thanks to its majority, the president, the vice-president and the secretary have been appointed from among the trade union "A" members. It will then be necessary to enlarge the board by adding trade union "B" members on a proportional basis.

Adding only one representative from trade union "B" would mean that the board comprised 4 members, namely 3 trade union "A" delegates (which is equivalent to 75% for trade union "A") and a trade union "B" representative (which is equivalent to 25% for trade union "B").

Adding two representatives from trade union "B" would mean that the board comprised 5 members, namely 3 trade union "A" delegates (which is equivalent to 60% for trade union "A") and two trade union "B" delegates (which is equivalent to 40% for trade union "B").

The second solution leads to percentages closer to the results obtained in the elections; it thus seems to be the most "proportional" solution, as sought by the legislature.

Example 2

In an undertaking with 320 employees, the staff delegation comprises 7 full delegates, namely 4 delegates from trade union "A" (57% of the votes), 2 delegates from trade union "B" (29% of the votes) and 1 delegate from a neutral list (14% of the votes).

Thanks to its majority, the president, the vice-president and the secretary have been appointed from among the trade union "A" members.

The board will then have to be enlarged by adding one or more trade union "B" members and by the delegate from the neutral list.

As a result of enlarging the board with a trade union "B" representative and the neutral representative, the board would comprise 5 members (3 trade union "A" members, 1 member of trade union "B" and 1 neutral member), so that trade union "A" represents therein 60%, trade union "B" represents 20% and the neutral delegate represents 20%. This does not seem very proportional for trade union "A", in so far as the latter obtained more than 50% of the votes and, moreover, double the neutral list votes.

For the proportion to be maintained, it is then possible to argue that the board should be enlarged by adding 2 trade union "B" representatives. It would then comprise 6 members, so that trade union "A" would represent therein 50%, trade union "B" 33% and the neutral list 17%.

The proportion between trade union "B" and the neutral list would thus be maintained, but trade union "A" would then have its position rendered more fragile as compared with the result that it obtained in the social elections. It should also be noted that the law does not provide any clear solution as to which lists should be used for the proportion to be tested.

 Legal basis: Article L. 416-1 (2) of the Labour Code

• a health and safety delegate

Each staff delegation shall appoint at the constituent meeting, from amongst its members or from amongst the other employees of the undertaking, a staff health and safety delegate.

• an equality delegate

Each staff delegation shall appoint at the constituent meeting, from amongst its full or alternate members and for its full term of office, an equality delegate.

C. Communication to the head of the undertaking and to the ITM

Within 3 days following the constituent meeting, the president of the delegation shall give notice in writing to the head of the undertaking of the surnames, forenames and national registration numbers of the vice-president, the secretary, the members of the board, the health and safety delegate and the equality delegate.

 Legal basis: Articles L. 414-14, L. 414-15 and L. 416-1 (3) of the Labour Code

Note

Within 5 days following the communication to the head of the undertaking of the functions of the delegates, the head of the undertaking shall give notice to the ITM, using the declaration of functions sent via the MyGuichet electronic platform, of the surnames, forenames and national registration numbers of the president, the vice-president, the secretary, the equality delegate, the health and safety delegate and the members of the board.

Within 5 days following the constituent meeting, minutes of the constituent meeting recording the appointment of the electoral office, the election of the president, of the vice-president, of the secretary, of the board, of the health and safety delegate and of the implementation of Article L. 415-5 of the Employment Code will be forwarded to the employer and by email (contact@itm.etat.lu).

DOCUMENTS AND INFORMATION	TIME LIMITS	RESPONSIBILITY	ADDRESSEE OF THE COMMUNICATION
Communication in writing of the names and national registration numbers of: - the president, - the vice-president, - the secretary, - the members of the board, - the health and safety delegate, - the equality delegate.	Within 3 days following the date of the constituent meeting	President of the delegation	Head of the undertaking
Minutes of the constituent meeting	Within 5 days following the constituent meeting	President of the delegation	Head of the undertaking ITM
Declaration of the allocation of functions within the delegation via the MyGuichet electronic platform	Within 5 days following the written communication to the head of the undertaking of the delegates' functions	Head of the undertaking	ITM
Any change affecting the composition of the delegation, of the board and/or the allocation of mandates shall be notified as soon as possible to the ITM in writing (and not via the platform)	As soon as possible	President of the delegation	Head of the undertaking ITM

8.2. SECOND MEETING

At this meeting, the first one after the constituent meeting of the staff delegation, the head of the undertaking will report to the elected members on:

- the structure of the undertaking,
- any links it has with other undertakings,
- the foreseeable economic development,
- the structure of employment,
- the continuing vocational training policy,
- the health and safety at work policy,
- the equal treatment policy.

