

# **Important changes in representativeness regulations of trade unions and representation of the workers in Luxembourg**

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## **ABSTRACT**

A new law on industrial relations was passed in 2004, putting forward very specific criteria enabling to define representativeness. These arrangements have then been inscribed into the 2006 Code of Work. The Code stipulates that in order to claim for the recognition of national representativeness, the union must have obtained on average at least 20% of the votes during the last elections for the Chamber of wages earners.

A new law has been introduced in 2008: “the single status”. One of the pivotal objectives of the single status for wage earners in the private sector consists in the abolition of all existing differences, within Luxembourg’s social legislation, between blue collar and white collar workers in the private sector. The introduction of the single status has led to the reorganization of some institutions: this included the merging of the Chamber of labor, representing blue-collar workers, and the Luxembourg Union of private sector employees, representing private sector white-collar workers. The social elections of November 12<sup>th</sup> 2008 were the first occasion when the new criteria for representativeness were applied to the new Chamber of wage earners.

Between the social elections of 2003 and 2008, the sum of the seats according to the ideological groupings highlights an increase of 3.3% of the socialist block in relation to the social-christian block.

But, the consequences of the social elections are not only quantified results. In the aftermath of the elections, the new union representation has been transformed into a real political divide between majority and opposition. The entente that preceded the elections between the two most representative unions has been blown and led to some extent to the explosion of the union of the great unions.

A totally different aspect of representation of workers is worth considering. In Luxembourg, since 1985, the number of cross-border workers from Belgium, France and Germany has increased. These phenomena are likely to augment in the future if we were to believe the forecasts of the National statistical institute of Luxembourg, the Statec.

Briefly, it seems to us that in addition to the old divide that results from the coexistence of ideological unions, Luxembourg will increasingly witness the presence of two different worlds: cross-border workers and resident workers. The figures of the most recent social elections organized in 2003 and 2008 indicate that the number of these cross-border workers taking part in the election process has been very limited. This would be in the medium term a serious problem in the representation of salaried workers working in Luxembourg.

However, the answers that could be given to these problems will have to be preceded by a real and inevitable debate on what is widely called the national sovereignty. Would Luxembourgers indeed be ready to abandon a part of their national sovereignty under the pretext of the internationalization of the employment market in their country? These are the

questions and the debates in perspective. If the current situation endures, the country must allow a large discussion on these issues.

## **THE REPRESENTATIVENESS OF UNION ORGANIZATIONS**

In Luxembourg, a union organization has to benefit from a certain representativeness in order to sign collective work agreements. A 1965 law stipulated that collective work agreements can only be signed by the most representative union organizations on the national level, apart from those that are signed by an employer or by groups of employers. Were considered the most representative union organizations those which distinguished themselves by the highest number of their affiliated workers, by their activities and by their independence.

The absence of specific criteria defining representativeness can be pointed out straightforwardly. The International Labor Organization (ILO) asked Luxembourg's Government to re-examine this situation and, as a consequence, take the necessary measures

A new law on industrial relations was passed in 2004, responding to the demands of the ILO and putting forward very specific criteria enabling to define representativeness. These arrangements have then been inscribed into the 2006 Code of Work. The Code stipulates that in order to claim for the recognition of national representativeness, the union must have obtained on average at least 20% of the votes during the last elections for the Chamber of wage earners. Further details on the new Chamber of wage earners are provided later. There are also criteria for sectorial unions: however, we do not present them here.

## **THE INTRODUCTION OF THE SINGLE STATUS IN LUXEMBOURG'S PRIVATE SECTOR**

During the meetings of the Tripartite coordination committee, which took place in 2005 and 2006, the Government and the social partners decided unanimously and in response to the changing economic climate, to proceed to a general assessment of the country's economic situation. One message of the tripartite package centered on the introduction of the so-called "single status" for wage earners in the private sector. On April 29<sup>th</sup> 2008, Luxembourg's House of Representatives (the "Chambre des Députés") voted the bill on the introduction of the single status. The law detailing the introduction of the single status started its effects on January 1<sup>st</sup> 2009 and concerns currently more than 257,000 (155,000 blue collar workers and 120,000 white collar workers) wage earners. One of the pivotal objectives of the single status for wage earners in the private sector consists in the abolition of all existing differences within Luxembourg's social legislation between blue collar and white collar workers in the private sector (Thill 2008).

