

ALLEN & OVERY

How to prepare for and manage the staff delegation elections of 12 March 2024

Employment law team

19 October 2023

A M C H A M  LUXEMBOURG
AMERICAN CHAMBER OF COMMERCE IN LUXEMBOURG A.S.B.L.

 The British Chamber
of Commerce for Luxembourg



Agenda

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Introduction

2

Election process

3

Questions

“I can’t help to spit nails when just thinking about Trade Unions.”

“The middle class built America, and unions built the middle class.”

Introduction

Introduction

When?

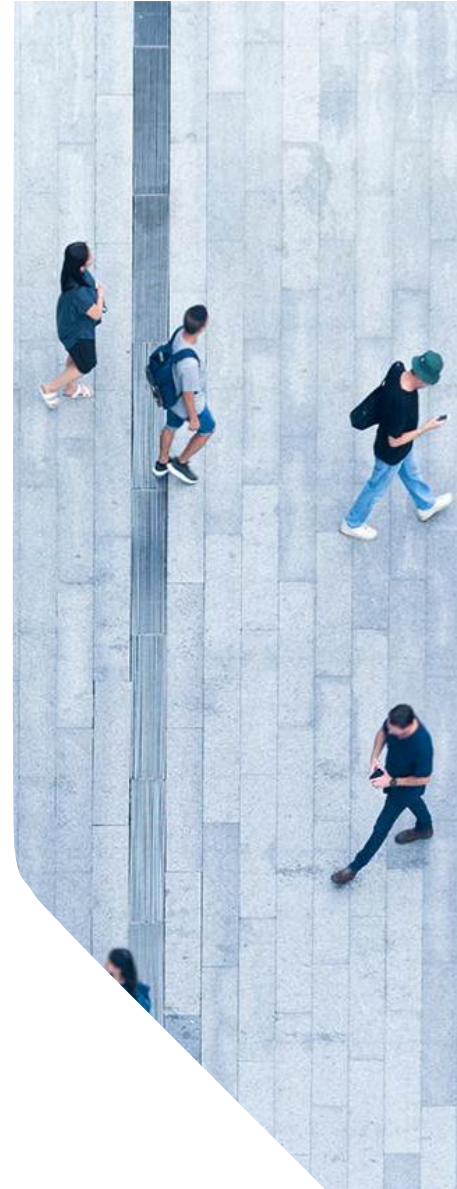
Every 5 years
12 March 2024

Who?

Workforce of
15 employees over
a 12-months' period

How?

Organized and
directed by the head
of undertaking or
their delegate



A large, solid red semi-circle is positioned on the right side of the slide, partially cut off by the edge. It serves as a background for the text.

Election process

Timeline - overview



1 February 2024 (First day of the month prior to the election)

End of the period which determines whether staff delegation is required



- Companies employing, during a 12-months' period prior to the first day of the month of display of the notice regarding the elections, ≥ 15 employees under an employment contract
- Not necessarily the same 15 employees



Categories of employees:

- Employees under an indefinite employment contract ≥ 16 hours/week
- Employees under an indefinite employment contract < 16 hours/week
- Employees under a fixed-term employment contract, temporary agency worker, supplied worker



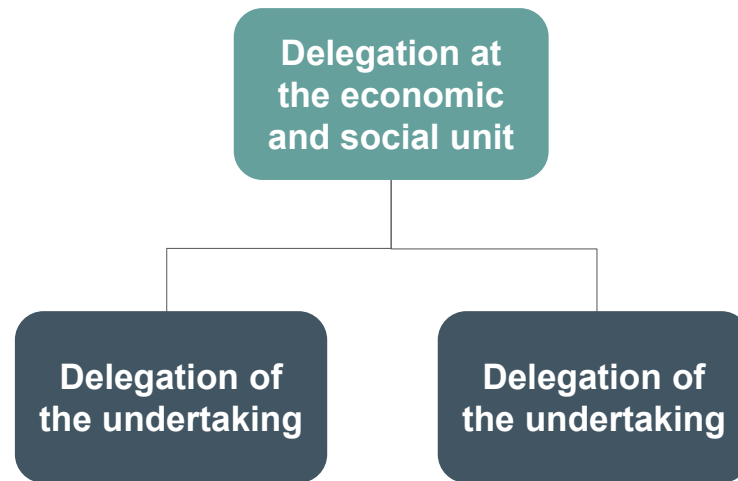
Specific situation of employees under global employment contracts

