



## Luxembourg newsflash

24 November 2014

### Dismissal of a member of a works council

Under Luxembourg law, staff representatives, *i.e.* members of the staff delegation (a staff delegation must be set up in all undertakings employing regularly 15 or more employees) and members of the works council (a works council must be set up in all undertakings employing regularly 150 or more employees), are protected against dismissal.

Whereas the provisions of Article L.415-11 of the Labour Code concerning staff delegates are clear and provide that the dismissal of effective and alternate staff delegates during their mandates will be declared null and void, the provisions of Article L.425-4 of the Labour Code concerning the protection regime of members of the works council are less clear. Article L.425-4 of the Labour Code merely states that the dismissal of an effective or of an alternate member of the works council must be submitted to the prior approval of the works council or, if such approval is not forthcoming, must be authorised by the Labour tribunal. The provisions of the Labour Code do however not foresee which sanction will apply if a member of the works council is dismissed without the prior approval of the works council or the prior authorisation of the Labour tribunal.

In the absence of precise legal provisions, case law had therefore to define the protection regime against dismissal to which the members of the works council are subject.

In a decision rendered on 10 May 2007 (No. 30394 of the register), the Court of Appeal, after having acknowledged that Article L.425-4 of the Labour Code did not specify that a dismissal of a member of a works council notified without prior approval of the works council or of the Labour tribunal was to be considered null and void, refused to declare such a dismissal null and void.

In a decision rendered on 6 November 2014 (No. 40573 of the register), the Court of appeal overruled its previous case law stating that the absence of prior approval of the works council or prior authorisation of the Labour tribunal was constitutive of a substantive irregularity which rendered null and void the dismissal notified by the employer.

To the best of our knowledge, an appeal before the Upper Court (*Cour de Cassation*) will be lodged against the decision rendered on 6 November 2014.

## For further information please contact:



**Louis Berns**

Employment Law, Pensions & Benefits  
Partner

Tel: +352 40 78 78 240

[louis.berns@arendt.com](mailto:louis.berns@arendt.com)



**Anne-Sophie Ott**

Employment Law, Pensions & Benefits  
Senior Associate

Tel: +352 40 78 78 276

[anne-sophie.ott@arendt.com](mailto:anne-sophie.ott@arendt.com)

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