

## Chapter VI. - Employee representation in *sociétés anonymes* (public limited-liability companies)

### Section 1. – Scope

#### Art. L. 426-1.

(1) Any company having the form of *société anonyme* (public limited-liability company) within the meaning of the provisions of the Law of 10 August 1915 on commercial companies, as amended, and established in the Grand Duchy of Luxembourg and normally employing there one thousand workers over at least the past three years shall fall within the scope of the provisions of this Chapter.

(1) The same shall apply to any company having the form of public limited-liability company within the meaning of the provisions of the Law of 10 August 1915 on commercial companies, as amended, and established in the Grand Duchy of Luxembourg and enjoying a financial stake of at least twenty-five per cent or a concession by the State relating to the main activity.

The companies referred to in the previous paragraph are designated by Grand-Ducal Decree.

### Section 2. – Board of directors of public limited-liability companies

(Grand-Ducal Regulation of 22 December 2006)

#### "Art. L. 426-2.

Notwithstanding the provisions of the first paragraph of Article 51, and Article 60 bis-15 of the Law of 10 August 1915 on commercial companies, as amended, there shall be at least nine directors or members of the supervisory board of the companies referred to in Article L. 426-1.

#### Art. L. 426-3.

(1) One third of the directors or members of the supervisory board of the companies referred to in Article L. 426-1(1) shall represent the company's staff. For the purposes of applying the provisions of the previous paragraph, fractions of a seat above a half shall be rounded up to the next whole number.

(2) At least three directors or members of the supervisory board of the companies referred to in Article L. 426-1(2) shall represent the company's staff. The board of directors or supervisory board shall comprise one member representing the staff for every 100 employees employed by the company. However, the total number of directors or members of the supervisory board referred to in this paragraph may not exceed one third of the directors or members of the Supervisory Board."

**Art. L. 426-4.** *(The Law of 23 July 2015 replaces paragraph (1) of this Article for any new social elections held by a company up to and including the 2018 elections)*

(1) Notwithstanding the provisions of the second paragraph of Article 51<sup>1</sup> of the Law of 10 August 1915 on commercial companies, as amended, the "staff-representative members of the board of directors or the supervisory board"<sup>2</sup> shall be appointed by the company delegation(s) by secret ballot from among the employees employed by the company, based on rules of proportional representation. They shall be designed no later than the month preceding the expiry of the period referred to in Article L. 426-7(1).

*(Law of 23 July 2015 – applying up to and including the 2018 social elections at the latest)*

"(1) Notwithstanding the provisions of the second paragraph of Article 51 of the Law of 10 August 1915 on commercial companies, as amended, the "staff-representative members of the board of directors or the supervisory board" shall be designated by the staff delegation(s) by secret ballot from among the employees employed by the company, based on rules of proportional representation. They shall be designated no later than the month preceding the expiry of the period referred to in Article L. 426-7(1)."

(...)<sup>3</sup>

"(2)"<sup>4</sup> The rules of the relevant election and any election-related disputes form the subject of a Grand-Ducal Regulation.

#### Art. L. 426-5.

Notwithstanding the provisions of Article L. 426-4, three of the "staff-representative members of the board of directors or the supervisory board"<sup>1</sup> of companies in the iron and steel sector shall be designated by the most representative trade-union organisations at national level after consultation with the signatories of the collective agreement(s) applying to the company; they may be appointed from outside the company's employees.

<sup>1</sup> Terms replaced by the Grand-Ducal Regulation of 22 December 2006

<sup>3</sup> Former paragraph (2) repealed by the Law of 13 May 2008

<sup>4</sup> New numbering introduced following the repeal of former Article paragraph (2)

Their allocation among the trade-union organisations concerned shall be the subject of a prior agreement between these organisations which shall be communicated in writing to the chairman of "the board of directors or the supervisory board"<sup>1</sup> of the company in question and the Director of the Inspectorate of Labour and Mines.

Failing designation of the "staff-representative members of the board of directors or the supervisory board"<sup>1</sup> referred to in this Article by the expiry of the period provided for in Article L. 426-4(1), the Director of the Inspectorate of Labour and Mines shall notify the minister responsible for labour matters who will designate them from among the company's staff.

**Art. L. 426-6.**

An employee of the company may only be designated a "staff-representative member of the board of directors or the supervisory board"<sup>1</sup> where his or her employment contract dates back to at least two years before his or her appointment and is equivalent to an actual job. He or she shall not lose the benefits of this employment contract.

**Art. L. 426-7.**

(1) "Staff-representative members of the board of directors or the supervisory board"<sup>1</sup> shall be appointed for a period equivalent to that of the term of office of the other "members of the board of directors or the supervisory board"<sup>1</sup>. Their term of office may be renewed.