Exact date to calculate the headcount to determine the number of delegates



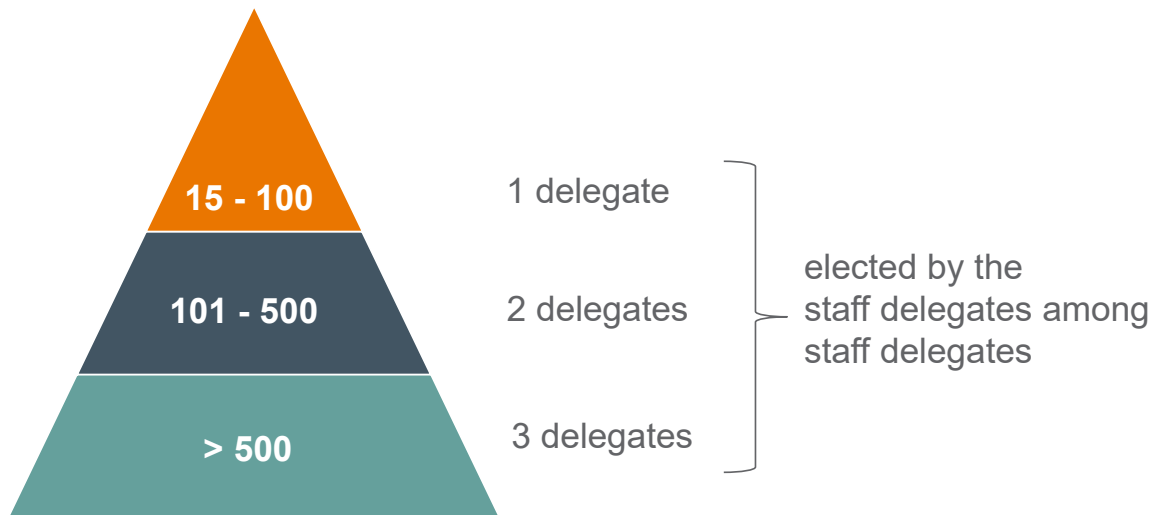
- Equal number of delegates and substitute delegates
- Up to 99 employees: majority election system
- As of 100 employees: proportional election system
- If headcount varies after 1 February 2024, the number of delegates does not change

Structure of social dialogue



Staff delegation at ESU level vs. joint staff delegation

Staff delegation at level of economic and social unit



- established at the request of at least 2 delegations
- presented within 3 months after the social elections
- attribution: exchange of information between the different delegations
- special case: 3 enterprises with each < 15 employees but total of ≥ 15 employees

Staff delegation at ESU level vs. joint staff delegation

One joint staff delegation for all group entities (in Luxembourg)?



Legal
certainty?



Condition:

- Agreement between employer and existing staff delegation or all employees
- Transparency towards ITM

9 February 2024 (at least one month prior to the election)



19 February 2024 (three weeks before the election)

Making ELECTORAL LISTS of employees satisfying conditions for active and/or passive voting rights available for consultation/inspection



Active electorate (right to vote)

- Age ≥ 16 , regardless nationality, and
- Minimum 6-months' length of service on election day under an employment or apprenticeship contract



Passive electorate (eligibility – right to stand as a candidate)

- Age ≥ 18 years old on election day
- Employed without interruption during 12 months prior to February 2019
- Luxembourg national or allowed to work in Luxembourg



Individuals excluded from eligibility

- Criterion “actual decision power to hire and/or dismiss employees”



19 February 2024 (three weeks before the election)



Display of a “NOTICE OF COMPLAINT” against electoral lists

Complaints must be:

- presented to the head of undertaking
- sent to the ITM for information purposes

Submission of the *avis d'élection* and
notice of complaint to the ITM
using the electronic platform “MyGuichet”

20-22 February 2024

(within three working days after having made available the electoral lists)