 Legal basis: Article L. 416-1 (4) of the Labour Code

The new delegation must retain the documents relating to the electoral procedure for its full term of office.

The new delegation shall be elected in principle for a 5-year term of office.

The term of office may be shorter or longer than 5 years where the delegation is elected on a date other than the legal date prescribed by the Minister of Labour. The new delegation will then be renewed on the legally prescribed date for the next social elections, unless the duration of their term of office would in such circumstances be less than one year, in which case the delegates' term of office would be extended until the next legal date for social elections.

 Legal basis: Articles L. 413-2 of the Labour Code and 39 of the GDR of 11 September 2018



9. ELECTORAL DISPUTES

ESSENTIAL POINTS

- Disputes concerning the electorate and the propriety of the electoral operations shall be within the purview of the ITM.
- Any appeal against a decision of the director of the ITM shall be brought before the administrative courts.
- The time limit for bringing an appeal is 15 days following the last day of display of the results.

9.3. APPEAL AGAINST THE DECISION OF THE DIRECTOR OF THE ITM

Within 15 days following notification thereof, the decisions of the director of the ITM may be the subject of an appeal before the administrative courts.

 Legal basis: Article 37 of the GDR of 11 September 2018

The appeal shall have suspensive effect.

9.1. TIME LIMITS FOR COMPLAINTS

Any objection concerning the electoral operations must be lodged – failing which it will be inadmissible – by registered post within the 15 days following the last day on which the results of the elections were displayed.

9.2. JURISDICTION

Any objections concerning electoral operations shall be within the jurisdiction of the director of the ITM.

The ITM shall adjudicate:

- within 15 days,
- by a reasoned decision,
- after the interested parties have been heard or convened.

As soon as an admissible objection is received by the director of the ITM, he shall inform the relevant parties, namely:

- the head of the undertaking who for his part will inform the president of the principal electoral office,
- the persons elected,
- the unelected candidates,
- and the complainant or complainants,
- and shall set a date for the case to be heard.

 Legal basis: Article 36 of the GDR of 11 September 2018

9.4. EFFECT OF ANNULMENT OF ELECTIONS

The annulment of the elections directed by the authorities described above shall entail the organisation of new elections within a period of 2 months following the date of the annulment. The entire electoral procedure, from the date of display of the first notice, will be recommenced.

 Legal basis: Article 38 of the GDR of 11 September 2018

10. SOCIAL ELECTIONS IN TEMPORARY EMPLOYMENT AGENCIES

10.1. UNDERTAKINGS AFFECTED

A temporary employment agency shall mean any natural or legal person whose commercial activity consists of recruiting and remunerating employees with a view to making them temporarily available to users for the performance of a specific and time-limited task.

10.2. COMPUTATION OF WORKFORCE

For computation of the staff employed by a temporary employment agency, account shall be taken of:

- the permanent employees of that agency,
- employees who have been linked to it by assignment contracts for a total period of at least 10 months during the year preceding the date of computation.

 Legal basis: Article L. 411-2 of the Labour Code

10.3. PERIOD FOR COMPUTATION OF THE WORKFORCE

The period to be used as a basis for computation of temporary staff will be, for the elections scheduled to take place on 12 March 2024, from 1 February 2023 to 31 January 2024.

Account shall be taken of those employees who, during that period, were linked to the temporary employment agency for at least 10 months on a full-time basis (that is to say 1,730 hours) or on a part-time basis.

Calcul

Full-time temporary employees:

$173 \text{ hours} \times 10 \text{ months} = 1,730 \text{ hours}$

Part-time temporary employees working 16 hours per week:

$1,730 \text{ hours} / 40 \text{ hours} \times 16 \text{ hours} = 692 \text{ hours}$

Hours worked over 10 months:

$173 \text{ hours} \times 12 \text{ months} = 2,076 \text{ hours} - 208 \text{ hours of annual leave} = 1,868 \text{ hours for 12 months}$

$1,868 \text{ hours} / 12 \text{ months} \times 10 \text{ months} = 1,556.66 \text{ hours for 10 months}$

If the total hours worked part time is equal to or greater than 692 hours, the employees will be counted in their entirety.

If the total hours worked part time is less than 692 hours, the time worked by the temporary employee concerned shall be added to the sum of the hours worked by other temporary employees in the same circumstances and the final sum will be divided by 1,556.

