



ESPN Thematic Report on Access to social protection of people working as self- employed or on non-standard contracts

Luxembourg

2017

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January 2017



EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion
Directorate C — Social Affairs
Unit C.2 — Modernisation of social protection systems

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Summary

This report studies the social protection of the self-employed and those working under non-standard contracts in Luxembourg. The report consists of three main sections.

The first section of the report is an attempt to define and describe (the evolution of) self-employment and non-standard work in the Luxembourg context. According to the Social Security Code a self-employed person in Luxembourg is considered to be someone who is working on his own behalf. Different categories of self-employment exist. In recent years the self-employment rate has increased, but it remains low compared to other European countries. The Luxembourg government links self-employment closely to entrepreneurship. Different government initiatives are in place to promote self-employment such as measures to facilitate the transition from unemployment to self-employment. Under certain conditions unemployed persons already receiving unemployment benefits can start or take over a business. Self-employment in Luxembourg is seen as a means to increase employment rates. Besides self-employment other forms of atypical or non-standard work exist and are growing in number. But at the moment they are hardly studied and barely defined by law. Women make up 45% of total employment in 2015: 34% of them work on a part-time basis, which is a higher rate than the EU-28 average (32.7%). But only a minority of them (14.5%) works part-time involuntarily.

The second section of the report focuses on the social security system as it is in place for employees compared to self-employment and non-standard contracts. The general organisation of the Luxembourg social security system and its main institutions are described, followed by an overview of the different social security schemes and the corresponding contribution rates. Luxembourg has a comprehensive social security system, both for employees and the self-employed. Only minor differences remain (e.g. the voluntary insurance to cover sickness from day one).

The current financial situation of the social security is healthy. The social security revenues outweigh the expenditures. As Luxembourg already has a very integrated social security system in which the self-employed pay the same contribution rates as the salaried workers and benefit from almost identical rights, there seems to be no need for a further improvement of it and there is not a political demand for it either, neither any estimate on how it would need to be improved.

A typical atypical dimension of the labour market in Luxembourg is the importance of cross-border work and posting. Cross-border work represents typically some 45% of the total employment in Luxembourg. It is remarkable is how well those cross-border workers are integrated and represented in the industrial relations. It is atypical in that in the non-standard work of temporary agencies, the cross-border workers represent two-thirds (68%) of this type of non-standard contracts. Incoming posting accounts for some 5.6% of the total employment.

As a main conclusion self-employment and entrepreneurship have become vital parts of Luxembourg's economic life. This is shown by the initiatives to encourage self-employment. It does not only take the economic factor at heart, but also becomes more and more aware of the importance of a good social security system for the self-employed, most importantly in the area of non-standard work and 'in between forms' of self-employment. They exist and are generally recognised, but are insufficiently studied or legally clarified. This is a first and essential condition to provide people under such contracts with a decent social protection.

1 Context: self-employment and non-standard contracts in the national economy and labour market

The legal definition of self-employment is created for social security purposes and is based on the Social Insurance Code (*Code de la Sécurité Sociale*) which was revised by the law of July 25th 2005. It is defined as: 'anyone practising in the Grand Duchy of Luxembourg on their own behalf a professional activity that falls within the scope of the Chamber of Trades, the Chamber of Commerce or the Chamber of Agriculture or a professional activity of a predominantly intellectual and non-commercial nature'. For the purpose of social security the self-employed persons are divided into two categories: 1) independent workers (handicrafts such as a baker; commercial professionals such as a salesperson or an industrial worker who requires a license to trade, liberal professionals such as a doctor, a lawyer) and 2) farmers (such as crop growers, horticulturalists, wine growers, etc.).

Luxembourg has fewer self-employed persons than the EU-28 average: 9.4% against 15.2% in 2015. This is also the case if we compare it to its neighbouring countries France (15.2%) and Belgium (14.5%). The difference with Germany (9.9%) is quite small.¹ In 2015, 64.9% of the self-employed in Luxembourg had no employees and were thus own-account workers.² The number and share of self-employment in total national employment is however rising, as shown in table 2.

According to a study conducted in 2010, the majority of the self-employed persons in Luxembourg at that time were liberal professionals (45%), followed by those working in agriculture (26%) and commercial activities (19%) (European Commission, 2010). The majority of the self-employed are male (63%) and have Luxembourg nationality (72%).

Although the self-employed view their own financial situation as rather positive (Bousselin, 2009), statistics show that the number of self-employed being at risk of poverty is rising. In 2015, 24.4% of the self-employed were at risk of poverty. In addition, the self-employed show a much higher risk of poverty compared to employees (12.2%). The rate of self-employed being at risk of poverty in Luxembourg is slightly higher than in the rest of the EU-15 countries (21.8% in 2014). Table 1 presents an overview of the people at risk of poverty by activity status.

Table 1: People at risk of poverty by activity status, in % (2010-2015)

| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | Change 2010-2015, in p.p. ³ |
|-----------------------------|------|------|------|------|------|------|--|
| Population | 15.6 | 15.3 | 15.6 | 16.9 | 17.0 | 17.2 | 1.6 p.p. |
| Employed persons | 10.8 | 10.4 | 11.0 | 11.8 | 11.7 | 12.2 | 1.4 p.p. |
| Employees | 10.1 | 10.0 | 10.5 | 10.7 | 10.9 | 11.5 | 1.4 p.p. |
| Self-employed | 20.5 | 16.1 | 18.8 | 23.2 | 22.3 | 24.4 | 3.9 p.p. |
| Not employed persons | 22.0 | 21.7 | 23.9 | 23.3 | 23.7 | 24.3 | 2.3 p.p. |

Source: Eurostat database - LFS

A 2007 study carried out by Gilbert McNeill described an independent worker as someone who 'exercises an economic activity as a non-employee (...) the independent worker can be an independent-entrepreneur or an assistant spouse (*conjoint aidant*)'. This points towards the generally accepted coexistence of self-employment as a second employment

¹ See: Eurostat database (LFS) [lfsa_egaps] - extracted on 13-12-2016.