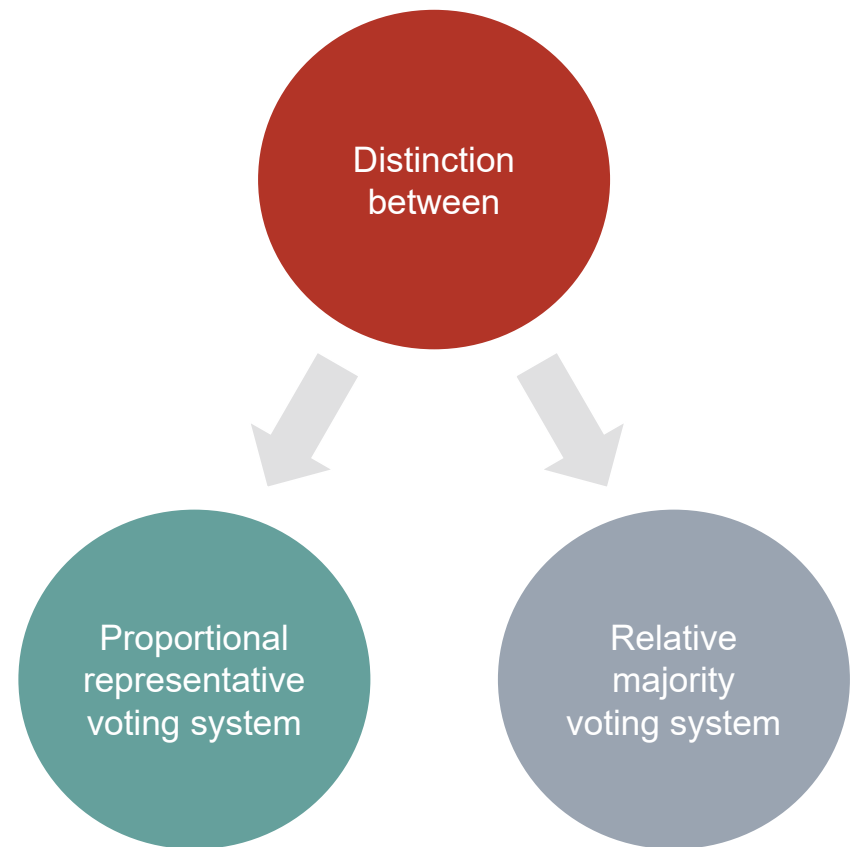


Period for submitting complaints against the electoral lists

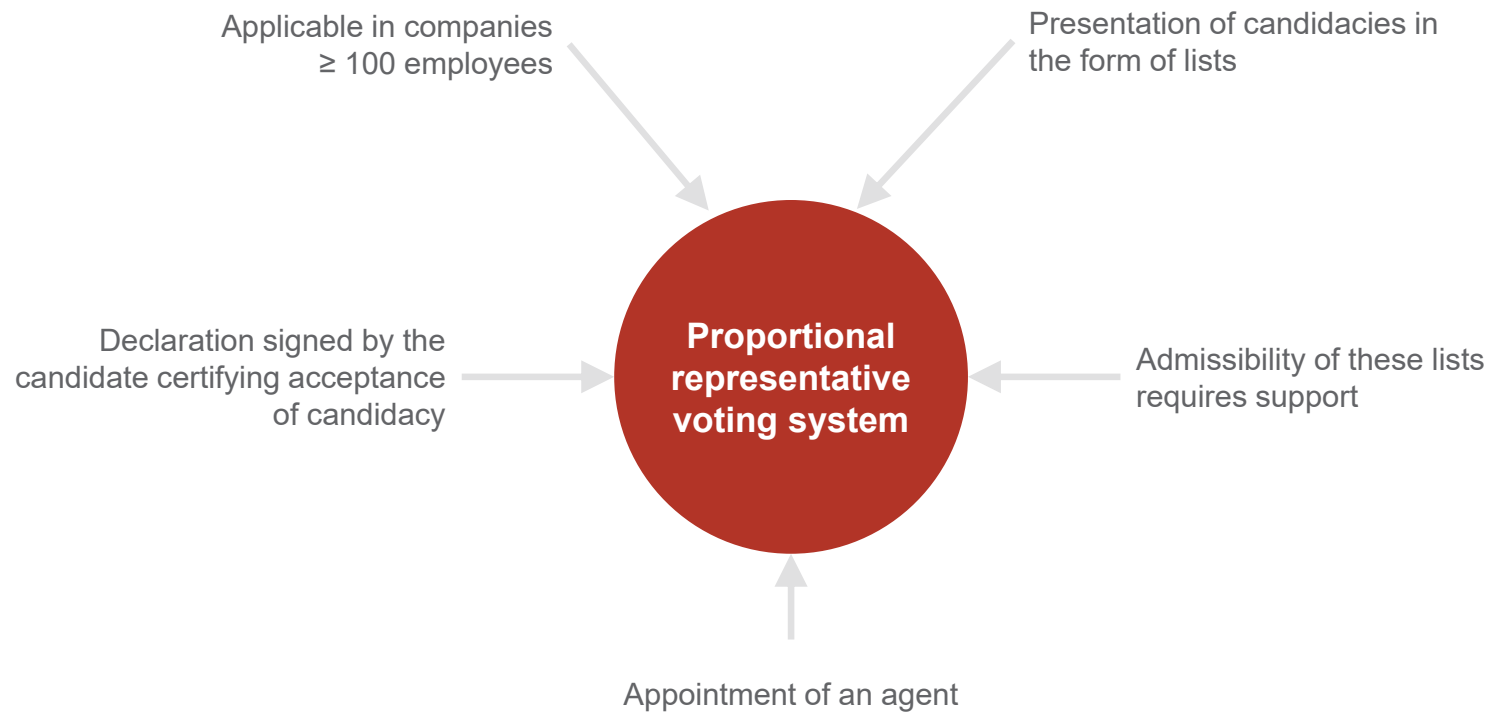
26 February 2024 (at the latest 15 calendar days before the election at 6 p.m.)

