



# ESPN Thematic Report on Retirement regimes for workers in arduous or hazardous jobs

## Luxembourg

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Annelies De Coninck & Jozef Pacolet  
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*Contact:* Emanuela TASSA

*E-mail:* [Emanuela.TASSA@ec.europa.eu](mailto:Emanuela.TASSA@ec.europa.eu)

*European Commission  
B-1049 Brussels*

**European Social Policy Network (ESPN)**

**ESPN Thematic Report on  
Retirement regimes for  
workers in arduous or  
hazardous jobs**

**Luxembourg**

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*Annelies De Coninck & Jozef Pacolet (HIVA)*

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## Highlights

Luxembourg had separate pension schemes for miners, metalworkers and professional drivers until 1999. They were entitled to a special early old age pension because of the arduous or hazardous nature of the work. Since 1999, only **night or shift workers** can go on pre-retirement because of arduous or hazardous work conditions, though the legislation does not actually refer to 'arduous or hazardous' work.

The notion of 'arduous work' does not exist in Luxembourg. The use of the term 'hazardous jobs' (including night or shift work), is used mainly in the context of health and safety at work – apart from the pre-retirement scheme described above. The definition of a hazardous job determines the working hours and the number of workers needed to carry out the job safely assigned to each company. It ensures that workers occupying positions at risk receive appropriate training, undergo a compulsory medical examination prior to employment, undergo periodic examinations as required by regulations, etc.

The current pre-retirement scheme is a form of bridging pension for certain workers (including night or shift workers), who can request pre-retirement and then move on to normal retirement conditions once they reach the statutory retirement age. Pre-retirement should not be confused with early retirement. The early retirement pension is governed by social security law while pre-retirement schemes fall under labour law. Early retirement before age 65 (*'pension de vieillesse anticipée'*) is part of the pension system and is possible from the age of 57 or 60. Pre-retirement is limited to three years and is an instrument to prevent unemployment, therefore this pre-retirement scheme falls under the unemployment regulation. It can be seen as 'benefits for the older unemployed'<sup>1</sup>. It is aimed at workers who have not yet reached their 40 years of contribution (OSHA, 2016).

The pre-retirement scheme is described as follows. The 4<sup>th</sup> one is applicable in the context of hazardous or arduous jobs.

- *Préretraite solidarité* (solidarity pre-retirement): The employer terminates the contract of employment with the employee and in return, he pays a pre-retirement pension to the employee.
- *Préretraite progressive* (progressive pre-retirement): This scheme applies to full-time employees. The employer agrees to transform the job from full- to part-time and to pay pre-retirement benefits.
- *Préretraite ajustement* (adjustment pre-retirement): This scheme is a social measure, which is limited to employers who are undergoing a business closure or to avoid job losses after a restructuring or after transformation following technological changes.
- *Préretraite des travailleurs postés et des travailleurs de nuit* (pre-retirement of shift and night workers - Article L. 583-1 to L.583-4): This pre-retirement scheme is important within the policy specifically targeted at workers in hazardous jobs. This scheme applies to employees both from the private and public sector. It applies to employees, aged 57 and more, who have been working in shifts for at least 20 years or have worked at least 20 years in a fixed night shift.

The mechanism for shift and night workers is the only pre-retirement mechanism compensating for demanding working conditions. Therefore, policy concerning special retirement regimes for workers in arduous or hazardous jobs is rather limited. This report will mainly focus on the pre-retirement schemes regarding night and shift workers, which is defined as 'hazardous work'.

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<sup>1</sup> MISSOC

It concerns a limited number of people, as the total number of people falling under the four types of pre-retirement schemes is only 1,393.

In July 2015, the Government decided to abolish the so called 'pre-retirement solidarity system' (type one within the scheme), which was intended to temporarily (for three years) allow early retirement from age 57, on condition that an unemployed person was recruited to replace the retiree. To compensate for the abolishment of the pre-retirement solidarity scheme, the conditions for pre-retirement of night workers and shift workers will become less stringent.