² See: Eurostat database (LFS) [lfsa_esgan] - extracted on 13-12-2016.

³ p.p.: point percentage

form next to salaried employment which is the more popular form in Luxembourg. It is considered to be more socially secure and described as a 'full-time job of unlimited duration guaranteeing a regular income' (Thill, 2010, p.3).

Also bogus self-employment, referred to as '*faux-indépendants*', is a known practice in Luxembourg, but it is not clearly identified nor studied properly. Those '*faux-indépendants*' are recently mentioned in the fact sheets of the European Commission on undeclared work as '*salariés auto-employeurs*' (European Commission, 2016, p.117). The term however is also in use in France for the growing number of persons that combine a salaried job with a job as an independent, what could be a road to a full independent job, but could also risk creating opportunities for social fraud.⁴ At the moment Luxembourg does not make a distinction between legal self-employment and bogus self-employment.

According to a research note of the European Commission, non-standard work is defined as 'including self-employment, employees with a temporary or fixed term contract and those working part time or less than 30 hours per week, as well as family workers' (Matsaganis et al., 2015, p.10).

Table 2 gives an overview of the employment rates in Luxembourg with attention to the employees, self-employed and others working under non-standard contracts during the 2010-2015 period. The statistics are based on available Eurostat data (Labour Force Survey). It allows us to present an evolution of the national employment.

Table 2: Employment of nationals, in thousand (2010-2015)

| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | % change 2010-2015 | Share in total employment | |
|-------------------------|-------|-------|-------|-------|-------|-------|--------------------|---------------------------|------|
| | | | | | | | | 2010 | 2015 |
| Total employment | 220.8 | 224.8 | 236.1 | 238.7 | 245.6 | 257.5 | +16.6 | 100 | 100 |
| Employees | 202.5 | 205.3 | 214.8 | 216.9 | 223.8 | 231.6 | +14.4 | 91.7 | 89.9 |
| Self-employed | 17.1 | 18.2 | 19.8 | 20.1 | 20.3 | 23.0 | +34.5 | 7.7 | 8.9 |
| Temporary work | 14.3 | 14.6 | 16.4 | 15.3 | 18.2 | 23.4 | +63.6 | 6.5 | 9.1 |
| Part-time work | 39.4 | 41.1 | 44.7 | 45.8 | 46.3 | 48.3 | +22.6 | 17.8 | 18.8 |

Source: Eurostat database – LFS

Although there is a slight decline in the share of employees in total employment figures, they still represent the vast majority of the labour market in Luxembourg. Since 2010 more and more people are taking on temporary jobs. Women make up 45% of total employment in 2015. They represent 82% of the part-time employed persons, 45% of temporary employees and 39% of the self-employed. This implies that 34% of the employed women work part-time, compared to 18.8% for the total workforce, and 34% is higher than the EU-28 average of 32.7%. This level increased by 0.14 percentage points compared to 2010. Of the female part-time workers 14.5% are working on an involuntary part-time basis because they are unable to find full-time work. This is a rather low figure compared to all the other EU member states (EU-28 average of 25.7%).

The Luxembourg Code of Work does not mention casual work, on-call workers, zero-hour workers, voucher-based workers, crowd workers. Seasonal work (*'travail saisonnier'*) is

⁴ We observed in the Belgian thematic report on this issue also the growing importance of persons registered as independent but as a complementary activity, complementary probably to the main job as a salaried worker. See De Wispelaere, Pacolet, 2017, p.7.

regarded legally as a fixed-term contract applied solely for very specific and temporary tasks. Paid trainees and ICT mobile workers are considered as employees with a contract. Workers in employee sharing and job sharing employment exist under the Code of Work. However this form of employee sharing is scarcely applied in practice and mostly applied in the context of job retention plans. Cross-border workers benefit from the same legal rights as residents do (Thill, 2016), and there seems to exist a remarkable well-established tradition to involve those cross-border workers in the industrial relations existing in the country⁵. Incoming posted workers are covered by the social protection schemes in their own country.

Because of the vast majority of cross-border workers in Luxembourg it seems relevant to also point out their share within total employment. Table 3 gives an overview of the domestic employment numbers by type of contract of the salaried workers, with inclusion of the cross-border workers, mostly based on data of March 2015.

Table 3: Domestic salaried employment by type of contract, absolute figures and % (2014-2015)

| Domestic employment – type of contract | Absolute number | % |
|--|-----------------|------|
| Worker (March 2015) | 376,568 | 100 |
| of which cross-border workers | 166,538 | 44.2 |
| Part-time work (March 2015) | 56,330 | 15 |
| Fixed-term worker/temporary contract (contrat à durée déterminée - CDD) (March 2015) | 18,550 | 4.9 |
| Permanent worker (contrat à durée indéterminée - CDI) (March 2015) | 353,961 | 94 |
| Temporary agency worker (March 2015) | 6,698 | 1.8 |
| of which cross-border workers | 4,560 | 1.2 |
| Apprentices (March 2015) | 3,542 | 0.9 |
| Persons in vocational training – professional capacity certificate (November 2014) | 182 | 0.0 |
| Persons in vocational training – professional capacity diploma (November 2014) | 888 | 0.2 |
| Persons in vocational training – technical and professional certificate (November 2014) | 634 | 0.2 |
| ICT mobile workers (4th semester 2015) | 17,647 | 4.7 |
| Posting, including salaried workers and self-employed (2014) | 21,763 | 5.8 |