Submission of candidacies

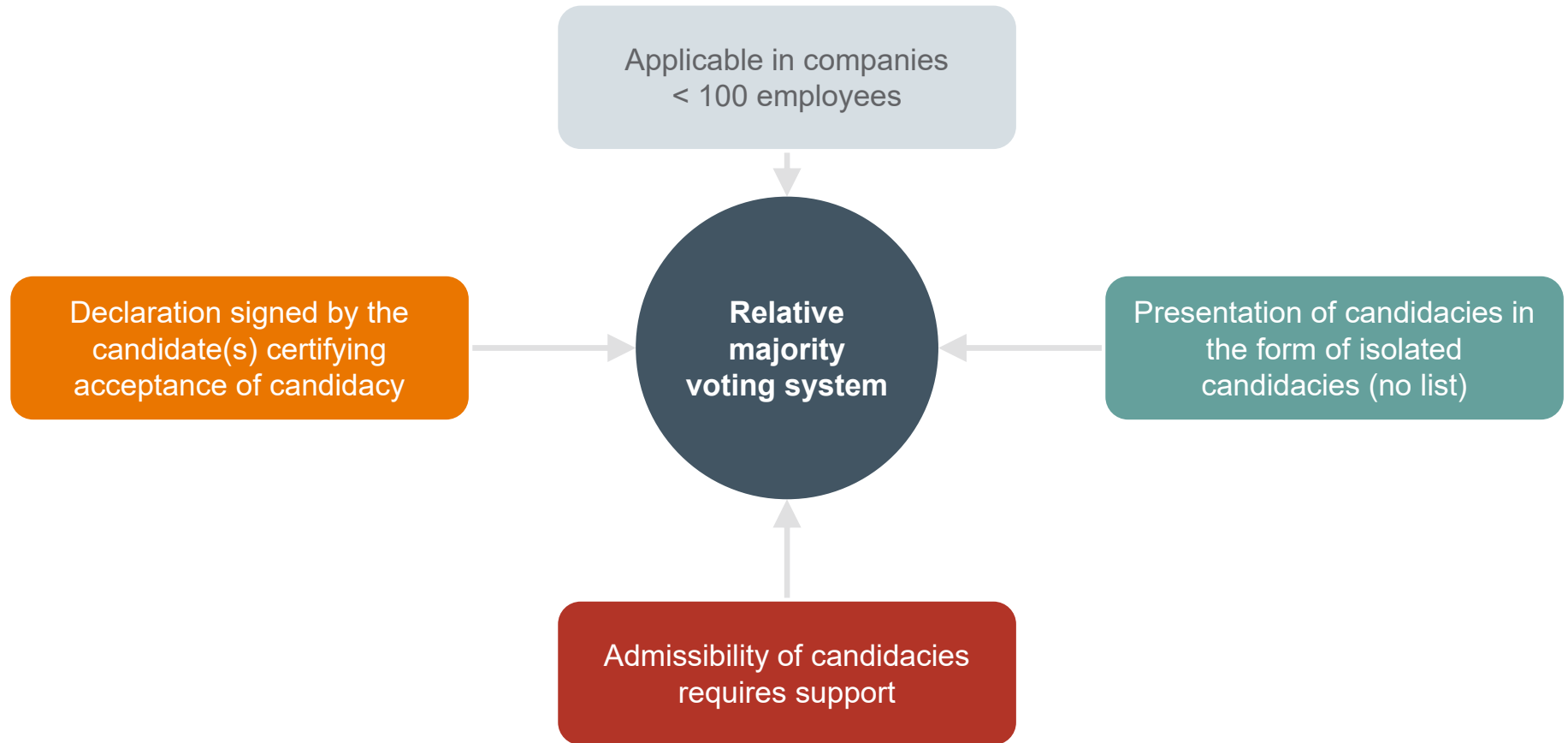
Remittance of lists or isolated candidacies to the head of undertaking or its delegate no later than 15 calendar days prior to election day at 6 p.m.



