



# INFORMATION SESSION ON SOCIAL ELECTIONS

Conference organised by FEDIL and l'ABBL

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This presentation is a translation of the french version.  
In case of any divergence between the french text and the english text, the french text shall prevail; only the legal texts published in official form are legally binding.

# INFORMATION SESSION ON SOCIAL ELECTIONS - AGENDA

- Welcoming message
- Presentation of the legal framework for staff delegation
- Organisation of elections
- Questions and answers

# PRESENTATION OF THE LEGAL FRAMEWORK FOR STAFF DELEGATION

- Monopoly position as from the next election
- Mediation, judicial applications and remedies and criminal sanctions

# STRENGTHENED POSITION AS FROM 1 JANUARY 2016

- 1) Roles and tasks of staff delegates
- 2) Status of staff delegates
- 3) Means and resources available to staff delegates

# 1) ROLES AND TASKS OF STAFF DELEGATES

## ➤ General mission

- Safeguard and defend the interests of employees with regard to working conditions, security of employment and employment status
- Individual or collective disputes
  - Submit claims to the employer
  - Refer a complaint to the Labour and Mines Inspectorate (ITM)
- Defence of respect of equal treatment

# 1) ROLES AND TASKS OF STAFF DELEGATES

## ➤ The right to be informed and consulted

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

# 1) ROLES AND TASKS OF STAFF DELEGATES

## ➤ The right to be informed and consulted

- The functioning and life of the undertaking
- General information regarding health and safety in the workplace
  - risks and protection
  - *developments regarding the rate of absenteeism*
  
- Information and consultation
  - on the situation, structure and probable development of employment
  - decisions likely to lead to substantial changes in work organisation or in employment contracts, including decisions covered by the legislation on collective dismissals, the safeguarding of employees' rights in the event of transfers of undertakings, and recourse to temporary employees;
  - employment support contracts and pre-employment contracts

# 1) ROLES AND TASKS OF STAFF DELEGATES

- Documents to be provided
  - Statistics, broken down according to gender, on the recruitment, career advancement, re-assignment, pay and training of employees
  - A management report of company benefit scheme
  - An annual report on the company's activities (<150 employees)
- Right to demand supplementary information

# 1) ROLES AND TASKS OF STAFF DELEGATES

## ➤ Competences

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<b>Opinions and proposals</b>	Working and employment conditions
	Internal rules
	Supplementary pension scheme
	Working time
	Vocational training

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# 1) ROLES AND TASKS OF STAFF DELEGATES

## ➤ Competences

### Participation and collaboration

Integration of persons disabled

Prevention of accidents in the workplace, occupational disease and harassment

Young workers

Implementation of internal reclassifications

A healthy balance between family life and professional life

Vocational training

# 1) ROLES AND TASKS OF STAFF DELEGATES

## ➤ The Health and Safety Delegate

- Special register
- Inspection tour
- The right to contact the ITM directly
- The right to be informed and consulted

## ➤ Equality Delegate

- Defending equal treatment between men and women as regards access to employment, training and career advancement, as well as pay and working conditions
- Competences :
  - to issue opinions and put forward proposals
  - take steps to prevent and reconcile any differences
  - training
  - meetings and consultations with the employees

## 2) STATUS OF STAFF DELEGATES

### ➤ Obligations

- Respect the internal rules
- Professional secrecy
- Inform the management before leaving their normal employment position

### ➤ Duration of the mandate

- 5 years
- Transfer of undertakings

## 2) STATUS OF STAFF DELEGATES

### ➤ End of the mandate

- Not re-elected
- Ceases to be a staff member
- Resigns from his mandate as a delegate
- Ceases to be a member of the trade union which put him or her forward as a candidate
- Dies
- Ceases to hold the authorization required in order to be able to work

### ➤ Intervention of the substitute delegate

- Unavailability of the delegate
- End of the mandate of the delegate
- Delegation is composed of only one full member

## 2) STATUS OF STAFF DELEGATES

- Reinstatement of delegates in their old job
  - **The theoretical development of careers of delegates who have a time-off right corresponding to at least 50% of his/her working time**
  - **Accord between the head of the undertaking and the Delegation**
  