Source: Thill, 2016; Pacolet & De Wispelaere, 2015

Compared to other European countries temporary work is a quite limited type of contract in Luxembourg. In 2013 only 8.1% of the 15 to 64 year olds were temporary workers. Nevertheless, Luxembourg is catching up. Over the last 10 years temporary work has risen from 5.3% in 2005 to 11.7% in 2015. The amount of temporary work has thus more than doubled over this time span. As for part-time work Luxembourg has a rather average percentage compared to other European countries (18.5% in 2014). Remarkably for temporary agency work two-thirds (68%) is carried out by cross-border workers. In September 2015 Luxembourg counted 11,000 outgoing posted workers. This is the highest

⁵ See: Clément, F. L'état de l'état-providence au Luxembourg. Revue Belge de Sécurité Sociale. 4^e trimestre 2015, pp.797–817.

number in five years (Chambre des Salariées, 2016, pp.110-115). The incoming number of posted workers is even larger: with some 21,763 postings (including salaried workers as well as self-employed), it is some 5.6% of total employment⁶.

The Luxembourg government has announced in a recent governmental programme the reform of self-employment regulations in which specific attention will be given to their overall rights. In its programme the Luxembourg government also speaks about an action plan to enhance entrepreneurship and make it more attractive. The action plan contains measures to make it easier to set up a small business (a new limited liability company statute and a system of micro-credits) and foresees a better coordination of the support structures for (young) entrepreneurs (*'guichet unique, centres d'accueil et d'innovation'*). This is in line with the European 2020 strategy in which the promotion of entrepreneurship is an important element. Luxembourg sets out a strategy to direct youngsters towards a career as an entrepreneur. Schools and the business world are therefore supposed to work more closely together to exchange experiences more intensively (*'Jonk Entrepreneuren Luxembourg'*).⁷ There are no planned reforms known with regard to bogus self-employment (Thill, 2016; Thill, 2010, p.4, 7).

Luxembourg has taken measures to promote self-employment for those who are unemployed. Those in search of a job receive financial support to set up or take over a company if they can present a realistic business plan. Those aid schemes for self-employment are also open to jobseekers already receiving unemployment benefits for at least six months (or three months for those older than 40 years). This is also the case if they are registered for a minimum of eight months with the National Employment Agency (ADEM) and have already built a professional career in Luxembourg for at least six years. This has turned out to be a highly efficient measure to reduce the unemployment rates (Thill, 2010, pp.6-7).

In Luxembourg, self-employment is considered to be an important driver in entrepreneurship. And both are regarded as fundamental pillars to promote new economic activities, especially in the context of the 2007-2009 post-crisis era (Thill, 2010). Businesses related to crafts, for example, are the biggest job supplier in Luxembourg. Craft businesses provide jobs to approximately 86,000 people. In 2015, 6,890 businesses were registered. The majority of these businesses were small scale (i.e. 5,259 or 76%). Almost half of these small-scale self-employed businesses (2,332 or 44%) had no employees. According to the *'Chambre des Métiers'* (Chambre of Craft Workers) these types of businesses play an important role in fighting unemployment. They create work, even for the less qualified workers.⁸

⁶ See: J. Pacolet & F. De Wispelaere, 2015. In this report Luxembourg is characterized by the highest share of postings in total national employment (8% even when compared to only the employment of nationals).

⁷ See: <http://www.gouvernement.lu/3322796/Programme-gouvernemental.pdf>

⁸ See: <http://www.cdm.lu/artisanat/chiffres-et-statistiques>

2 Description and assessment of social protection provision for self-employed and non-standard contracts

2.1 Description of social protection provisions for self-employed and people employed on non-standard contracts (see also Annex 1)

Luxembourg has a comprehensive system of social security. The legal basis for the social security system is the '*Code de la Sécurité Sociale*'. The Luxembourg social security system applies to all residents and enables them to benefit from insurance coverage for different types of risks. The social security system provides for sickness, maternity and long-term care benefits, occupational injuries and work-related illnesses benefits, invalidity benefits, old age and survivors' benefits, unemployment benefits, early retirement benefits, family benefits and social assistance.

The Luxembourg social security system is divided into different branches which are run by approximately ten independent public institutions ('*caisse*') which are financially autonomous. These institutions are characterised by an equal representation of employers, employees and different groups of the self-employed. Some examples of '*caisse*' are '*Caisse Nationale de Santé*' (the National Health Fund) for the sickness insurance, '*Caisse Nationale d'Assurance Pension*' (the National Pension Insurance Fund) which runs the pension system and '*Association d'Assurance Accident*' (Accident Insurance Association) for the benefits resulting from accidents at work or work-related illnesses.

The conception and statutory supervision in the area of social security is delegated to the '*Inspection Générale de la Sécurité Sociale*' (Inspectorate General of Social Security) under the responsibility of the Ministry of Social Security. People are entitled to challenge any decision of the competent institution with regard to their benefits. For this purpose there exist special courts in Luxembourg which are competent to settle disputes in the field of social security. These are the '*Conseil Supérieure de la Sécurité Sociale*' (High Council of Social Security) and the '*Conseil Arbitrale de la Sécurité Sociale*' (Council of Arbitration of Social Security) (European Commission, 2013).

Employers are responsible for all formalities to register their employees with the social security system. As to the self-employed, they have to register themselves with the '*Centre Commun de la Sécurité Sociale*' – CCSS (Joint Centre of Social Security) in order to benefit from the social security system.

Membership of the Joint Centre of Social Security is compulsory for everybody. The Joint Centre of Social Security is a central body which handles data, the registration of the affiliation of the self-employed and the calculation and collection of the contributions for the different institutions ('*caisse*').⁹

The Luxembourg social security system is financed by means of contributions ('*cotisations sociales*').