26 February 2024 (at the latest 15 calendar days before the election at 6 p.m.)



26 February 2024 (at the latest 15 calendar days before the election at 6 p.m.)



26 February 2024 (at the latest 15 calendar days before the election at 6 p.m.)

Candidates > delegates

Elections must be proceeded with


Candidates = delegates


- No elections if agreement
- Elections if no agreement


Candidates < delegates


Deadline for submitting candidacies
is extended by 3 additional days

Postal ballot

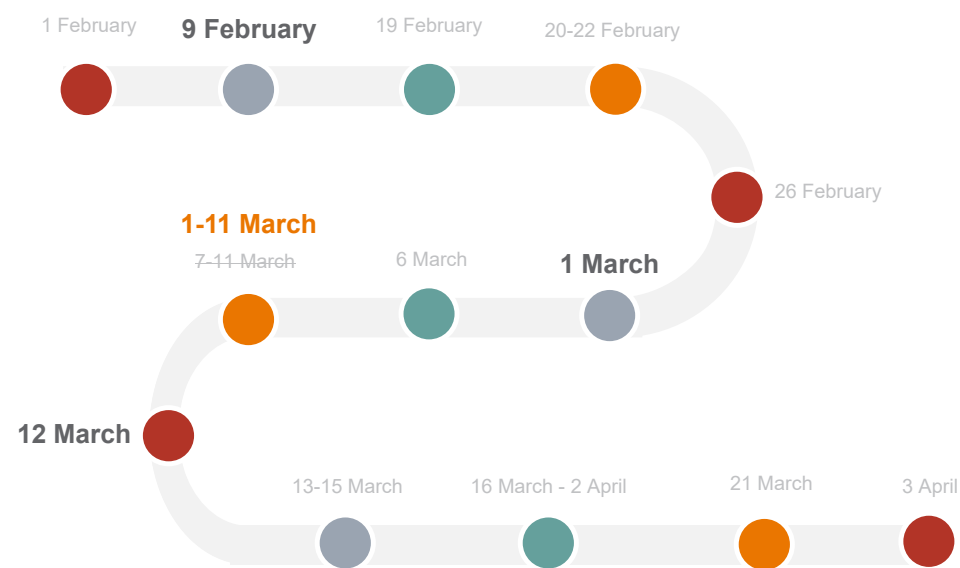
**Employees concerned**

**Request for authorisation**

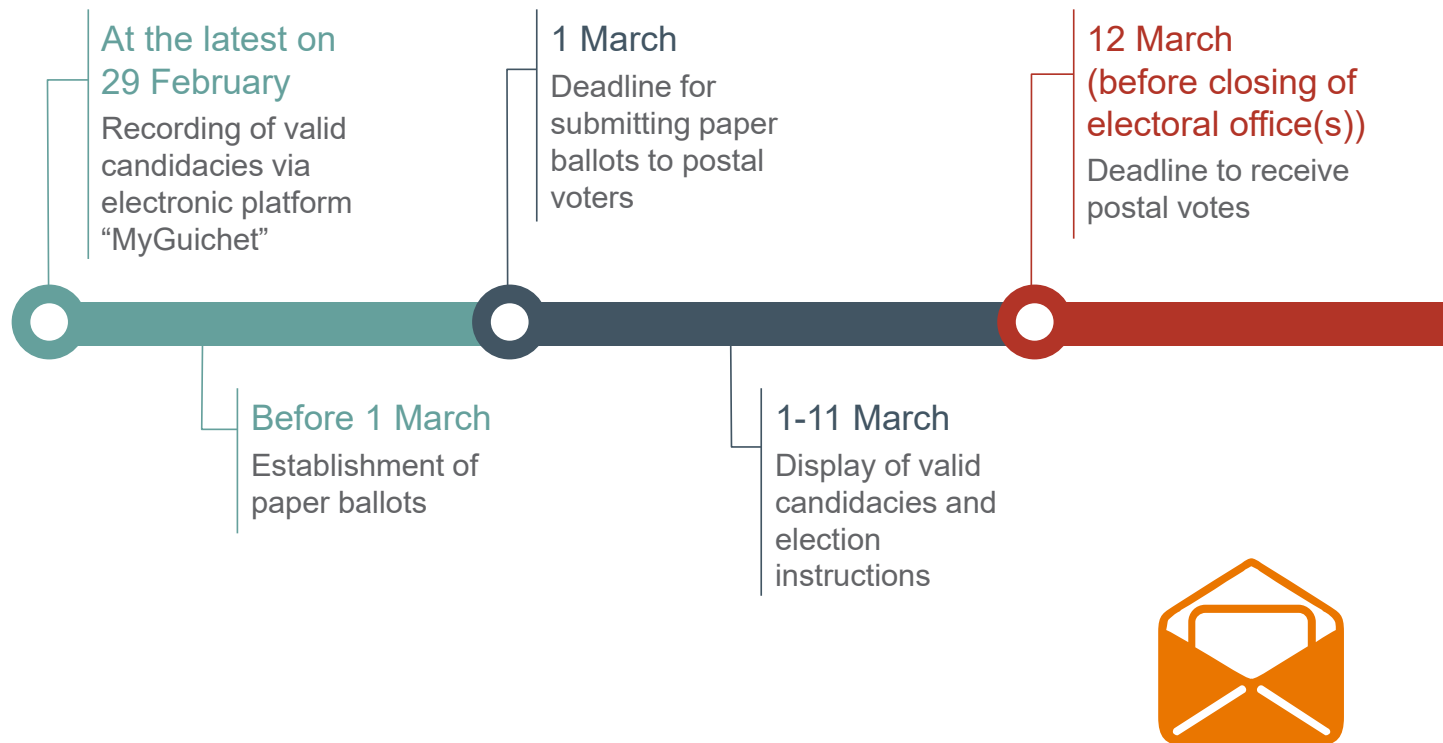
**Minister's decision**

**Organisation**
Dispatch of voting slips
✓ By post ✓ By hand ✕ By proxy

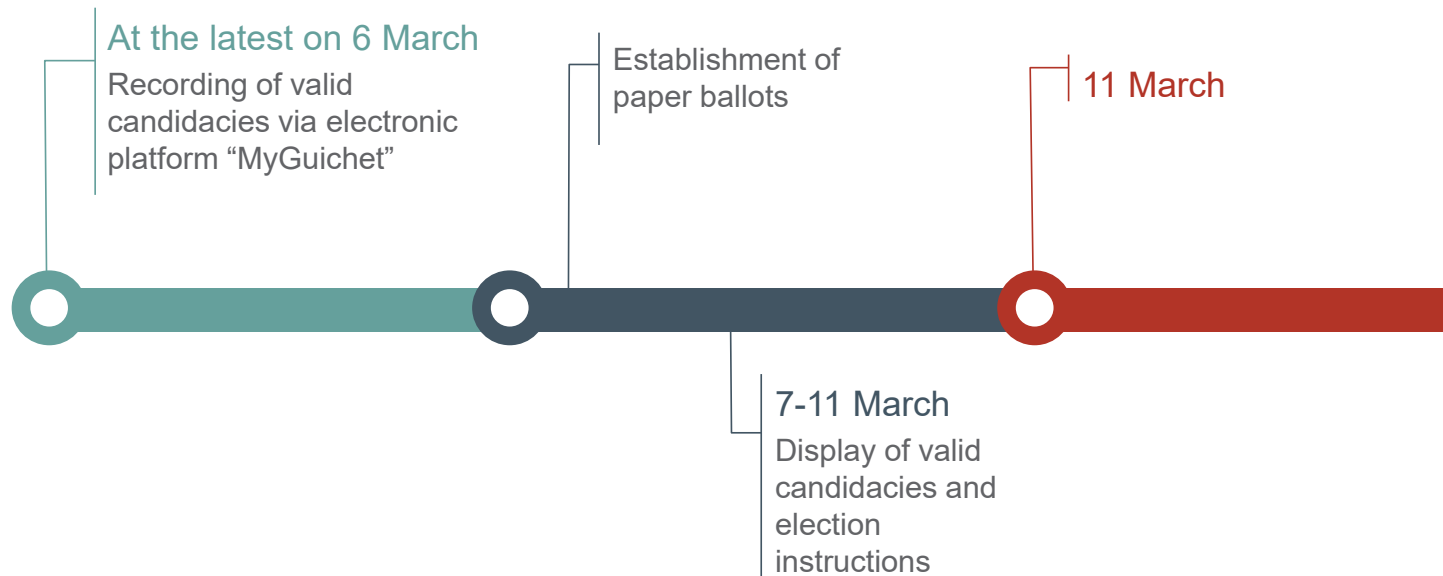
Timetable



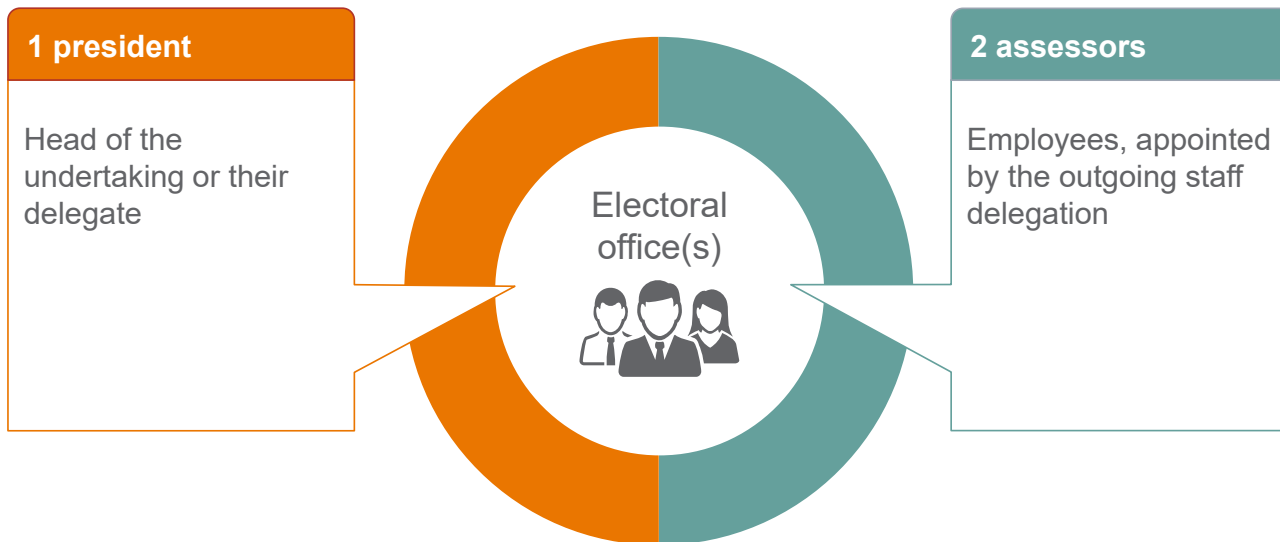
29 February - 11 March 2024 - If POSTAL ballot