- Protection against dismissal
  - During the currency of their mandate
  - During the first six months following the expiration or cessation of their mandate
  - In the case of candidates for election, from the presentation of their candidacy
  - Prohibition from dismissal (exception where the undertaking is closing down)
  - Procedure in the event on grounds of serious misconduct
  - Modification of an essential element of the contract
  - Alternative actions for maintaining /reintegration or compensation

# 3) MEANS AND RESOURCES OF THE DELEGATE

## ➤ Time-off rights

- Hours of delegation based on number of staff <or ≥150 employees
  - <150: number of staff x 40 hours / 500 staff represented
  - 150 to 249 employees: number of staff x 40 hours/250 staff represented
- Share out in proportion to the number of votes : at least 20% of the seats in election

### **Examples:**

**a) Number of staff: 130**

**Time-off rights:  $130 \times 40/500 = 10,4$  hours = 10 hours**

**a) Number of staff: 248**

**Time-off rights:  $248 \times 40/250 = 39,68 = 40$  hours**

# 3) MEANS AND RESOURCES OF THE DELEGATE

## ➤ Released delegate

- between 250 and 500 1
  - between 501 and 1.000 2
  - between 1.001 and 2.000 3
  - between 2.001 and 3.500 4
  - $\geq 3.500$  + 1 per 1.500
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- possibility to convert the time-off rights
- 
- suspension of a releases delegate

# 3) MEANS AND RESOURCES OF THE DELEGATE

## ➤ Time-off rights

### ▪ Equality delegate

#### **Additional time-off right:**

- 4 hours per month if between 15 and 25 employees
- 6 hours per month if between 26 and 50 employees
- 8 hours per month if between 51 and 75 employees
- 10 hours per month if between 76 and 150 employees
- 4 hours per week > 150 employees

# 3) MEANS AND RESOURCES OF THE DELEGATE

- Meetings of the staff delegation
  - Once per month during working hours
  - Least five working days' advance notice
  - At least six obligatory meetings per year,
  - Three meetings with the management of the undertaking (6 more if monthly meetings)
  - Written notice
    - by the chair of the delegation
    - by at least one third of the members of the delegation
    - by the Minister responsible for employment matters
  - The agenda points

# 3) MEANS AND RESOURCES OF THE DELEGATE

- Means of communication
  - Displaying and dissemination of communications
    - freely posted up and/or displayed on ***various media accessible to staff*** and reserved for such use, ***including electronic media***
    - display trade union communications
    - disseminate publications and pamphlets of a trade union
  - Annual meeting with all employees
  - Consultation hours
    - in delegation's premises
    - delegation's with/without released delegate

# 3) MEANS AND RESOURCES OF THE DELEGATE

- Means of communication
  - Contact with employees
    - right to contact them
    - right to move freely within the undertaking
    - right to contact them by all means of communication available within the undertaking
  - Right to access personnel files
    - twice per year during working hours

# 3) MEANS AND RESOURCES OF THE DELEGATE

➤ Training

Employees	Training leave		Remuneration
<b>Staff delegation</b>			
Between 15 and 49 staff	1 week	per mandate	one week to be paid for by the State
50 and 150 staff	2 weeks		
More than 150	1 week	per year	to be paid for by the employer
<b>Health and safety Delegate</b>			
Up to 150 staff	40 hours	per mandate	to be paid for by the State
From 150 staff			to be paid for by the employer
<b>Equality Delegate</b>			
Up to 150	two half days	per year	to be paid for by the State
From 150			to be paid for by the employer
Substitute members	one half of the training hours allowed for full members		

# 3) MEANS AND RESOURCES OF THE DELEGATE

## ➤ Advice and expertise assistance

### ▪ Use of advisers

- at least 51 employees
- request by a majority of Delegates
- appointment of advisers
  - on the proposal of trade unions
  - by decision of the delegation

### ▪ Use of an external expert

- payment of the fees within the limit of 0,1% of the total annual wage bill

### ▪ Use of employers' professional organisations

# 3) MEANS AND RESOURCES OF THE DELEGATE

- Material and financial means
  - Accommodation and travel expenses
    - relating directly to the exercise of their mandate
    - means of transport
  - Premises and equipment
    - delegations without delegates released : for consultation sessions
    - delegations with delegates released : permanently
    - equipment, maintenance fees, secretariat