(2) Their term of office shall end in case of death, resignation or, where applicable, termination of the employment relationship.

It shall also end following cancellation by the staff representatives, the trade-union organisation or the minister responsible for labour matters, from whom they receive their mandate.

(3) Where a "staff-representative member of the board of directors or the supervisory board"<sup>1</sup> terminates his or her duties for any of the reasons listed in (2), he or she shall be replaced:

where he or she was elected in accordance with Article L. 426-4, by the candidate immediately following him or her in the list of elected representatives:

when he or she has been designated in accordance with Article L. 426-5 by the most representative trade-union organisations at national level and, failing such designation, by the minister responsible for labour matters.

The new holder of the role shall complete the term of office of the person he or she is replacing.

(4) The provisions of the third and fourth paragraphs of Article 51, and Article 52 of the Law of 10 August 1915 on commercial companies, as amended, shall not apply to "staff-representative members of the board of directors or the supervisory board"<sup>1</sup> covered by the provisions of this article.

**Art. L. 426-8.**

(1) "Staff-representative members of the board of directors or the supervisory board"<sup>1</sup> shall be liable for errors made under their stewardship in accordance with common law regarding the liability of "members of the board of directors or the supervisory board"<sup>1</sup>.

(2) "Staff-representative members of the board of directors or the supervisory board"<sup>1</sup> shall be jointly and severally liable with the other "members of the board of directors or the supervisory board"<sup>1</sup> in accordance with the provisions of the second paragraph of Article 59 of the Law of 10 August 1915 on commercial companies, as amended.

**Art. L. 426-9.** *(The Law of 23 July 2015 replaces paragraphs (1) and (2) of this Article for any new social elections held by a company up to and including the 2018 elections)*

(1) "Staff-representative members of the board of directors or the supervisory board"<sup>1</sup> cannot be dismissed during their term of office without authorisation from the court competent for service contracts.

(2) However, in case of serious misconduct by a "staff-representative member of the board of directors or the supervisory board"<sup>1</sup> when performing his or her duties at the company, the head of the company shall have the power to decide to immediately lay off the person in question pending the final decision of the court referred to in paragraph (1).

The provisions of the second and third subparagraphs of Article L. 425-4(2) shall apply.

*(Law of 23 July 2015 – applying up to and including the 2018 social elections at the latest)*

"(1) Staff-representative members of the board of directors or the supervisory board" cannot be dismissed during their term of office without authorisation from the court competent for employment contracts.

(2) However, in case of serious misconduct by a staff-representative member of the board of directors or the supervisory board when performing his or her duties at the company, the provisions of Article L. 415-10(4) to (6) shall apply."

(3) The provisions of this Article shall apply to the dismissal of former "staff-representative members of the board of directors or the supervisory board"<sup>1</sup> during the six months following the expiry of their mandate, and the candidates for the seat of "staff-representative member of the board of directors or the supervisory board"<sup>1</sup> for a three-month period from the submission of nominations.

**Art. L. 426-10.**

(1) None of the "staff-representative members of the board of directors or the supervisory board" may sit on more than two "boards of directors or supervisory boards"<sup>1</sup>.

Furthermore, under no circumstances may they concurrently be "staff-representative members of the board of directors or the supervisory board"<sup>1</sup> of other companies pursuing similar business activities and purposes.

(2) Moreover, they may not be employed by another company performing activities of the same type as the company in question.

**Art. L. 426-11.**

In companies referred to in Article L. 426-1, "staff-representative members of the board of directors or the supervisory board"<sup>1</sup> constituting at least one third of the members of "the board of directors or the supervisory board"<sup>1</sup> may, by tabling an agenda, convene a meeting of this body if it has not met for more than three months.

The chairman of "the board of directors or the supervisory board"<sup>1</sup> shall include in the agenda of the next meeting the matters specified in a request submitted by one third of the members of this body within three days after they receive notice of the meeting.

**Art. L. 426-12.**

(...) (abrogé par le règlement grand-ducal du 22 décembre 2006)

**Commented [RK1]:** Pas surligné en jaune dans le texte source, donc pas traduit

**Section 3. – Supervision of public limited-liability companies**

**"Art. L. 426-12"<sup>1</sup>**

"Members of the board of directors or the supervisory board"<sup>2</sup> of companies referred to Article L. 426-1, including staff-representative members, shall unanimously designate an independent statutory/supervisory auditor complementing the number of supervisory auditors set out in Article 61 of the Law of 10 August 1915 on commercial companies, as amended.