The rounded result of this division shall be added to the number used to determine the workforce to be represented by those temporary employees.

10.4. VOTERS AMONG TEMPORARY STAFF

The general conditions for entitlement to vote operate for temporary employees in the same way as for any other employee (see page 17).

For compilation of the lists of persons eligible to vote, it is recommended that account be taken, as at the final date for the filing of those lists, of temporary employees who normally, on the day of the elections, prove uninterrupted seniority of at least 6 months in the agency.

Periods between varying assignments, if those periods do not exceed 3 calendar days, are not to be regarded as interruptions.

The right to vote shall be refused to any temporary employee whose employment relationship with the temporary employment agency has come to an end between the date of publication of the lists and the day of the elections or if his seniority in the service has been interrupted by more than 3 consecutive days during that period.

10.5. MEMBERS OF TEMPORARY STAFF ELIGIBLE TO STAND FOR ELECTION

The general conditions for entitlement to stand for election operate for temporary employees in the same way as for any other employee (see page 20).

For compilation of the lists of persons entitled to stand for election, it is recommended that account be taken, as at the final date for the filing of those lists, of the temporary employees who normally, on the day of the elections, prove uninterrupted seniority of at least 12 months in the agency.

Periods between varying assignments, if those periods do not exceed 3 calendar days, are not to be regarded as interruptions.

Eligibility shall be refused to any temporary employee whose employment relationship with the temporary employment agency has come to an end between the date of publication of the lists and the day of the elections or if his seniority in the service has been interrupted by more than 3 consecutive days during that period.

A temporary employee who, if the case arises, has not been able to be removed from the voting slips before the opening of the polling stations, and who has been elected, will, with a special note being made in the minutes, be replaced by the person who, on the same list, after him, obtained the largest number of votes and the number of alternates shall be supplemented, where appropriate, by the candidate on that list who obtained the largest number of votes as an unelected candidate.

In the case of voting according to the simple majority system, he shall be replaced by the person who, after him, obtained the largest number of votes, and the number of alternates shall be supplemented, if appropriate, by the unelected candidate who obtained the largest number of votes.

10.6. VOTERS AND PERSONS STANDING FOR ELECTION FOR THE PERMANENT EMPLOYEES OF TEMPORARY EMPLOYMENT AGENCIES

See page 20 regarding voters and page 22 regarding persons entitled to stand for election.

Example of computation of the workforce:

CATEGORY OF STAFF	ATTENDANCE AT THE UNDERTAKING	TAKEN INTO ACCOUNT FOR COMPUTATION OF THE WORKFORCE	OBSERVATIONS:
Number of employees under a full-time employment contract + Number of part-time employees whose individual working time is: ≥ 16 hours/week	17	17	Account is taken of all employees, including managers/directors and heads of department, provided that they are not freelance. (OEC, sickness leave, maternity leave, parental leave included)
Number of hours per week worked by part-time employees whose individual working time is: < 16 hours/week	375 hours	9	$375/40 = 9.38 = 9$ The number of hours worked is to be divided by the number of legal or contractual hours of work applicable in the agency concerned.
Attendance time of staff on an FTC or of an employee made available otherwise than to fill in for sickness leave, maternity leave or parental leave, etc. during the last 12 months preceding the first day of the month of display of the notice	7,583 hours	4	The following averages will be applied: hours worked per month: 173 hours/month (for the general situation where, in the agency, weekly working hours are 40 hours/week) months worked per year: 12 months hours of leave per year: 208 hours/year the division is thus as follows: $(173 \times 12) - 208 = 1,868$ hours $7,583 : 1,868 = 4.06 = 4$ (To be adjusted for cases where a collective agreement provides for a different work duration or for different annual leave.)

Example of computation of the workforce:

CATEGORY OF STAFF	ATTENDANCE AT THE UNDERTAKING	TAKEN INTO ACCOUNT FOR COMPUTATION OF THE WORKFORCE	OBSERVATIONS:
Number of full-time employees linked to the temporary employment agency by assignment contracts for a total period of at least 10 months during the year preceding the date of computation and whose number of hours worked part time is equal to or greater than 692 hours	85	85	Account is taken of employees who have been linked to the temporary employment agency for 10 months on a full-time basis
Attendance time of part-time employees linked to the temporary employment agency by assignment contracts for a total duration of at least 10 months during the year preceding the date of computation and whose number of hours worked part time is less than 692 hours	44,833 hours	28	The following averages will be applied: hours worked per month: 173 hours/month (for the general situation where, in the agency, weekly working hours are 40 hours/ week) months worked per year: 10 months hours of leave per year: 208 hours/year the division is thus as follows: $(173 \times 12) - 208 = 1,868$ hours $1,868 \text{ hours} : 12 \text{ months} \times 10 \text{ months} = 1,556$ hours for 10 months $44,833 \text{ hours} : 1,556 \text{ hours} = 28.79 = 28$ temporary employees (To be adjusted for cases where a collective agreement provides for a different work duration or for different annual leave.)
Total	/	143	The total results from the addition of the results obtained above (N.B. when the result is a decimal it is rounded to the number immediately below)