For employees the contributions are split in equal portions. Both the employee and the employer pay for these social benefits. This is the case for sickness benefits and pension benefits. The basis on which the contributions are calculated – also referred to as '*assiette de cotisations*' – is the gross professional income taking into account a minimum and maximum contribution. The minimum contribution is based on the social minimum wage ('*le salaire social minimum*'). For a non-qualified worker aged ≥ 18 years the social minimum wage is EUR 1,922.96. The maximum contribution base cannot exceed five times the social minimum wage (EUR 9,614.82).

Long-term care contributions do not take the minimum and maximum into account and need to be paid solely by the employee. Other contributions are paid for by the employer.¹⁰

⁹ See: <http://www.ccss.lu/>

¹⁰ See: <http://www.ccss.lu/salaries/assiette/>

Persons working under a non-standard contract such as paid trainees, ICT mobile workers, seasonal workers, temporary work (*'travail à durée déterminée'*) or part-time work are considered employees and treated likewise.

The self-employed are themselves responsible for the payment of their contributions. This is mandatory. The basis on which the contributions are calculated is the same as for the salaried workers, namely the gross professional income. The minimum and maximum contribution base in place is the same as for employers/employees (one to five times the social minimum wage). For a newly insured person (a first affiliation with the Joint Centre of Social Security) the social minimum wage is used to calculate the contributions. If the self-employed can justify a different income, a request for adjustment of the taxation base can be submitted.¹¹

In accordance with the employees there is no minimum or maximum in place for the contribution rate which has to be paid for the long-term care insurance (1.4%). The following table provides an overview of the contribution rates per social security segment for the salaried workers compared to the self-employed (January 1st 2016). As can be seen in table 4, those contribution rates are identical. The contribution rates remained stable for the last years, with exception of the contribution rate for work-related accidents. Those have been gradually lowered from 1.15% in 2012, 1.10% in 2013 and 1.0% in 2016.

Table 4: Contribution rates for the salaried workers compared to the self-employed, in % (2016)

| Social security segment | Portion paid by the salaried worker | Portion paid by the employer | Total payment by the self-employed | Total per social security segment for the salaried worker |
|--|-------------------------------------|------------------------------|------------------------------------|---|
| Sickness benefits in cash + in kind | 2.80 + 0.25 | 2.80 + 0.25 | 6.10 | 6.10 |
| Pension benefits | 8 | 8 | 16 | 16 |
| Long-term care | 1.40 | None | 1.40 | 1.40 |
| Work-related accidents | None | 1 | 1 | 1 |
| Family benefits | None | 1.70 | 1.70 | 1.70 |
| Health at work | None | 0.11 | None | 0.11 |

Source: Centre Commun de la Sécurité Sociale¹²

Someone who is helping his/her spouse to exercise the self-employed activity up to a level that these activities can be considered as a main activity, is defined as an assisting spouse (*'conjoint aidant'*). They must insure themselves against all risks covered by social security, unless they explicitly ask to be exempted from this obligation. In that case, they are no longer considered to be an assisting spouse, but a salaried worker. When an activity is carried out on an occasional and irregular basis for a predetermined period of time not exceeding three months per year, an exemption for this occasional activity can also be granted. This activity must be the only activity carried out by the self-employed person. The exemption releases the person from sickness and pension insurance contributions. Contributions for work-related accidents remain compulsory.

Contributions that have to be paid by the self-employed for an activity that is carried out in addition to another main activity (i.e. ancillary activity) are calculated based on 1/3rd of the social minimum wage. In the case of an annual income below 1/3rd of the social

¹¹ See: <http://www.guichet.public.lu/entreprises/en/sante-securite/declaration-secu/affiliation/affiliation-independent/index.html>

¹² See: http://www.ccss.lu/fileadmin/file/ccss/PDF/Avis_au_public/AF_201603_99.pdf#pageMode=bookmarks

minimum wage, a request for an exemption for insignificant income offers the option to be released from accident, pension and health insurance contributions.¹³

The following table gives a succinct overview of the organisation of the social security system and who is responsible for the overall contributions.

Table 5: Responsibility for the overall contributions for employed and self-employed persons

| Social security segment | Employees | Self-employed |
|--|--|---------------------------|
| Sickness benefits | Contribution equally divided between employee and employer | Self-employed |
| Pension benefits | Contribution equally divided between employee and employer | Self-employed |
| Long-term care | Employee | Self-employed |
| Work-related accidents | Employer | Self-employed |
| Health at work | Employer | None |
| Employers mutual insurance scheme | Employer | Self-employed (voluntary) |

Source: Centre Commun de la Sécurité Sociale¹⁴

As mentioned in the table above, the self-employed have to pay all contributions themselves. For farmers however, some of the contributions are paid by the government (MISSOC, 2016).

Since January 1st 2009 the Employers Mutual Insurance Scheme (*'Mutualité des Employeurs'*) is operational in Luxembourg. This institution was created by the law of May 13th 2008 and within the framework of the unified statute for employees (*'statut unique'*). The objective of the Employers Mutual Insurance Scheme is to safeguard employers against the financial costs of the general introduction of the compulsory principle of a continued payment of salaries or wages to employees who become disabled at work (*'lohnfortzahlung'*). The obligation applies to all employers and requires them to continue to pay the remuneration of the employee who is unable to work until the end of the month in which the 77th day of disability occurs. This within a reference period of twelve successive calendar months.

Affiliation with the Employers Mutual Insurance Scheme is compulsory for employers whose personnel are covered by the law governing the employment contracts. Public sector employers are exempted from this affiliation requirement in the case of employees benefitting from a continued payment of their wage or income for an unlimited period of time. Employers of domestic personnel in their own private home are also not required to affiliate themselves to the Employers Mutual Insurance Scheme. For the self-employed membership of the Employers Mutual Insurance Scheme is voluntary. Family members who are registered as assistants of the self-employed can also affiliate with the Mutual Insurance Scheme. Membership to the Joint Social Security Centre (CCSS) remains mandatory for everybody as it is the central institution handling all the information concerning the calculation and collection of the contributions for the different insurance schemes (*'caisse'*).