# 1 Overall description of the policy mix targeted at workers in arduous or hazardous jobs

## 1.1 What are considered 'hazardous jobs' ('Postes à risques')?

In Luxembourg, employers must protect the health and safety of their employees in all work-related situations, so they have to evaluate the risks at the workplace and establish an inventory of hazardous jobs. When hazardous jobs are identified, the employer has to forward this information to the Occupational Health Department every three years in the form of an up-to-date inventory of hazardous jobs.

The definition of a hazardous job determines the working hours and the number of 'safety officers' assigned to each company (their number increases with the number of risk positions). It ensures that workers occupying positions at risk receive appropriate training, undergo a compulsory medical examination prior to employment, undergo periodic examinations as required by regulations.

The government defines (Le code du travail, article L.326-4) the following posts as being 'hazardous'<sup>2</sup>:

- Posts exposing employees to a risk of occupational illness;
- Posts exposing employees to a specific risk of occupational accident at the workplace;
- Posts exposing employees to physical, biological and carcinogenic agents likely to affect their health;
- Posts involving an activity likely to put in serious danger the health and safety of other workers or third parties;
- Posts involving the control of an installation or machinery which, in case of failure, may put in serious danger the health and safety of other workers or third parties;
- Night work (*'travail de nuit'*).

The following are not part of the definition: psychosocial risks and stress, bullying, physical violence.

Night work is considered 'hazardous' by the Luxembourg government. It is even been included in the 'pre-retirement scheme' (together with shift work), which contains special pre-retirement conditions for employees falling under this category. Part 2 will deal with the pension rules related to night and shift work.

According to a Belgian report about a European comparison of policy towards arduous jobs and specific pension schemes (*Commissie Pensioenhervorming 2020-2040 II*, 2015, p.4), the usual term for arduous jobs in Luxembourg is 'Workers subject to heavy physical work', which is rather vague (survey with the Permanent Representation of Luxembourg<sup>3</sup>). A clear fixed definition for arduous jobs in Luxembourg was not found. Since there is no clear definition, there is also lack of a specific policy concerning arduous jobs. Therefore this report will mainly focus on the pre-retirement schemes concerning night and shift workers.

But first, we take a look at the definition of night work, as well as some statistics that can indicate the presence of arduous or hazardous jobs in Luxembourg.

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<sup>2</sup> [http://www.quichet.public.lu/entreprises/catalogue-publications/ressources-humaines/inventaire-postes-risque/inventaire-postes-risques\\_FR.pdf](http://www.quichet.public.lu/entreprises/catalogue-publications/ressources-humaines/inventaire-postes-risque/inventaire-postes-risques_FR.pdf)

<sup>3</sup> <http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeid=4358>



## 1.2 Definition of night work

Night work (Code du travail, Livre III, Titre III, Chapitre III), is defined as working between 22:00 and 6:00 hours (exception: 23:00 - 6:00 hours for the hotel and catering business), which is not prohibited, nor subject to authorisation, although the employer must ensure that the normal working time for night workers does not exceed 8 hours on average in a 24-hour period calculated over a 7-day period.

- Night workers carrying out hazardous jobs cannot, under any circumstances, work more than 8 hours during each 24-hour period.
- Mobile workers (road transport) who work at night are not allowed to work more than 10 hours during each 24-hour period, except if the night work does not exceed 2 hours twice a week or if there is a two-man crew.

In general, employees are considered night workers when they work at night for at least 3 hours of their daily working time, or if they work partly at night in accordance with an agreement (concluded between social partners at a national or sectoral level) or a collective agreement and for more than 25% of the annual working time.

It is not necessary for the employer to give a special wage supplement for night work. The employer only has to make additional payments for night work if a collective agreement is in place, or in the HORECA (hotel, restaurant, catering) sector. When additional payments are required, employers need to pay an additional 15% minimum in the case of collective agreements, or 25% from 01:00 in the morning in the hotel and catering sector. Additional payment for night work is exempt from taxes. These night hours worked, as well as the payments, must be recorded and presented during inspections by the Inspectorate of Labour and Mines (*Inspection du Travail et des Mines*, ITM), which is under the authority of the Ministry of Labour and Employment.

## 1.3 Statistics

Even though Luxembourg has only a limited policy concerning hazardous or arduous work, especially related to specific pension schemes, it is interesting to know what the overall working conditions for older workers are, and how they compare to the EU average. Some of these working conditions can be an indication of hazardous or arduous work. We have listed some of these indicators.

