



Newsletter social elections 2020 **Parliament adopts new legislation**

April 2019

Dear reader,

At its plenary session on Thursday evening, 28 March 2019, the Federal Parliament adopted the bill aimed at regulating and simplifying the organisation of the 2020 social elections.

The new act largely follows the advice given earlier by the NLC, but at the same time a number of important innovations are added.

In this newsletter, you will find the most important elements of the new law, which was published today, 30 April 2019, in the Belgian State Gazette.

We hope you enjoy the read!

- **Employment threshold.** The threshold of employees required for the establishment of a works council remains at 100 (or exceptionally, 50 if the number of employees since the last elections has dropped below 100, but still amounts to at least 50 for the social elections of 2020). The threshold of 50 employees still applies to the CPPW.
- **Reference period.** The act amends the reference period for calculating the average number of employees. For the 2020 elections, this period started on 1 October 2018 and runs until 30 September 2019. The usual average employment can therefore still be viewed over four quarters, but this period is brought forward by one quarter. In this way, every company knows by 1 October 2019 at the latest whether it must start the election procedure in December 2019.
- **Election date (day Y).** The social elections must be held between 11 and 24 May 2020. It is therefore best to check which date would be appropriate for your company. In addition to the election date itself, some other dates may also be relevant, such as day X (number of employees + temporary agency workers on that date determines your number of mandates) or day X-30 (date start of hidden protection period).
- **Temporary agency workers.** Three important changes have been made for temporary agency workers.
 - **Reference period.** For temporary agency workers, this period runs from 1 April 2019 to 30 June 2019.
 - **Special personnel register.** You may be exempt from keeping such a register during this second quarter. However, this requires the works council to declare unanimously (via the minutes) that your company employs more than 100 employees. For the social elections of 2020, this agreement must be made within 30 days of the date of publication of the law. If you therefore wish to make use of this (light) administrative simplification, you will have to put it on the agenda of the next meeting of your works council.
 - **Voting rights.** Surprisingly, temporary agency workers are granted sufficient voting rights (and all related rights) in your company as a so-called “user” if they meet two cumulative seniority conditions.
 1. Between 1 August 2019 and day X (which normally falls in February 2020), they must be employed for either 3 continuous months or 65 working days if interrupted; and
 2. Between day X and X+77 they must be employed for at least 26 working days.This is always evaluated in the legal entity or the user's TBU if it consists of several legal entities.

Temporary agency workers, on the other hand, cannot be nominated as candidates.
- **Web application FPS Employment.** An upload of your documents to the FPS Employment web application is no longer the only possibility, but you will also be able to supplement the legal information directly in the web application. This is important, for example, for the information that you must provide on day X-60, day X-35, day X and day X+35.
- The list of information that **can be made available by electronic means** instead of displaying on your premises is substantially expanded. This will now also be possible, for example, for the following steps: provisional lists of voters, the correction message following a complaint or a judgment on day X, the list of candidates after replacement, the composition of the polling station, the notice convening the voters and the notice terminating the procedure.


- **Voter lists.** In view of the GDPR, the Parliamentary Explanation (in line with advice 156/2018 of the Data Protection Authority) states that if you would make the electoral lists available electronically, this must be done on a closed platform or on an intranet secured by the employer that is only accessible to the employees of the company. Sending electoral lists by e-mail should therefore be excluded.
- **Provisional voter lists on day X** (which now also includes temporary agency workers). These must be transferred to the representative trade union and management organisations if there is no works council in the company, but from now on also if there is only a trade union delegation present in which not all three representative trade union organisations are represented.
- **Candidate lists.**
 - Trade unions must ensure that female and male candidates are proportionally represented in relation to their respective interests in the company. Statistics will also be drawn up for this purpose and this will be a new competence of the works council whereby the employer will have to provide this information to the works council (or, in the absence thereof, to the trade union delegation) within 6 months of the election results being announced.
 - The lists of candidates may be submitted electronically in four different ways. However, the employer would only see one ordinary list of candidates. It is also still possible to submit candidate lists on paper, by registered mail or delivery on site.
 - The employer must no longer submit a complaint about or the withdrawal of a candidacy both to the organisation that proposed the candidates and to the (possible) proxy holder if he has chosen to communicate electronically with the trade unions via the web application.
 - For the sake of transparency, the employer must now in each case proceed to a third display of the candidate lists at the latest on X+77, regardless of whether or not replacements have been notified to him. In this way, all parties involved within the company are clearly informed about the final lists of candidates.
 - If there is a last-minute change that is communicated on an inactivity day or a Sunday, the employer may only display the final lists of candidates on the next regular activity day following the receipt of these lists. This exception does not affect the electoral calendar.
 - The trade unions are now given the opportunity to mention a candidate's commonly used name from the moment the lists are drawn up.
- **Convening letters.**
 - If these are sent by registered mail to voters who are not present in the company on the day of the delivery of the convening letters, the employer no longer has to have proof of dispatch and receipt by the addressee.
 - If this is not done by registered mail and there is no proof of receipt, it is now possible to convene them a second time by other means than registered mail, provided that the works council or the CPPW unanimously agrees. The employer must then provide the body with the list of voters concerned.
- **Electronic voting.** The decision to proceed to electronic voting no longer has to be taken unanimously by the works council, the CPPW or the trade union delegation (unless your internal regulations would stipulate that all decisions have to be taken unanimously). Moreover, electronic voting can now also be organised from the regular workstation. The works council, the CPPW or the trade union delegation will then have to work out the necessary modalities in this respect (to ensure the secrecy of the vote, what is understood by ordinary workstation, identification of voters, etc.).

- **Follow-up rules.**
 - The rules on the temporary or permanent replacement of an effective or substitute member are centralised in the Act of 20 September 1948 on the Organisation of the Economy for the Works Council and the Well-Being of Workers Act of 4 August 1996 for the CPPW.
 - As regards the order of replacement, reference must be made to the voting record order in each case.
 - If a mandate should end due to the fact that the delegate no longer belongs to the category of employees in which he was elected, the trade union has the possibility to keep this delegate in his mandate. This possibility is now provided for both the organisation and any proxy holder, specifying that the employer does not have to agree to this, but only requires a communication to the employer.

 - **Model documents.** The new law provides for new and adapted model documents in the context of the upcoming social elections.

 - **Duration of display.** Most displayed messages still have to be displayed until 15 days following the announcement date of the election result. However, only in the event of an appeal is there a further obligation to display a new document and to keep the other documents available.

 - **Entry into force.** The new law will enter into force immediately on the date of publication in the Belgian State Gazette.

 - **Adjustment of the election procedure.** The law further clarifies a number of legal provisions on minor points.
-  Be sure to visit us regularly at www.socialelections.be. This website contains useful information about the social elections of 2020 and will help you make them a success. We regularly update the site. Via the following links you can consult our **Dutch** or **French** brochures about the services we provide with regard to the social elections.

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