It shall be appointed for a period corresponding to the period of the term of office of the other supervisory auditors, and its term of office is renewable.

(Law of 10 June 2009)

**"Section 4. – Employee participation in case of cross-border company mergers**

**Art. L. 426-13.**

Sections 1 and 2 of this chapter shall apply in case of a cross-border company merger within the meaning of the third paragraph of Article 257 of the Law of 10 August 1915 on commercial companies, as amended.

**Art. L. 426-14.**

(Act of 3 June 2016)

"In any case the principles and procedures under Article 12(2), (3) and (4) of Regulation (EC) No. 2157/2001 and the provisions regarding employee participation envisaged in Title IV of Book IV shall apply.

The same shall apply in the event that in one of the merged companies' Member State of origin the employees were to enjoy a more favourable system for participation than the national provisions."

**Art. L. 426-15.**

(1) The competent bodies of the companies participating in the cross-border merger may choose to be subject to Article L. 426-14 without any prior negotiation and as from the registration date of the company resulting from the cross-border merger.

(2) The special negotiating body shall have the right to decide by a two-thirds majority of its members representing at least two thirds of employees, including the votes of members representing employees in at least two different Member States, not to open negotiations, or to terminate negotiations that had already been launched, and to draw on the participation rules set out in sections 1 and 2 of this Chapter.

**Art. L. 426-16.**

Any company resulting from a cross-border merger which is governed by an employee participation mechanism shall take the appropriate measures to ensure that in case of a subsequent national merger, employee participation rights are protected for a three-year period after the cross-border merger."

**Section 5. – Standard rules for participation**

**Art. L. 443-5.**

**(1) Employee participation in an SE shall be governed by the following provisions:**

- 1) In the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SE.
- 2) In other cases of the establishing of an SE, the employees of the SE, its subsidiaries and establishments and/or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SE equal to the highest proportion in force in the participating companies concerned before registration of the SE. The required equivalence shall be based on a specific comparison between the extent of the previous right to elect, appoint, recommend or oppose the appointment of members of the administrative or supervisory body in the participating company concerned and the extent of the right granted in the SE, taking into account the nature of the bodies in relation to which the right of participation is exercised. A general assessment of the maintenance of the level of participation shall also be made taking into account the number of employees represented before the establishment of the SE and the number of employees represented following the establishment of the SE.

(2) Notwithstanding the provisions laid down in Article L. 443-1(2), if none of the participating companies was governed by participation rules before registration of the SE, the latter shall not be required to establish provisions for employee participation.

(3) The representative body shall decide on the allocation of seats by country within the administrative or supervisory body among the members representing the employees from the various Member States or on the way in which the SE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SE's employees employed in each Member State. If the employees from one or more Member States are not covered by this proportional criterion, the representative body shall allocate to the Member State of the SE's registered office one of the seats initially allocated to the Member State having the most seats based on represented employees, unless it already has a representative, in which case it shall be allocated to the as yet unrepresented Member State with the largest number of employees.

(4) The appointment of members representing employees shall be based on the national rules of the Member States where the employees are employed. In the absence of such national provisions, these members shall be appointed by the representative body from among the employees from the Member State concerned.

(5) Every member of the administrative body or, where appropriate, the supervisory body of the SE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be a full member with the same rights and obligations as the members representing the shareholders, including the right to vote.

**Section 6. – Appointment of representatives of employees employed in Luxembourg to an SE administrative or supervisory body**

**Art. L. 443-6. (The Law of 23 July 2015 replaces paragraph (1) of this Article for any new social elections held by a company up to and including the 2018 elections)**

(1) Notwithstanding any provisions to the contrary of the law governing the SE, representatives of employees employed in Luxembourg shall be appointed by the company delegation(s) to the administrative or supervisory body of an SE having its registered office in Luxembourg or another Member State by secret ballot from among the employees employed at the company, based on rules of proportional representation; they shall be appointed no later than the month preceding the expiry of the period referred to in Article L. 444-4.

**(Law of 23 July 2015 – applying up to and including the 2018 social elections at the latest)**

"(1) Notwithstanding any provisions to the contrary of the law governing the SE, representatives of employees employed in Luxembourg shall be appointed by the staff delegation(s) to the administrative or supervisory body of an SE having its registered office in Luxembourg or another Member State by secret ballot from among the employees employed at the company, based on rules of proportional representation; they shall be appointed no later than the month preceding the expiry of the period referred to in Article L. 444-4."

(2) These seats on the administrative or supervisory body shall be allocated among employees pro rata to the respective proportion of employees employed at the company in relation to the overall workforce of the company. For the purposes of applying the provisions of this paragraph, fractions of a seat above a half shall be rounded up to the next whole number; where there is an equal number of employees and no agreement between the respective delegations, lots shall be drawn.