Based on the Fifth European Working Conditions Survey<sup>4</sup> (5<sup>th</sup> EWCS), carried out by the European Foundation for the Improvement of Living and Working Conditions (EUROFOUND) in 2010, the following conclusions can be drawn with regard to the working conditions of older workers (aged 50 years and above) in Luxembourg. Some statistics concern hazardous or arduous work. The Sixth version will be available in 2017, which contains data about 2015. For now, these statistics of 2010 are the best available.

- The share of older workers (50+) having to *carry heavy loads* for at least a quarter of their working time decreased from 31% in 2000 to 24% in 2010, which is lower than the EU-average of 32% in 2010.
- The share of older workers indicating that their job involves *tiring and painful positions* (almost) all of the time is 19%, which is higher than EU-average (16%).
- The share of older workers who are exposed to *shift work* during their working time has decreased over the period 2000-2010. In 2000, it was 19%, while the percentage dropped to 11% in 2010. At that time, EU-average was 14%.
- Exposure to *night work* for older workers is slightly below EU-average (15% versus 16%).

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<sup>4</sup> <http://www.eurofound.europa.eu/publications/report/2012/working-conditions/fifth-european-working-conditions-survey-overview-report>

- About 27% of older workers in Luxembourg think that *their work negatively affects their health*, which is about the same as the EU-average.
- About 20% of the older workers think that their *health and safety is at risk* because of their job, which is lower than EU-average (26%).
- The share of older workers who think they will be *able to do the same job at the age of 60* was lower in Luxembourg (56%) than across the EU (71%).

**Table 1: Results EWCS survey on working conditions, response of older workers (50+), 2010.**

Item EWCS 2010	Luxembourg	EU-average
Share of older workers (50+) having to carry heavy loads for at least a quarter of their working time	24%	32%
Share of older workers indicating that their job involves tiring and painful positions (almost) all of the time	19%	16%
Share of older workers who are exposed to shift work during their working time	11%	14%
Share of older workers who are exposed to night work during their working time	15%	16%
Share of older workers in Luxembourg who think that their work negatively affects their health	27%	27%
Share of older workers who think that their health and safety is at risk because of their job	20%	26%
Share of older workers who think they will be able to do the same job at the age of 60	56%	71%

Source: EWCS, 2010.

Overall, older workers in Luxembourg have slightly better working conditions than the EU-average, when considering most of the indications for hazardous or arduous work mentioned above.

In the following chapter, we discuss the pension rules related to night and shift workers, which is defined as 'hazardous' work.

## 2 Pension rules for workers in arduous or hazardous jobs

### 2.1 Criteria for arduous or hazardous work within the pension system

A general description of the adequacy of the pension system in Luxembourg and other European countries can be found in the European Commission's 2015 Pension Adequacy Report volume 1 & 2.

The last reform of the pension system was introduced in December 2012. However, it had a limited scope and mainly addressed the large gap between the statutory and the effective retirement age. The 2012 reform did not modify the legal retirement age in Luxembourg, which is 65 years with at least 10 years of contributions. Instead, it was decided to link benefits to retirement age. Workers who retire at a later age will receive higher pensions than workers who leave at 65. The reform also involved an increase in the contributions, for workers as well as for employers, by 24 to 30%.

The effective retirement age in Luxembourg is 60.8 for women and 61.9 for men, calculated as an average over the period 2009-2014, which is among the lowest in OECD countries.

There is no special treatment of arduous jobs within the first pillar of the pension system. Night work, defined as a hazardous job, is the exception. As for shift work, the pre-retirement scheme has special pre-retirement conditions for night work.

Pre-retirement cannot be confused with early retirement. The early retirement pension is governed by social security law, while pre-retirement schemes fall under labour law. Early retirement before age 65 (*'pension de vieillesse anticipée'*) is part of the pension system and is possible from the age of 57 or 60. Pre-retirement is limited to three years and is an instrument to prevent unemployment. It is aimed at workers who have not yet reached their 40 years of contribution (EU-OSHA, 2016).