In order to well understand the situation, we have to mention that in Luxembourg, before the introduction of the single status, there were 6 professional associations: the Chamber of agriculture, the Chamber of craft, the Chamber of commerce, the Chamber of private sector employees, the Chamber of work, the Chamber of public servants and public employees. These professional associations embody a juridical form that is equal to the one of the professional representations. The professional associations must notably play the role of an advisory board and being directly associated to the legislative procedure of the country.

The introduction of the single status has led to the reorganization of some institutions: this included the merging of the Chamber of labor, representing blue-collar workers, and the Luxembourg Union of private sector employees, representing private sector white-collar workers. With the exception of government officials and public sector employees, all workers and all pensioners with private sector status have been required to join this single new body: The Chamber of wage earners (Wlodarski 2008).

There is now, after the fusions, both a single professional Chamber of wage earners in the private sector and a single health insurance. The fusion of the professional associations has been accomplished in the aftermath of the social elections of November 12th 2008.

## THE SOCIAL ELECTIONS OF NOVEMBER 2008

The social elections of November 12th 2008 were the first occasion when the new criteria for representativeness were applied to the new Chamber of wage earners. Let's have a look at the effects.

Elections were organized via postal ballot, on the basis of candidate lists presented by the trade unions in particular. About 400,000 employees and pensioners whose workplace is or was in Luxembourg, regardless of their place of residence, have been invited to vote. The election took place on November 12<sup>th</sup> 2008.

The Chamber of wage earners comprises 60 elected members. There are 5 main organizations, among others, that presented themselves to the elections: the Independent union confederation – Luxembourg (OGBL-L), the Luxembourg Confederation of Christian unions (LCGB), the Luxembourg Association of banking and insurance employees (ALEBA) and two other active unions from the rail sector: FNCTTFEL (holding close links with the OGB-L) and SYPROLUX (holding close links with the LCGB).

### The Results

Table 1: Repartition of 60 seats in the Chamber of wage earners in the aftermath of the November 2008 social elections

OGB-L	LCGB	ALEBA	FNCTTFEL	SYPROLUX
36	16	5	2	1
60.0%	26.7%	8.3%	3.3%	1.7%

In order to proceed to a comparison, let's see the results obtained by the same unions in 2003, cumulating the results obtained for the former Chamber of private sector employees and the Chamber of work.

Table 2: Repartition of 70 seats cumulated by the Chamber of private sector employees and the Chamber of work in the aftermath of the November 2003 social elections.

OGB-L	LCGB	ALEBA/UEP - NGL-SNEP	FNCTTFEL	SYPROLUX
38	19	7	4	2
54.3%	27.1%	10.0%	5.7%	2.9%

As a result, two elements become evident: First, the OGB-L union has witnessed a progression of 5.7 seats since the creation of the Chamber of wage earners, whereas the LCGB has lost 0.4%. Second, the new 2004 criteria for representativeness do not affect the representativeness of the two unions that continue to benefit from national representativeness. However, we have to report that the official statistics of the November 2008 social elections have not been published yet. As far as the participation rate of workers is concerned, one estimates that only a third has actually participated in the vote.

In addition, the results can be refined in the following way. The FNCTTFEL union takes part, together with the OGB-L in another national confederation: the General work confederation - Luxembourg (CGT-L). As far as SYPROLUX is concerned, this one constitutes a LCGB-related union responsible for the rail sector. As a matter of fact, these unions represent ideological groupings that are important for what is analyzed next. There is a block with a socialist tendency (OGBL/FNCTTFEL) and a Christian-social block (LCGB/SYPROLUX). The union results can thus be grouped together in the following way.

Table 3: The results (number of seats) of the 2003 and 2008 social elections according to the ideological union groupings

	<b>OGB-L + FNCTTFEL</b>	<b>LCGB + SYPROLUX</b>	<b>ALEBA</b>
<b>2003</b>	42	21	7
	60.0%	30.0%	10.0%
<b>2008</b>	38	17	5
	63.3%	28.3%	8.3%

Between 2003 and 2008, the sum of the seats according to the ideological groupings highlights an increase of 3.3% of the OGB-L/FNCTTFEL block in relation to the LCGB/SYPROLUC block. The ALEBA does not belong to any ideological block.