Employees' delegations shall, where appropriate, use separate ballots to appoint staff representatives.

(3) The rules of the relevant election and any election-related disputes form the subject of the Grand-Ducal Regulation referred to in Article L. 426-4.

(4) Staff representatives employed in Luxembourg in legal entities governed by public law shall be appointed by the staff representative body as constituted pursuant to Article 36 of the Law of 16 April 1979 laying down the general status of civil servants, as amended.

*Section 3. – Employment status of members of the special negotiating body and of the representative body and of employees' representatives sitting on the supervisory or administrative body of an SE*

**Art. L. 444-3. (The Law of 23 July 2015 replaces paragraph (4), the first subparagraph of paragraph (5), and paragraph (7) of this Article for any new social elections held by a company up to and including the 2018 elections)**

(1) The members of the special negotiating body, the members of the representative body, any employees' representatives exercising functions under the information and consultation procedure and any employees' representatives in the supervisory or administrative organ of an SE who are employees of the SE, its subsidiaries or establishments or of a participating company shall enjoy the protection and guarantees provided for by Articles L. 415-11 and L. 415-12.

(2) They shall have the right, under an agreement entered into with the head of the establishment or his or her representative, to take time off from their actual work, without loss of pay, in so far as is necessary for the performance of the duties conferred on them under this Title.

(3) Within the scope of the performance of these duties, the head of the establishment shall provide them with the appropriate time and pay for this time off as if it were working time.

They may not be paid less than they would have if they had actually been performing their normal duties.

(4) The arrangements for the application of paragraphs (2) and (3) may be specified by joint agreement between central management and/or the heads of the establishments or companies in Luxembourg on the one hand, and the employees' representatives employed in Luxembourg and sitting on the special negotiating body or the representative body or involved in an information and consultation procedure on the other.

*(Law of 23 July 2015 – applying up to and including the 2018 social elections at the latest)*

"(4) The arrangements for the application of paragraphs (2) and (3) may be specified by joint agreement between central management and/or the heads of the establishments or companies in Luxembourg on the one hand, and the employees' representatives employed in Luxembourg and sitting on the special negotiating body or the representative body or involved in an information and consultation procedure on the other."

(5) Failing this, and in the event that the representative of the employees employed in Luxembourg has an employment contract with any of the establishments or companies concerned, the time credit determined by Article L. 415-5(2) shall be increased as follows:

*(Law of 23 July 2015 – applying up to and including the 2018 social elections at the latest)*

"(5) Failing this, and in the event that the representative of the employees employed in Luxembourg has an employment contract with any of the companies concerned, the time credit determined by Article L. 415-5(2) shall be increased as follows:"

- where the companies and establishments whose employees are represented by representatives elected or appointed in Luxembourg regularly employ 500 or more employees, the aforementioned time credit shall be increased by two paid hours per month;
- this shall be increased by three paid hours per month if the number of employees defined in the previous paragraph is at least 501, and four paid hours per month if this is at least 1,501.

This overtime may only be used by the employees' representative(s) employed in Luxembourg sitting on the special negotiating body and the representative body or involved in the information and consultation procedure.

Where the employees' representative(s) employed in Luxembourg is/(are) a staff representative/(staff representatives) released pursuant to Article L. 415-5(3), the time credit referred to in the first subparagraph of this paragraph shall be transferred to the rest of the delegation.

However, the role of employees' representative(s) employed in Luxembourg pursuant to this Title must be performed by them personally.

(6) Full members of the representative body who are employees of the SE, its subsidiaries or establishments or a participating company and who are employed in Luxembourg are entitled to the time off work, called 'training leave', they require to participate, without loss of pay, in training organised by trade-union organisations or specialist organisations during normal working hours and aimed at enhancing their economic, social and technical knowledge in their role as employees' representatives.

They are each entitled to one week of training leave per year, with the relevant remuneration expenses being borne by the Luxembourg State.

The training leave may not be considered annual paid leave and instead shall be deemed equivalent to working time.

Training-leave credit shall be awarded on an annual basis by the head of the company, at representatives' request and

within the limits referred to in the first and second paragraphs above, to representatives wishing to undertake approved training courses, in connection with a list drawn up jointly by the most representative national trade-union organisations and employers' organisations.

(7) The role of representative of employees employed in Luxembourg in any of the establishments or companies referred to in this Title may not be accumulated except, where appropriate, in the case referred to in the final subparagraph of paragraph (5) above, with the role of young employees' representative, equal opportunities representative or safety representative pursuant to Articles L. 411-5, L. 414-2 and L. 414-3 or with any of the roles of an employees' representative pursuant to Title I of Book III of this Code, relating to occupational safety.