6-11 March 2024 - If NO postal ballot



12 March 2024 - Election day



Assessors ≠

- Effective or substitute members of the current staff delegation
- Candidates

12 March 2024 - Material required for electoral office(s)



Voting booths



Ballot box(es)



Election instructions (guidelines)



Pens/pencils to vote



Table and chairs for the president and the two assessors



One or two ticking lists of all the employees admitted to vote



Envelopes containing the voting forms (paper ballots)



Identical ballots must be folded in four, in a right angle, and stamped at the outside



Empty envelopes



Counting material

12 March 2024 - Election day



1 Election phase

2 Voting rules

3 Counting of votes

4 Drafting of minutes

5 Recording results and minutes via the electronic platform
“MyGuichet”

13-15 March 2024 (during the 3 consecutive days following the election)



Display of the election results

What?

- Elected effective and substitute staff delegates
- Non-elected candidates
- Number of votes per candidate
- (Proportional representative voting system) the union having presented the candidate

Where?

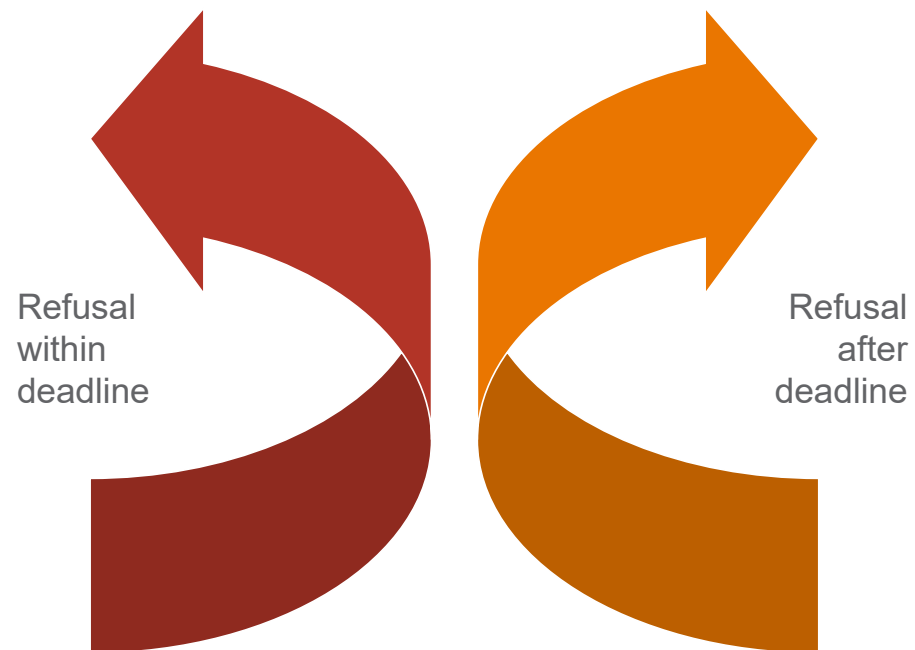
- Place within company where announcements to staff are usually made

How?