11. POSTAL VOTING

11.1. EMPLOYEES CONCERNED

Employees of an undertaking for whom it is ascertained that they will be absent on the day of the ballot – for reasons associated either with the organisation of work in the undertaking (for example business trips or duties abroad) or external to the undertaking (by reason of sickness, occupational accident, maternity or leave on various grounds) – may be granted a postal vote.

The ITM is of the opinion that part-time employees and apprentices who would not be present in the undertaking on the day of the ballot may take advantage of postal voting.

The ITM proposes to inform employees, where appropriate, at the time of the first display of a notice that an authorisation for postal voting has been submitted and to ask those who wish to take advantage of it to make contact with the person in charge of the electoral operations.

Thus, the latter may not in principle be held responsible for having forgotten someone on his lists. People will have to make contact within a reasonable period to enable the head of the undertaking to organise the procedure without encountering problems.

It will nevertheless be necessary for the head of the undertaking, for his part, to make provision on his own initiative for any persons who he knows to be on leave, sickness leave, exemption from service, maternity leave, parental leave and, in the case of shift work, those persons who will not be present during the opening hours of the polling station.

11.2. REQUEST FOR AUTHORISATION FOR POSTAL VOTING

Authorisation for postal voting must be sought from the Minister of Labour by the head of the undertaking or by the staff delegation.

The request for authorisation for postal voting must be submitted at least one month before the date of the elections.



Legal basis: Article 16 (1) of the GDR of 11 September 2018

11.3. DECISION OF MINISTER

The Minister of Labour will give his decision in the form of an order.

It is important to note that the Minister of Labour may change or adjust authorisations for postal voting from one day to the next.

Thus, the information given below is merely indicative. It goes without saying that the text of the order issued by the Minister will have to be complied with scrupulously, rather than the indications in the present handbook, if the latter should conflict with the order.

The time limit for publication of candidatures, which is normally 3 working days before the elections, will then be extended, by the ministerial order for the undertaking concerned, to no more than 10 calendar days before the elections, which is the same day by which the voting materials must be forwarded to the electors who have been granted a postal vote.



Legal basis: Article L. 413-1 (5) of the Labour Code

Articles 9(1) and 16(2) of the GDR of 11 September 2018

11.4. ORGANISATION OF POSTAL VOTE

No later than the tenth day before the election, the head of the undertaking or his delegate will forward the voting slips together with a notice setting out instructions for the elections to the electors who have been granted a postal vote.

 Legal basis: Article 16 (2) of the GDR of 11 September 2018

A. Dispatch of voting slips

a) By post

The head of the undertaking or his delegate will forward the voting slips to the electors who have been granted a postal vote by registered post, together with the notice setting out instructions for the elections.

Each relevant elector will thus receive an envelope – hereinafter called “the big envelope” – containing:

- a copy of the ministerial order authorizing postal vote;
- a notice with instructions to the electors (a copy of this page of the handbook “point 4.3 Steps to be taken by the postal voters” under “4. Organisation of the postal vote”);
- the voting slips, folded in 4 and contained in a first envelope, known as the “neutral” envelope, left open and bearing the words “élections pour la délégation du personnel [Staff delegation elections]”;
- a second envelope, also open, bearing the address of the president of the principal electoral office and, underneath, a space reserved for the elector to subscribe his signature;
 - Postage being borne by the undertaking, this second envelope will, instead of a postage stamp, bear the words “Port payé par le destinataire [Postage paid by the addressee]”.
 - This second envelope must be capable of containing the first (neutral) envelope without the elector having to fold the latter envelope.
- a copy of the notice listing the candidatures or at least the voting instructions contained in the notice in question and above all information regarding the close of the polling station.

b) Person to person

Electors who have been granted a postal vote may receive their voting slip, against the issue a receipt, through the head of the undertaking or his delegate

and personally deliver, against a receipt, the envelope containing their voting slip, before closure of the ballot, to the president of the electoral office.