The Employers Mutual Insurance Scheme provides employers a refund of 80% of the cost due to the principle of the continued payment of the wage or income. The benefit is

¹³ See: <http://www.guichet.public.lu/entreprises/en/sante-securite/declaration-secu/affiliation/affiliation-independent/index.html>

¹⁴ See: <http://www.ccss.lu/cotisations/charge/>

calculated by multiplying the basis of the employer's contribution to the national Health Insurance Scheme for the pecuniary health allowance by the ratio between the number of unemployed hours and the number of total hours of work done. Therefore, employers must declare the remuneration every month as well as the number of unemployed hours and the number of hours of work done in the previous month to the Joint Social Security Centre (CCSS). The refund covers amounts paid out by the employer in respect of absences caused by an occupational accident, leave on family grounds, etc. Persons pursuing a profession for their own account are compensated at the rate of 80% of the basis on which contributions are calculated.¹⁵

The financing of the system is based on contributions paid by those affiliated. They are classified into four contribution groups. Each contribution group is characterised by a corresponding contribution rate. There is no difference in contribution rate between the employers and the self-employed. The allocation to one of the four groups is done based on a financial absenteeism rate (*'taux d'absentéisme financier'*). The financial absenteeism is calculated on the basis of the sum of gross remuneration of employees on a pro rata basis, taking into account their absenteeism. The financial absenteeism rate varies between 0.65% in classification type 1 to 2.50% or more in classification type 4. The classifications and corresponding contribution rates for the Employers Mutual Insurance Scheme are shown in the table below.

| Classification type | Contribution rate |
|------------------------------------|-------------------|
| Classification 1: < 0,65 | 0.46 |
| Classification 2: < 1,60 | 1.21 |
| Classification 3: < 2,50 | 1.85 |
| Classification 4: ≥ 2,50 | 2.93 |

Source: Centre Commun de la Sécurité Sociale¹⁶

Besides the existence of mandatory insurance schemes, a number of complementary insurance schemes exist, for instance in healthcare. Everybody can insure themselves extra by means of a complementary insurance. Different (private) insurance companies offer a variety of extra insurances with each their own conditions and benefits¹⁷. No information was found on complementary health schemes to which employers contribute. There also exist different complementary pension insurance schemes. Everybody can voluntarily enter their own personal pension plan. The individual pension savings contract can be agreed with banks or insurance companies. The terms, conditions and contribution rates which have to be paid are determined in the pension contract. An employer or a group of employers can set up an occupational, voluntary pension plan for their employees. There exist different types of plans (pension funds, group insurance, etc.). The self-employed can also set up their own occupational plan. A voluntary occupational plan can take on different forms. It can be defined benefit, defined contribution in nature or a mixture of both. Employer contribution rates of between 2% and 5% of the wage are applicable for a typical defined contribution plan. The contributions employees pay to pension funds and group insurances are voluntary.¹⁸

¹⁵ See: Mutualité des Employeurs, Circular to all employers and future affiliated members, November 12, 2008.

¹⁶ See: http://www.ccss.lu/fileadmin/file/ccss/PDF/Avis_au_public/AF_201603_99.pdf#pageMode=bookmarks

¹⁷ See: <http://www.quichet.public.lu/citoyens/fr/sante-social/affiliation-remboursement/assurance-complementaire/mutuelle/index.html>

¹⁸ See: OECD, 2008. Pension country profile: Luxembourg. (Extract from the OECD private pensions outlook 2008).

2.1.1 Healthcare and sickness: cash benefits and benefits in kind

Healthcare and sickness benefits are available in cash and in kind for salaried workers and the self-employed. It is a compulsory insurance scheme financed by means of contributions and state subsidies. Persons who are only engaged occasionally in a professional activity of which the period of activity does not exceed more than three months per calendar year are exempted from this compulsory scheme. The possibility to subscribe to a voluntary and complementary health insurance does exist for everybody. No qualifying period is required, with the exception of the voluntary insurance where a qualifying period of three months is applicable. The benefits include medical treatment and hospitalisation (e.g. free choice of a doctor, no restrictions on seeing a specialist, etc.), dental care (e.g. dental prosthesis, etc.), reimbursement of pharmaceutical products, hearing-aids, spectacles, travel costs under certain conditions, etc. Healthcare benefits and services are provided for an unlimited period from the onset of the illness. The incapacity for work is certified by a doctor from the third day of the illness. The salaried workers and self-employed are entitled to cash benefits in case of incapacity for work due to sickness or accidents not related to the occupation. In the case of the salaried worker, the employer will continue to pay the salary until the end of the month in which falls the 77th day after ceasing work. Afterwards the '*Caisse Nationale de Santé*' will pay sickness cash benefits ('*indemnité pécuniaire de maladie*'). The cash benefits equal the wage for up to 52 weeks, in a reference period of 104 weeks. The self-employed will only receive benefits in cash from the first day of the month following that in which falls the 77th day of incapacity for work. The self-employed who are voluntarily insured with the '*Mutualité des Employeurs*' receive a compensation from this fund as of the first day of work incapacity. No minimum period of work or insurance is required (European Commission, 2013, pp.8-11; MISSOC, 2016).