Luxembourg no longer recognizes *'pénibilité'* criteria in old-age pensions<sup>5</sup>. According to an annex of a report from the Belgian Commission for Pension Reform (*Commissie Pensioenhervorming<sup>6</sup> 2020-2040 II*, 2015)<sup>7</sup>, which contains a European comparison about arduous jobs (situation July 2014), Luxembourg used to have separate pension schemes for miners, metalworkers and professional drivers until 1999. They were entitled to a special early old age pension. Since 1999, the only possibility to go on early retirement because of arduous work is reserved for night or shift workers (under 'pre-retirement schemes'), although there is actually no reference to arduous or hazardous work in the legislation. The notion of "arduous work" does not exist in Luxembourg. We describe this system in the following paragraph.

### 2.2 Pre-retirement schemes

The current pre-retirement scheme is a form of bridging pension for certain workers, who can request pre-retirement and then move on to normal retirement conditions once they reach the statutory retirement age. As already documented in the ESPN European semester report of 2015-2016 for Luxembourg (Swinnen, Pacolet & De Wispelaere, 2015), these pre-retirement schemes fall under the unemployment regulation<sup>8</sup> (benefits for the older unemployed)<sup>9</sup>.

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<sup>5</sup> Addio, Boulhol, Lundberg & Reilly (2015) Contribution to the EU adequacy report 2015. Interim Report on penibilite schemes in EU. OECD;

[http://www.mss.public.lu/publications/Apercus\\_et\\_cahiers/apercus/cahier\\_apercu\\_201209.pdf](http://www.mss.public.lu/publications/Apercus_et_cahiers/apercus/cahier_apercu_201209.pdf)

<sup>6</sup> In French: Commission de réforme des pensions 2020-2040

<sup>7</sup> They asked these questions through Eurofound.

<sup>8</sup> [http://www.cleiss.fr/docs/regimes/regime\\_luxembourg-salaries.html#chomage](http://www.cleiss.fr/docs/regimes/regime_luxembourg-salaries.html#chomage)

<sup>9</sup> In MISSOC, a description of the policy for pre-retirement in Luxembourg is also situated under 'benefits for older unemployed'.

Luxembourg's early retirement concessions are linked to workers' specific jobs, rather than using criteria such as the occupational or business sector<sup>10</sup>. Luxembourg has four types of 'pre-retirement schemes', listed in the labour law. The 4<sup>th</sup> one is applicable in the context of hazardous or arduous jobs.

- *Préretraite solidarité* (solidarity pre-retirement): The employer terminates the contract of employment with the employee, and in return he pays a pre-retirement pension to the employee. The employer may receive a financial contribution from the state when he hires a job applicant. It is limited to employees of companies made eligible for pre-retirement support under a collective agreement between the employer and the Ministry of Labour and Employment. Beneficiaries are employees of the private sector aged 57 and over.
- *Préretraite progressive* (progressive pre-retirement): This scheme applies to full-time employees. The employer agrees to transform the job from full- to part-time and to pay pre-retirement benefits. It is limited to employees of a company made eligible for gradual pre-retirement.
- *Préretraite ajustement* (adjustment pre-retirement): This scheme is a social measure, limited to employers who are in the event of a business closure or to avoid job losses after a restructuring or after transformation following technological changes. This mechanism is justified by the economic situation of the company.
- *Préretraite des travailleurs postés et des travailleurs de nuit* (pre-retirement of shift and night workers - Article L. 583-1 to L.583-4): This pre-retirement scheme is important within the policy specifically targeted at workers in hazardous jobs. This scheme applies to employees both from the private and public sector. It applies to employees aged 57 and more, who have been working in shifts for 20 years or have worked 20 years in a fixed night shift (see previous section). The conditions (see 2.3) are the same as applicable within the scheme '*préretraite solidarité*'.

The mechanism for shift and night workers is the only pre-retirement mechanism compensating for demanding working conditions. Therefore policy concerning special retirement regimes for workers in arduous or hazardous jobs is rather limited.

### 2.3 Conditions

The pre-retirement model for night and shift workers allows employees who have worked for at least 20 years in shifts or at night to retire before the statutory pension age (Code du travail: Article L.581-1 and following). Additionally each early exit should create a new vacancy and promote investment in unemployed people or apprentices.