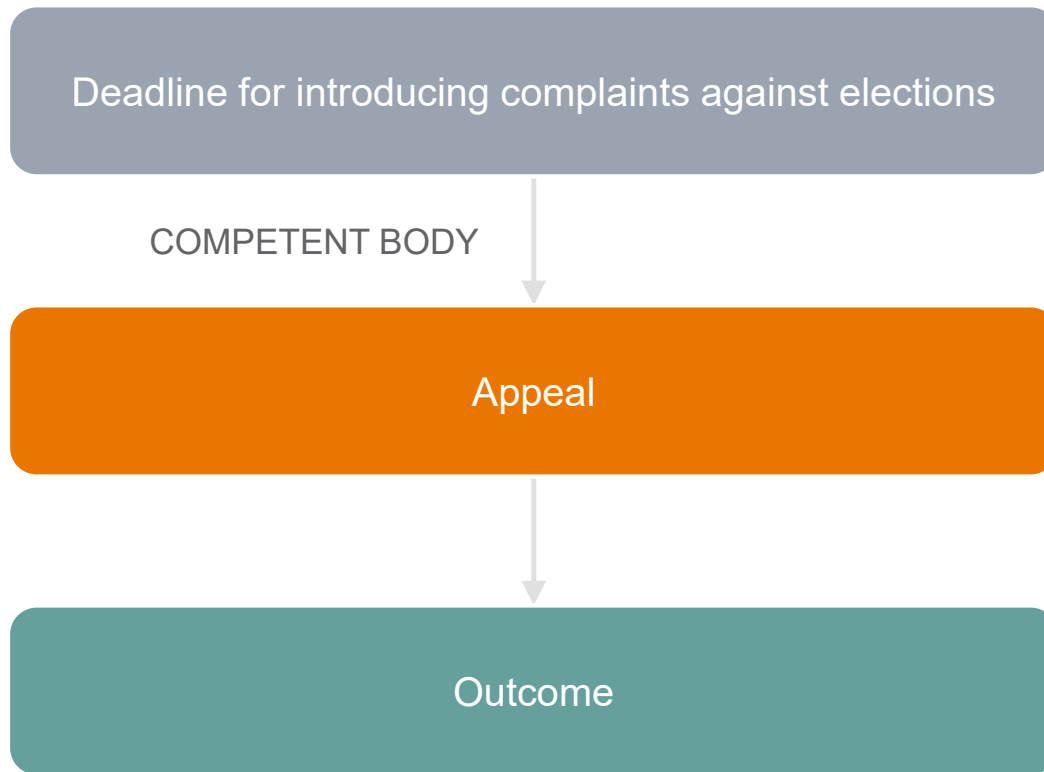
- Paper form/ electronic form

21 March 2024 (at the latest the 6th day following the display of the results)

Deadline for elected candidate to refuse mandate



16 March - 2 April 2024 (within 15 days after last day of display of results)



At the earliest on 3 April 2024



Entry into office of the new staff delegation



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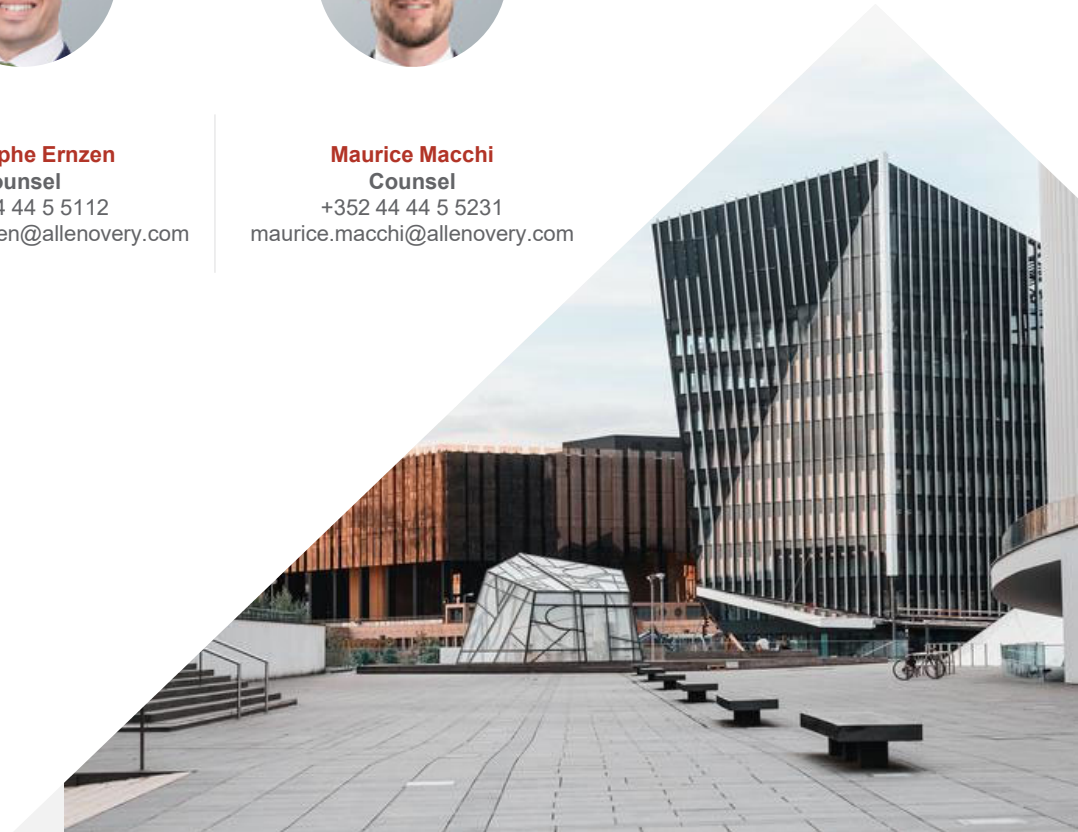
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Questions?

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