2.1.2 Maternity/paternity cash benefits and benefits in kind

Both the salaried workers and self-employed are entitled to maternity/paternity benefits. People working under a non-standard contract such as temporary workers are considered and treated as salaried workers. It is a compulsory social insurance scheme financed by equal contributions paid by the employer (8%) and the employee (8%). The self-employed pay 16% contributions. The state contributes 40%. The same regulations and features are applicable for both the salaried workers and the self-employed. The insurance scheme provides benefits in kind which cover the necessary medical care during pregnancy and childbirth. The midwife and medical assistance, the stay in the maternity hospital, medication and diet nutrition for babies is covered by a lump sum payment. There are no qualifying conditions in place for the benefits in kind. The benefits in cash cover 100% of the wage earned prior to the beginning of the maternity/paternity leave. Half of the benefit is granted during an adoption leave. In order to receive cash maternity benefits, one must have been affiliated for six months in the year proceeding to the birth. All pregnant women workers (either in paid employed or self-employed) are entitled to a maternity leave. A maternity leave is awarded for 16 weeks, from 8 weeks before to 8 weeks after giving birth. A special leave of two days is granted to the father in the case of the birth of his child (MISSOC, 2016).

Since December 1st 2016 a new law is in place concerning parental leave. There are different types of parental leave to choose from. A full-time parental leave can be taken for 4 to 6 months, a part-time parental leave spread over 8 or 12 months, a fractioned leave of 4 months spread over a period of 20 months or one day a week during a maximum period of 20 months. For those working 40 hours a week all the abovementioned options are possible. A full-time or part-time parental leave are the options to choose from when working 20 hours a week or more. A full-time parental leave is the only possibility for those working 10 hours or more and apprentices (<http://www.cae.public.lu/fr/conge-parental/informations-generales/modeles.html#>).

2.1.3 Old-age and survivors' pensions

Both the employed and the self-employed are entitled to an old-age pension. It is a compulsory social insurance scheme financed by contributions paid in equal shares of 8% by the employers and the employees. The self-employed pay 16% contributions. There is also an 8% contribution by the state which brings us to a total contribution rate of 24%. The old-age pension consists of two parts: one part based on the duration of the affiliation (flat-rate) and another part based on contributions (earnings-related). In order to qualify for an old-age pension it is obligatory to have been insured for at least 120 months and have reached the legal retirement age of 65. If this condition is not fulfilled at the age of 65, the contributions paid will be reimbursed (with exception of the contributions paid by the state). The condition to draw a full pension is being insured for 40 years. Each additional year results in an increase in the income-related pension part. In certain circumstances connected with the length of the insurance period, the old-age pension can be awarded earlier, from the age of 57 or 60 (European Commission, 2013, pp.15-16). The pension calculation method consists of flat-rate supplements of EUR 458.05 per month for 40 years of insurance. Income-related supplements of 1.825% of the total earnings are also taken into account. There is an end-of-the-year allowance of EUR 735.40 in the case of a complete career of 40 years. If not, there is a proportional reduction. The calculation of the pensions is based on the professional income. The minimum amount subject to contributions is EUR 1,922.96 per month. The maximum is EUR 9,614.82 per month. No pension can be less than EUR 1,721.28 per month. If the insured did not complete the qualifying period of 40 years, the minimum pension will be reduced by 1/40th for each missing year. No pension will exceed 5/6th of five times the reference amount which is EUR 7,968.91 per month. The same features apply to the salaried workers and the self-employed. The old-age insurance does not cover self-employed activities if the income is below 1/3rd of the social minimum wage. Exemption from the insurance is granted to persons who are only engaged occasionally in a professional activity, when the period of activity is determined in advance. The period of activity should not exceed three months in each calendar year (MISSOC, 2016).

Both the salaried workers and the self-employed are entitled to a survivor's pension under the same general regulations. The survivor's pension is a compulsory social insurance scheme financed by contributions with a participation by the state. In order to receive a survivor's pension, the deceased person must have been affiliated for three years prior to death. No qualifying conditions apply when the death is due to any kind of accident or to an occupational disease occurred during the affiliation. Benefits depend on the pension (flat-rate and earnings-related) of the deceased person. There is an exemption granted for persons who are only engaged occasionally in a professional activity. The period of activity does not exceed three months per calendar year and is determined in advance. Self-employed persons whose income does not exceed 1/3rd of the social minimum wage are not covered by this insurance. Among the beneficiaries are the spouse/legal partner, the divorced spouse (if not remarried), legitimate, adopted or natural children and other persons treated as widows/widowers (parents and direct relatives). (MISSOC, 2016).

2.1.4 Unemployment benefits and social assistance benefits¹⁹

People working in Luxembourg are covered against the risk of being unemployed. The unemployment allowance scheme is financed by a fund created by the state. The benefits are related to the remuneration previously earned. The scheme is applicable for salaried workers, young persons who are unemployed after their studies and for the self-employed. There is no waiting period applicable. But there are a number of conditions which have to be met: one must be involuntarily unemployed, one must be registered as a jobseeker, one must be fit and available to work, one must accept a suitable employment and one has to be resident in Luxembourg when the redundancy occurred. A qualifying period of at least 26 weeks of employment during the previous year is applicable. For the self-employed

¹⁹ It might have been better if social assistance benefits was a separate heading.

unemployment benefits can be obtained when the self-employed has to cease his occupation in the event of a '*force majeure*'²⁰, economic, financial difficulties or medical reasons. Therefore the self-employed has to register as a jobseeker within six months after ending the occupation. The self-employed must have completed at least two years of compulsory pension insurance as a self-employed person. However for the purpose of calculating the two year qualifying period, periods of insurance completed as an employed person can be aggregated, provided the person has carried out activities as a self-employed person for at least six months before the submission of the request for compensation. The unemployment benefit consists of 80% of the income which the pension fund used as a calculation basis for the contributions for the last activity. This is the same for the employees and can be increased to 85% when the person has one or more dependent children (family supplements). Benefits are paid for a maximum period of 365 days during a reference period of 24 months and 182 extra days are in place for those 'difficult to place'. The duration of the benefits is prolonged for jobseekers over 50 years. The granting of the benefits is prolonged with 12, 9 or 6 months extra, depending on the number of years of affiliation (respectively 30, 25, 20 years). There is a maximum for unemployment benefits which corresponds with the maximum within the general system. The unemployment benefits cannot exceed an amount equal to two and a half times the statutory minimum wage. The resulting income is deducted from the unemployment benefit for those people carrying out occasional work while being unemployed (European Commission, 2013, pp.23-24; MISSOC, 2016).