This pre-retirement regime can be used both in the private and the public sector for employees reaching the age of 57. For public service employees, the years worked in government services before being appointed are included in the 20 years of work performed at night or in shifts. If these conditions are met, admission to pre-retirement cannot be refused. Unlike other types of pre-retirement, this scheme for night or shift workers is an acquired right.

### 2.4 Volume

In 2011, the total expenditure for employees in pre-retirement was EUR 63.5 million, covering 1,393 beneficiaries in total, calculated over the four types of pre-retirement. It is a limited number and these numbers are slightly declining/stabilising over time (see Swinnen, Pacolet & De Wispelaere, 2015 for the graphs). Of this total number, some 438 were related to the pre-retirement of shift and night workers, of which exactly half was

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<sup>10</sup> This information was collected using a specific questionnaire, which was completed by the delegates to the OECD Working Party on Social Policy during Summer 2008. See: Zaidi & Whitehouse (2009), page 12.

concentrated in the metal industry (219 beneficiaries in ArcelorMittal) (*Ministère du Travail, de l'Emploi et de l'Economie sociale et solidaire*, 2011).

In 2015 there were 1,306 beneficiaries for pre-retirement with a total budget of EUR 72.9 million. Of this total number, 413 were beneficiaries due to night and shift work (of which now only one fourth was related to the metal industry (116 beneficiaries in ArcelorMittal) (*Ministère du Travail, de l'Emploi en de l'Economie sociale et solidaire*, 2015).

## 2.5 Debates

The special scheme for pre-retirement has existed for a long time. Since 1999, the separate pension schemes for miners, metalworkers and professional drivers have been abolished. Therefore there isn't a lot of discussion going on about these topics. The discussion is mainly focused on details.

The government announced in 2013<sup>11</sup> that further measures to increase the actual retirement age would be taken. In particular, it planned to provide additional incentives to postpone retirement and to enable a more gradual transition to retirement. Other reform efforts are working on overhauling the pre-retirement system, including abolishing the '*préretraite solidarité*' system<sup>12</sup>. The impact of abolishing the '*préretraite solidarité*' scheme is estimated to be marginal as it involves only a limited number of people each year. The last budget estimates this at around EUR 5 million per year (European Commission, 2015c, page 13). To compensate for the abolishment of the '*préretraite solidarité*', the conditions for pre-retirement of night workers and shift workers will become less stringent.

In July 2015 the Government accepted the regulation to abolish the so called 'pre-retirement solidarity system', because 'it has never been a success'. The trade-unions reacted by saying that abolishing the system would only be acceptable if the other subsystems, among others the one of pre-retirement because of shift and night work, were improved (OGBL<sup>13</sup>, Press release 2015, 'Prétraitements: Une réforme qui ne satisfait pas les attentes de l'OGBL')<sup>14</sup>. In a note from '*La chambre des salariés Luxembourg*' (workers chamber) of 15 October 2015<sup>15</sup>, an extension of the scope<sup>15</sup> of the '*Prétraitements des travailleurs postés et des travailleurs de nuit*' was proposed using the definition '*pénibilité de travail*'.<sup>16, 17</sup>

Additionally, the OGBL (*Onofhängege Gewerkschaftsbond Lëtzebuerg* – independent Luxembourg workers union) states that the rule 'in order to claim this pre-retirement benefit you need to work for this employer for at least 5 years' is discriminatory and creates obstacles for certain workers.

Another note from '*La chambre des salariés Luxembourg*' of 15 October 2015, asks why the rights are limited to people who work minimum 50% part-time, as a minimum of 40% is counted for the old age pension<sup>18</sup>. They also signal that the definition of night

<sup>11</sup> December 2013 programme

<sup>12</sup> <http://www.guichet.public.lu/citoyens/fr/actualites/2015/07/15-preretraite-solidarite/index.html>

<sup>13</sup> La Confédération syndicale indépendante du Luxembourg, *Onofhängege Gewerkschaftsbond Lëtzebuerg* en luxembourgeois

<sup>14</sup> <http://www.ogbl.lu/de/blog/preretraites-une-reforme-qui-ne-satisfait-pas-les-attentes-de-logbl/>