### **The Consequences And The Lessons Of The Electoral Results**

It is clear that the LCGB union has not been the great winner of the elections. Its President, Robert WEBER, wrote in the aftermath of the elections in the review "Soziale Fortschritt" that "Since the beginning, we have known that the single status has not been in our favor". In a comment on the low results for his union, the President indicated that "The reasons for these results are below our expectations, we are looking for the reasons amid our own ranks, we know very well where our weaknesses are and since a couple of months, we have started to remedy our deficiencies. This work will continue consequently after the elections because we are convinced that it will succeed" (Weber 2008). From the point of view of the OGB-L, it has been noted that "The absolute majority that the voters attributed to the OGB-L is a historic event and the scope for the future of the union movement in Luxembourg can't be underestimated. One thing has to be clear. The massive vote in favor of the OGB-L lists and candidates has not shortened the way to the key objective that is the unity of unions representing all the salaried workers, but has above all considerably reinforced the union political program and the claims of utmost importance to the OGB-L" (Roeltgen 2008).

A couple of lessons can be learned from these declarations. First, the LCGB seems to indicate that internal "weaknesses" have been the origin of the disappointing results. Then, the OGB-L declaration seems to indicate that it is aimed towards the constitution of the unity of all union members. So, the idea of a kind of single union is put forward at this level. This idea is of course reinforced by the progression, not only by the OGB-L union, but also by the ideological block that it constitutes with the FNCTTFEL.

But, the consequences of the social elections are not only quantified results. In the aftermath of the elections, the new union representation has been transformed into a real political divide between majority and opposition. On the occasion of the constituent meeting of the

new Chamber of wage earners on January 5<sup>th</sup> 2009, the President of the OGB-L has been elected president of the Chamber of wage earners. The executive committee, the assessors and other functions have been occupied by elected members of the OGB-L, the FNCTTFEL and the ALEBA. The President of the LCGB estimates that an agreement of his union and the OGB-L existed within the Chamber of work, at the time when this chamber still existed. The agreement would have been renewed as far as the Chamber of wage earners is concerned. Then, still according to the LCGB, the OGB-L would separately invite the other unions that are represented in the Chamber of wage earners so as to proceed to bilateral meetings. A week later, the OGB-L finalized an agreement with the ALEBA and the FNCTTFEL. The OGB-L would not have proposed an agreement to the LCGB, although this one, on the 8<sup>th</sup> December 2008, decided not to sign an agreement with the OGB-L and rather constitute an opposition force within the new Chamber (Weber 2009). Briefly, the new Chamber of wage earners has transformed itself into a kind of political parliament with its own majority and opposition. The entente that preceded the elections between the two most representative unions has been blown and led to some extent to the explosion of the union of the great unions.

This has been in addition reflected by the facts because President Robert WEBER also indicated: "Over the next five years, we will be doing an autonomous, very critical and consequent work in the Chamber of wage earners" (Weber 2008). The work "opposition" is often used in the world of unions of the new Chamber.

### **The Representation Of Cross-Border Workers**

A totally different aspect of representation of workers is worth considering. In Luxembourg, since 1985, the number of workers from Belgium, France and Germany has increased. On March 31 2008, the General inspection of social security (IGSS) indicated that 43.7% come from France, 25.8% from Belgium and 24.1% from Germany. From the 56.3% of resident workers, we have to count 29.3% Luxembourgers and 27.0% of foreign nationalities. These phenomena are likely to augment in the future if we were to believe the forecasts of the National statistical institute of Luxembourg, the Statec (Statnews 2008).

The rise of the number of cross-border workers has been attributed to Luxembourg's booming economy, which has resulted in an increased demand for workers. Between December 2007 and December 2008, a total of 16,000 new jobs were created in Luxembourg, 67% of which were given to cross-border workers (Wlodarski 2009). We are going to see that Luxembourg's unions have well learned how to set their sights on cross-border workers on the occasion of the social election.

### **Trade Union Activities And Cross-Border Workers**

During Luxembourg's social elections in November 2008, the country's two main trade unions OGB-L and LCGB launched an information campaign for cross-border workers.

More specifically, the trade unions held information meetings in border towns such as Saarbrücken in Germany, Thionville in France and Alon in Belgium. The OGB-L also launched three websites that were aimed at Belgian, French and German cross-border workers. The association highlighted how its website initiatives distinguished themselves from other internet initiatives which perceive cross-border workers more as a "consumers". The OGB-L believes that cross-border workers should be primarily viewed as employees who contribute on a daily basis to Luxembourg's richness and diversity and who are entitled to know their rights. For its part, the LCGB has dedicated part of its website to cross-border workers. Electoral posters for Luxembourg's unions have also been stuck all along Belgian, French and German roads.