# MONOPOLY POSITION AS FROM NEXT ELECTIONS

1. Monopoly in respect of representation
2. Monopoly in respect of competences
3. Installation of new staff delegations

# 1) MONOPOLY IN RESPECT OF REPRESENTATION

## ➤ Employee Representation

- At company level
- At economic and social entity level (ESE)
  - definition : art L.161-2
  - exchange of information between the different staff delegations
- Board of directors

## 2) MONOPOLY IN RESPECT OF COMPETENCES

### ➤ Information and consultation

- Half-yearly information about the economic and financial development of the undertaking
  - Current and foreseeable needs in respect of the workforce and training
  - Inform and consult the staff delegation in advance of any important decision
    - installations – equipment – working methods and production processes
    - may have a decisive effect on the structure of the undertaking or the level of employment
      - decisions concerning production and sales volumes
      - investment policy
      - plans for merger
      - ...
- consequences of these decisions for employees
- information and consultation process must in principle take place prior to decision, except in case of risk

## 2) MONOPOLY IN RESPECT OF COMPETENCES

- Decision-making competences
  - Technical installations designed to monitor
  - Measures concerning the health and safety of employees
  - General criteria concerning the selection of staff members
  - Internal rules
  - Ongoing vocational training
  - The grant of rewards to employees
  - Workplace monitoring
  - ...
  
- Meeting at least once in every quarter with the employer

# 3) INSTALLATION OF NEW STAFF DELEGATIONS

- Types of delegation
  - At company level
  - At economic and social entity level (ESE)
  - Health and Safety Delegate
  - Equality Delegate

### 3) INSTALLATION OF NEW STAFF DELEGATIONS

- Appointment of staff delegates
  - Principle: election by employees
  - Except for :
    - elections by delegations
      - economic and social entity delegation (ESE)
    - appointment by delegations
      - Equality delegate
      - Health and Safety delegate

# 3) INSTALLATION OF NEW STAFF DELEGATIONS

- Setting -up of the delegation
  - The constituent meeting
    - within one month following the elections/ automatic designation
    - meeting called by the employee who won the greatest number of votes in the ballot/ the oldest person
  - Appointment of the Delegation's Board
    - a chair, a vice-chair and a secretary
    - size of the board according to the company's workforce
    - enlarged for co-decision matters
  - Appointment of specialised delegates
    - Equality delegate
    - Health and Safety delegate

### 3) INSTALLATION OF NEW STAFF DELEGATIONS

- Setting -up of the delegation
- Information by the employer
  - at the first meeting after the constituent meeting
  - on the structure of the undertaking, any links that it may have with other undertakings, foreseeable economic developments, the employment structure, and the policies in relation to ongoing vocational training, health and safety in the workplace and equal treatment
- Additional training leave
  - 16 hours the 1 year of mandate
  - 10 hours for the 1 mandate of Health and Safety delegate

### 3) INSTALLATION OF NEW STAFF DELEGATIONS

➤ Installation at the level of ESE

- Request
  - at least two delegations
  - within three months after the elections
- Composition
  - delegates elected by company delegations, from among their members
  - according to the number of employees in these companies

Employees	Full delegate	Released delegate
<b>15 to 100</b>	1	1
<b>101 to 500</b>	2	2
<b>More than 500</b>	3	3

- Companies employing fewer than 15 employees

# MEDIATION, JUDICIAL APPLICATIONS AND REMEDIES, AND CRIMINAL SANCTIONS

- Monitored by ITM
- Mediation
  - Disputes which are not resolved following the intervention by the ITM
    - relating to the electorate and/or the regularity of the electoral operations, experts-advisers, demand of supplementary information , co-decision, organization and functioning of the staff delegation
  - Mediation Board
    - set up within a framework of a collective agreement, in the absence of mediation:
  - Mediator
    - designated by the Director of the ITM

# MEDIATION, JUDICIAL APPLICATIONS AND REMEDIES, AND CRIMINAL SANCTIONS

## ➤ Judicial applications and remedies

- Disputes relating to the electorate and the regularity of the electoral operations :Director of the ITM/Administrative courts
- Other disputes: labor court

## ➤ Criminal sanctions

- Act designed to obstruct
- professional secrecy / personnel files

# INFORMATION SESSION ON SOCIAL ELECTIONS

- Practical organization of elections