<sup>15</sup> "une définition légale de la « pénibilité du travail » est caractérisée par deux conditions cumulatives : 1) une exposition à un ou plusieurs facteurs de risques professionnels susceptibles de laisser des traces durables, identifiables et irréversibles sur la santé et 2) des facteurs (déterminés par décret) liés à des contraintes physiques marquées, un environnement physique et agressif ou à certains rythmes de travail". ["The legal definition of arduous jobs is characterized by two conditions: 1) exposure to one or more occupational risk factors likely to leave lasting traces, identifiable and irreversible effects on health and 2) factors (determined by Decree) associated with physical stress, physical and aggressive environment or certain work patterns."] (source: see next footnote, p.3.)

<sup>16</sup> [http://www.csl.lu/index.php?option=com\\_rubberdoc&view=doc&id=2857&format=raw](http://www.csl.lu/index.php?option=com_rubberdoc&view=doc&id=2857&format=raw)

<sup>17</sup> <http://www.ogbl.lu/blog/preretraite-la-reforme-doit-prendre-en-compte-la-penibilite-du-travail/>

<sup>18</sup> <http://www.csl.lu/component/rubberdoc/doc/2858/raw>

work causes problems in certain sectors, such as the hospital sector, transport and aviation. In these sectors, workers are often obliged to be on standby. Those hours, although at night, are not taken into account.

## 2.6 Other alternatives

Pension reforms aimed at keeping people in the labour market longer may apply to all employees or to specific professions, such as arduous or hazardous jobs. Workers in particularly arduous or hazardous jobs can also be offered alternatives to early retirement, such as job mobility. This is not the case in Luxembourg.

## 3 Retirement income of workers in arduous or hazardous jobs

### 3.1 Pre-retirement benefit

The monthly pre-retirement benefit is calculated on the gross monthly remuneration of the employee for the 3 months immediately preceding the benefit period. The benefit must be based on a 12-month reference period for the variable part of the remuneration, where this calculation is more favourable. Non-periodic earnings (*'la gratification'*), as well as the 13<sup>th</sup> month pay are brought into the calculation at a rate of one twelfth per month.

The length of the pre-retirement cannot exceed three years. The benefit is spread over this period with a progressive annual diminution of 5%.

Thus, the pre-retirement benefit equals to:

- 85% of the average monthly gross salary, calculated over the last three months prior to the start of the benefit. This counts for a first period of 12 months;
- 80% of that monthly gross salary for a second period of 12 months;
- 75% of that monthly gross salary for the remaining time.

The benefit is subject to social charges and fiscal taxes and is also limited to a maximum of five times the 'social minimum wage'<sup>19</sup>. The rights to pre-retirement benefits cease the day the retiree is entitled to his retirement pension or a disability pension or if he resumes activity with an income exceeding half the minimum wage.

The pre-retirement benefit must be adapted to changes in the costs of living according to the law of application.

The retirement benefit is paid to the employee by the employer. The employer will obtain full reimbursement of expenses from the Employment Fund.

### 3.2 Pre-retirement benefits in comparison with the old-age pension

As described in the 2016 ESPN Country report Luxembourg, the old-age pension consists of two parts.

A *lump sum* for people with full contributory period (40 years) is determined as a percentage of a reference amount which more or less equals the national minimum income. As of 1 January 2015, the lump sum amounts to EUR 455.

The second part is an earnings-related pension, calculated as a percentage of the sum of lifetime contributable wages and income (1.832% in 2015, which can increase up to a maximum of 2.05%). The pension system guarantees a minimum pension of 90% of the minimum wage if 40 eligible pension years or equivalent have been completed. As of

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<sup>19</sup> The applicable minimum wage depends on the employee's level of professional qualification. <http://www.guichet.public.lu/entreprises/en/ressources-humaines/remuneration/paiement-remunerations/salaire/index.html>

January 2015, the minimum pension amounted to EUR 1,726. The maximum monthly pension is capped at EUR 6,265.

As the old-age pension consists of two parts, it is difficult to compare the pre-retirement benefit to the old-age pension. The pre-retirement benefit, as one receives between 75-85% of the average monthly gross salary calculated over the last three months, does not seem unfavourable in comparison to the old-age pension. It is a high percentage.



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