For the OGB-L, the low participation among cross-border workers in social elections can be explained by a misinterpretation of the Luxembourg model of social democracy. However, despite several efforts made by trade union organizations to provide information, interest among cross-border workers in social elections remains low. This can be attributed to a number of other factors. On the one hand, the rate of unionization is very low in France (10%) where about half of the number of cross-border workers in Luxembourg come from. On the other hand, significant disparities emerge in the structure of salaried employment which comprises nationals from Luxembourg, migrant residents in Luxembourg and cross-border workers. Disparities also exist in the types of candidates taking part in the elections. Furthermore, not everyone totally agrees with Luxembourg's trade union organizations or their message.

It is possible that, as a result of this situation, the representativeness of a body such as the Chamber of wage earners may be affected and perceived by some cross-border workers as a largely national body although it is difficult to talk of discrimination towards cross-border workers, as their interests constitute a concrete issue on the social dialogue agenda (Włodarski 2008).

Briefly, it seems to us that in addition to the old divide that results from the coexistence of ideological unions, Luxembourg will increasingly witness the presence of two different worlds: cross-border workers and resident workers. Yet, we have to remind that the figures (although not published yet) of the most recent social elections organized in 2003 and 2008 in Luxembourg indicate that the number of these cross-border workers taking part in the election process has been very limited.

This would be in the medium term a serious problem in the representation of salaried workers working in Luxembourg. In fact, we have indicated that the part of cross-border workers out of the entirety of salaried workers has increased. We have also indicated that non-nationals have been numerous on the employment market. From the point of view that this situation remains or will increase, what will become of the governance on the employment market in Luxembourg? Currently, most of the significant agreements on employment and their effects on social security are negotiated within a national instance: the Tripartite coordination committee. These agreements are then voted by Luxembourg's House of Representatives which only comprises nationals. The agreements will then be applied to all the salaried workers in Luxembourg, to half of the cross-border workers and to a great number of resident non-Luxembourg workers. Can a similar model of governance persist if the increase of cross-border works and non-nationals continues? Does one not risk finding oneself in the particular situation where a minority would take decisions in a sovereign state, imposing oneself to a majority on the employment market? It is certain that the question could appear paradoxical, but it may be possible.

Thus, cross-border workers would not seem to be really concerned by the election of delegates into the professional associations, representing their interests. However, the issue concerning the participation would be clearly asserted if the growth of the cross-border labor force were to continue so as to exceed those of the residents. In this case, it would indeed be unimaginable that a majority of salaried workers would not feel concerned by the governance of the employment market on the basis that it resides on other territories than on those where it exercises its salaried activity.

## **CONCLUSIONS: TOWARDS A NEW GOVERNANCE OF INDUSTRIAL RELATIONS?**

Currently, we can come to the four following conclusions:

First, it is deplorable that the participation rate during the elections will again stay below the expectations. It results that a massive sensitization has to be done in the future. The weak participation rate is not a phenomenon that limits itself to the 2008 elections. This is the reason why one would have to rethink the electoral procedure. The current legislation seems to be outmoded, also as far as the setting up of lists, the procedure per se and the counting mode is concerned. It appears to be urgent to act in favor of a modern and adapted legislation. One can ask if it were not appropriate to have recourse to modern technological means as for instance the vote via internet.

Second, the weak participation of workers in the social elections gives them a very relative weight in relation to the employers' union. This is all the more damaging as the recent evolution of the employment market in Luxembourg has brought about the creation of a great number of jobs, the establishment of new foreign companies and, as a consequence, a modification of the sociological composition of the wage system. Hence the utility to think about future modifications as far as electoral matters are concerned.

Third, we have seen that a progression in seats of the ideological union blocks is manifest and that the unity of the great national unions has been blown, which is a new phenomenon. The question then arises if this change, if not to say upheaval, in the conception of the social dialogue will not have in the medium or long term harmful consequences as much for the salaried workers than for the quality of social dialogue in general.

Fourth, the weak mobilization of cross-border workers will inevitably need to be addressed by appropriate answers. These could be the following: change the legislative arrangements in such a way that they allow an increased participation of cross-border workers in the governance of the employment market. A modification of the electoral law could also be envisaged and carried out in such a way that it would give access to the function of a parliamentary representative ("député") for all those who do not detain the nationality of Luxembourg. Another answer would be the extension of this nationality to foreign residents, although these procedures do already exist to some extent in the form of the double nationality, for instance.

However, all these answers would have to be preceded by a real and inevitable debate on what is widely called the national sovereignty. Would Luxembourgers indeed be ready to abandon a part of their national sovereignty under the pretext of the internationalization of the employment market in their country? These are the questions and the debates in perspective. If the current situation endures, the country must allow a large discussion on these issues.

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