(See the form of receipt annexed hereto) “Acknowledgement of receipt and person-to-person delivery of the voting slip”

Forms M-13-2 or P-14-2 Form for acknowledgement of receipt – postal voting – person-to-person delivery

c) By an intermediary

According to the opinion of the Council of State of 24 October 2017 regarding the draft GDR concerning electoral operations for the appointment of staff delegates (N° CE: 52,178), the practice of delivering voting slips through an intermediary is no longer allowed, so as to make sure that the protective provisions for postal voting laid down in Article L. 413-1 (5) of the Labour Code cannot be evaded. Apart from postal delivery, the GDR of 11 September 2018 provides an opportunity for electors granted a postal vote to deliver the envelope containing their voting slip personally to the president of the electoral office, before close of the ballot and against the issue of a receipt.

B. Steps to be taken by postal voters

The elector will cast his vote and then will be required to:

- 1) fold the voting slip in 4 at right angles with the stamp on the outside;
- 2) insert the voting slip in the neutral envelope and seal that envelope;
- 3) insert that envelope in the second envelope bearing the address of the president of the principal electoral office and the elector's registration number;
- 4) seal that envelope;
- 5) subscribe a legible signature in the space reserved for that purpose on the envelope;

This signature must be legible and must enable the elector to be identified unequivocally.

- 6) deliver the envelope by registered post sufficiently in advance for it to reach the electoral office before the close of the ballot (the date and time of which are indicated in the notice containing the instructions for electors).

C. Belated return of postal votes

No envelope will be accepted outside those time limits, regardless of the date of posting.

Where applicable – and this applies to all rejected envelopes (signatures not legible or absence of signature), the said envelopes are to be kept sealed and to be destroyed at the earliest 3 days after the last date for objections. In the event of an objection, these envelopes must be kept until the time of commencement of the new electoral procedure or the inauguration of the elected delegation.

For undertakings at which the delivery of mail does not take place until late in the morning, the elections must be organised in such a way that they close only after the postal delivery has taken place.

D. Opening of envelopes

Until the day of the ballot, the envelopes and the acknowledgements of receipt in question are to be kept under lock and key by the president of the principal electoral office. On the day of the ballot, the envelopes will be opened by the members of the electoral office.

The voting slips will be placed in the ballot box and intermingled with those of the electors who did not resort to postal voting, before the ballot count.

Where an envelope contains more than one voting slip, the vote shall be deemed void and the voting slips in the envelope will be destroyed without being unfolded. Any such incident must be mentioned in the minutes.

The names of the postal voters will be ticked off on the electoral list or lists. The number thereof will be indicated in the minutes. An elector who has cast his vote by recourse to postal voting will not be allowed to vote at the ballot box.

12. NUMBER OF LISTS

The drawing of lots has produced the following allocation. In accordance with the requests made by the trade union organisations, the respective lists of candidates will have the following names:

List No 1: LCGB – Lëtzebuerger Chrëschtliche Gewerkschafts-Bond

List No 2: OGBL
Onofhängege Gewerkschaftsbond Lëtzebuerg
Confédération syndicale indépendante du Luxembourg

List No 3: ALEBA

List No 4: FGFC – Gewerkschaft vum Gemengepersonal

List No 5: SYPROLUX

List No 6: SEA – SYNDICATS DES EMPLOYES DU SECTEUR DE L'AVIATION

List No 7: NGL – SNEP

List No 8: CLSC – CONFEDERATION LUXEMBOURGEOISE DES SYNDICATS CHRETIENS

List No 9: Neutrale Verband Gemeng Lëtzebuerg N.V.G.L.

13. FORMS ⁽¹⁾

For elections held in accordance with the relative majority system:

- M-02** Request for authorisation for postal voting.
- M-04** Filing of alphabetical lists.
- M-06** Filing of an individual candidature.
- M-07** Notice announcing an extended time limit for the submission of candidatures.
- M-13-1** Document to be used for the count.
- M-13-2** Form for acknowledgement of receipt – postal vote – person-to-person delivery.

For held in accordance with the proportional representation system:

- P-02** Request for authorisation for postal voting.
- P-04** Filing of alphabetical lists.
- P-06** Filing of a list of candidates.
- P-07** Notice announcing an extended time limit for the submission of candidatures.
- P-08** Application for a serial number for one or more lists.
- P-14-1** Document to be used for the count.
- P-14-2** Form of acknowledgement of receipt – postal vote – person-to-person delivery.
- P-15** Calculation of the allocation of posts.

⁽¹⁾ Available on the ITM Website and not generated by the procedures carried out on MyGuichet