The guaranteed minimum income ('*revenue minimum garanti*') is a universal right. It is a means to fight social exclusion. The guaranteed minimum income consists of an integration allowance ('*indemnité d'insertion*') or a supplementary allowance ('*indemnité complémentaire*'). The guaranteed minimum income is paid each month for as long as the situation of need lasts and the entitlement conditions are met. The guaranteed minimum income is granted when the person has not willingly abandoned his work without a valid justification or has been dismissed for a serious reason. To be entitled to the integration allowance an integration contract needs to be signed stating the person will take part in an integration activity. Participation in vocational integration activities is obligatory. Integration activities can be work of public utility or a traineeship in an undertaking. If the person is unwilling to meet these requirements, the allowance can be withdrawn (MISSOC, 2016).

2.1.5 Long-term care benefits

Long-term care is a special social insurance scheme providing benefits to all persons recognised as being dependent, regardless of their age, income or residence. It is financed by social contributions, by a state contribution and by a contribution paid by the energy sector. The contribution by the energy sector is the result of a special taxation of the large consumers (yearly consumption of more than one million kWh). The system is designed to meet the costs of assistance and care to dependent persons. As stated in the legislation, dependency refers to the condition of a person who, following a mental, physical or psychiatric illness or deficiency of a similar nature, regularly needs a considerable amount of assistance from a third party to carry out basic daily activities (personal hygiene, mobility, nutrition). Benefits are provided to all those covered by the sickness insurance. There is no qualifying period or age limit applicable. But there needs to be a minimum level of dependency. Benefits are granted under the condition that the dependent person is in need of at least 3.5 hours of assistance or care a week and when the dependent condition is likely to last longer than six months or is irreversible. The evaluation of the dependency is done based on fixed indicators and categories of need. The evaluation is performed by a doctor or a health professional. Benefits are in kind (home care, semi-residential or residential care) and in cash (the costs of interventions by professionals are reimbursed).

²⁰ The country of residence is competent for paying the unemployment benefit for frontier workers who have become redundant, but the Luxembourg unemployment insurance needs to reimburse these benefits for three to five months.

It is possible to partly convert benefits in kind into benefits in cash as a financial recognition of the informal caregivers. There are no special regulations or features for the self-employed in place compared to the general system for the salaried workers. The benefits are reviewed regularly in order to adapt the care plan to the needs of the dependent person (MISSOC, 2016).

2.1.6 Invalidity, accidents at work and occupational injuries benefits

Invalidity is a compulsory social insurance scheme financed by contributions and a participation by the state. People are entitled to invalidity benefits if they are in paid employment or self-employed. The insured person who, as a result of a disability or prolonged sickness has lost his working capacity to carry on his occupation or any other occupation suited to his abilities, is covered by the invalidity insurance scheme. There is a qualifying period of 12 months of insurance in the three years prior to the invalidity applicable. If the invalidity is caused by an accident or an occupational disease which occurred during the affiliation, no qualifying period applies. No minimum level of incapacity for work is at place. The invalidity benefit is withdrawn when there's no permanent incapacity anymore. The regulations and features of the general system are the same for the salaried worker as for the self-employed. The benefits are dependent on the duration of the affiliation (flat-rate) and on contributions (earnings-related). Persons who are only engaged occasionally in a professional activity, with the period of activity determined in advance and not more than three months in a calendar year, are exempted from this compulsory insurance. The insurance does not cover self-employed persons whose income does not exceed one-third of the social minimum wage (MISSOC, 2016).

Accidents at work and occupational injuries is a compulsory insurance scheme. Both employees and self-employed are covered by this insurance scheme. But also those in a vocational training or those attending a programme for their integration or reintegration. There are no exemptions from this insurance. It consists of benefits in kind and in cash related to the severity of the injury suffered and to the loss of earnings. It covers for accidents at work, travel between home and work and occupational diseases. The insurance covers a free-of-charge healthcare under the sickness insurance and free-of-charge benefits in kind under long-term care insurance. There is no waiting period applicable. (European Commission, 2013, pp.17-19; MISSOC, 2016).

2.1.7 Family benefits

The '*Caisse pour l'avenir des enfants*' – CAE (the Future Fund) manages all family benefits. There are no special regulations or features applicable for the self-employed and non-standard workers compared to the salaried workers in order to benefit from the system. Family benefits consist of a general child benefit. But also other allowances and benefits such as a birth grant, an allowance for children going back to school, special supplementary allocations for disabled children and a parental leave benefit (European Commission, 2013, pp.20-21; MISSOC, 2016).

The general child benefit (*'allocation pour l'avenir de l'enfant'*) is a universal tax financed scheme. The monthly benefit is EUR 265 per child. The allowance is the personal right of the child. It is applicable to all children brought up in Luxembourg and who have a legal residence there. In order to receive the allowance, these conditions have to be met on the first day of each month. With the exception of the month in which the child is born. For cross-border workers and interim workers the conditions have to be fulfilled half the month plus one day. The normal age limit for receiving the allowance is 18 years. The age limit is 25 years for those who pursue a secondary education, a secondary technical education on their own account or an internship. The same goes for those following a special educational programme. The amount of the benefit varies depending on the family group and increases with the age of the child. It increases with EUR 20 for each child older than six years and EUR 50 for children older than twelve years. There are no special regulations or features applicable for the self-employed and non-standard workers compared to the salaried

workers. Normal family benefits are also applicable for those being unemployed, pensioners and orphans. The birth grant is EUR 1,740.09 and is allocated to the mother in three equal parts before, during and after childbirth. As a granting condition, mother and child have to undergo a series of medical examinations. The back to school allowance is EUR 115 for a child of six years and older. For children aged twelve years or older, the allowance is EUR 235. The allowance is paid each year. A special supplementary allocation is provided for disabled children (a reduced physical or mental capacity of at least 50% compared to a child of the same age). The allocation is EUR 220 monthly and is added to the general child benefit (<http://www.cae.public.lu/fr/allocations.html>).