*(Law of 23 July 2015 – applying up to and including the 2018 social elections at the latest)*

"(7) The role of representative of employees employed in Luxembourg in any of the establishments referred to in this Title may not be cumulated except, where appropriate, in the case referred to in the final subparagraph of paragraph (5) above, with the role of young employees' representative, equal opportunities representative or safety representative with any of the roles of an employees' representative pursuant to Title I of Book III of this Code, relating to occupational safety."

*Section 4. – Special status of employees' representatives on the board of directors or supervisory board of an SE having its registered office in the Grand Duchy of Luxembourg*

**Art. L. 444-4.**

(1) Employees' representatives on the board of directors or supervisory board of an SE having its registered office in the Grand Duchy of Luxembourg shall be elected or appointed for a period equivalent to that of the term of office of the other directors or members of the supervisory board, and their term of office is renewable.

(2) Their term of office shall end in case of death, resignation or termination of the employment relationship.

It shall also end if they are dismissed by the body or organ appointing them and in the event that the entity with which they are associated ceases to belong to the SE.

(3) Where a representative ceases to hold office for any of the reasons set out in paragraph (2), the body or organ that appointed him shall replace him or her.

The new holder of the role shall complete the term of office of the person he or she is replacing.

(4) The provisions of the third to sixth paragraphs of Article 51, Article 52 and Article 60bis-15 in so far as it refers to the aforementioned initial provisions of the Law of 10 August 1915 on commercial companies, as amended, shall not apply to the representatives covered by the provisions of this article.

(5) Employees' representatives shall be liable for errors made under their stewardship in accordance with common law regarding the liability of directors or members of the supervisory board.

(6) They shall be jointly and severally liable with the other directors and members of the supervisory board in accordance with the provisions of the second paragraph of Article 59 and the second paragraph of Article 60bis-18 of the Law of 10 August 1915 on commercial companies, as amended.

*Section 5. – Misuse of procedures*

**Art. L. 444-5.**

If, within one year following the registration of the SE, the SE's representative body demonstrates that the SE was established spuriously for the purpose of depriving workers of their rights to involvement, a new negotiation procedure shall commence. This procedure shall be governed by the following rules:

- 1) It shall be conducted at the request of the representative body or of the employees' representatives of the SE's new subsidiaries or establishments.
- 2) Articles L. 442-1 to L. 443-1 shall apply mutatis mutandis, with references to the participating companies being replaced by references to the SE and its subsidiaries and establishments, references to the time before registration of the SE being replaced by references to the time when the negotiations fail, and the term "special negotiating body" being replaced by the "representative body".

*Section 5. – Standard rules for participation*

**Art. L. 453-5.**

(1) Employee participation in the SCE [European Cooperative Society] shall be governed by the following provisions:

- 1) In the case of an SCE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SCE.
- 2) In other cases of the establishing of an SCE, the employees of the SCE, its subsidiaries and establishments and/or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SCE equal to the highest proportion in force in the participating companies concerned before registration of the SCE.

The required equivalence shall be based on a specific comparison between the extent of the previous right to elect, appoint, recommend or oppose the appointment of members of the administrative or supervisory body in the participating legal entity concerned and the extent of the right granted in the SCE, taking into account the nature of the bodies in relation to which the right of participation is exercised.

A general assessment of the maintenance of the level of participation shall also be made taking into account the number of employees represented before the establishment of the SCE and the number of workers represented following the establishment of the SCE.

(2) Notwithstanding the provisions laid down in Article L. 453-1(2), if none of the participating legal entities was governed by participation rules before registration of the SCE, the latter shall not be required to establish provisions for employee participation.

(3) The representative body shall decide on the allocation of seats within the administrative or supervisory body among the members representing the employees from the various Member States or on the way in which the SCE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SCE's employees employed in each Member State. If the employees of one or more Member States are not covered by this proportional criterion, the representative body shall allocate to the Member State of the SCE's registered office one of the seats initially allocated to the Member State having the most seats based on represented employees, unless it already has a representative, in which case it shall be allocated to the as yet unrepresented Member State with the largest number of employees.

(4) The appointment of members representing employees shall be based on the national rules of the Member States where the employees are employed. In the absence of such national provisions, these members shall be appointed by the representative body from among the employees from the Member State concerned.

(5) Every member of the administrative body or, where appropriate, the supervisory body of the SCE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be a full member with the same rights and obligations as the members representing the members of the cooperative society, including the right to vote.