2.2 Assessment of the existing social provisions and of the impact of possible extension of their coverage

Since 2000 the Luxembourg social security system is characterised by a positive balance between revenues and expenditures. In 2014 the social security revenues accounted for EUR 13,004.4 million. This is an increase in revenues with 10.5% in comparison to 2013. For 2014 the global balance of the social security system represented 3.7% of GDP.

Table 7: Social security balance, in million EUR (2013-2014)

| Year | Revenues | Expenditures | End balance |
|------|----------|--------------|-------------|
| 2013 | 11,768.2 | 10,749.2 | 1,019.0 |
| 2014 | 13,004.4 | 11,204.7 | 1,799.7 |

Source: *Ministère de la Sécurité Sociale*²¹

No information was found on the financial implications of an extension of the social security coverage, the possible consequences on the labour market and the scope for the development of individual social security accounts. No studies have been done on this matter. Neither are there any political debates going on concerning these issues. But looking at the information presented in section 2.1 this might not be surprising. The self-employed pay the same contribution rates and benefit from the social insurance schemes, mostly under the same regulations as the salaried workers. The Luxembourg social security system is already a very integrated system. Thus there is no need for further initiatives to expand it. The increase in self-employment requires a good legal framework which allows for the flexibility which characterises self-employment. Self-employment is designed as a flexible form of employment with a large degree of independence. But at the same time, the self-employed benefit from a legal framework that confers more or less identical rights as those of employees. Nevertheless, the perception remains that differences still exist. Although both self-employed and employees are affiliated with the Joint Centre of Social Security, the self-employed need to pay their own social contributions whilst this is partly done by the employer for employees (Thill, 2010, pp.4-6,9). This, in fact, is actually not a real difference as it covers the essence of being self-employed. A self-employed person is his own employer and employee.

Luxembourg aims to provide self-employed workers with the same rights and entitlements as those already enjoyed by employees. This is e.g. the case for the conditions under which the self-employed can now participate in training courses. Since the law of February 17th 2009, self-employed persons receive a compensation from the government for training days. The self-employed can apply for an individual training leave if they are affiliated for a minimum of two years with the social security system. (Thill, 2010, pp.7-9).

²¹ See: http://www.mss.public.lu/publications/rapport_general/rg2015/rg_2015.pdf

3 Conclusions and recommendations

Luxembourg has a comprehensive and financially stable social security system. Both employees and self-employed persons benefit from it on a largely similar basis. Only minor differences still exist. For instance, the voluntary affiliation with the employers' mutual insurance (*'Mutualité des Employeurs'*) and the conditions which have to be met in order to benefit from insurance coverage (e.g. an income above 1/3rd of the minimum wage). More and more attention is given to eliminating these differences and working towards the same social rights for the self-employed. These 'social' rights need to be interpreted more broadly than social security rights. Continuous efforts are made to provide them with the same rights such as conditions under which participation in additional training is made possible. These efforts are driven by the close link between self-employment and entrepreneurship. The Luxembourg government promotes both. It is seen as a booster of economic life, new income avenues and higher employment rates. The subsequent National Reform Programmes and the 2009-2013 Government Programme promote entrepreneurship. In Luxembourg the debate is dominated by aspects of economic competitiveness, but the social dimension has gradually become more at the forefront (Thill, 2010).

The increase in self-employment rates and the strong focus of the Luxembourg government on self-employment in combination with entrepreneurship has led to a greater awareness of the importance of a good legal basis to further boost self-employment, in order to make the self-employed less vulnerable and less exposed to the volatilities of the market. Nevertheless, it is striking that self-employment remains rather an unexplored and understudied domain in public and private assessments.

The financial implications of an extension of the social security system, the consequences for the labour market and the scope for the development of individual social security accounts is also insufficiently studied. No information was found on this matter. It also seems it has not caught political attention. But as section 2.1 shows, Luxembourg already has a very integrated social security system. There seems to be no need to expand or further harmonise it.

Bogus self-employment (*'faux indépendants'*) and self-employed employees (*'salariés auto-employeurs'*) do exist in Luxembourg. Although several authors mention these phenomena, they are not yet studied properly. Because of a lack of information on this matter it is not possible to assess the size of these phenomena. But nevertheless their social security coverage, cost and entitlements, should be similar if not identical, and therefore less problematic. Other forms of non-standard contracts seem to be less present, with the exception of one major characteristic of the Luxembourg labour market: the cross-border workers. The Luxembourg labour market is characterised by a large amount of cross-border workers and posted workers. **For Luxembourg, cross-border work and posting are typical atypical forms of work.** These types of work tend to be forgotten, but in Luxembourg they are too dominant to be left out. That's why we choose to include them in this report (see section 2.1). As they have become an important part of the Luxembourg labour market, the cross-border workers are also given a voice in national labour market institutions showing a higher degree of integration and normalisation of even 'non-standard' workers.

Non-standard contracts such as part-time work and temporary work are increasing. While in total employment, the share of cross-border workers is some 45% it is **remarkable that the share of cross-border workers who are employed by temporary agency contracts is even 68%. Or how atypical a non-standard or atypical contract can be.** More people from abroad than residents are working under this more vulnerable type of contract.

A first essential step in providing for a good social protection for 'new' and atypical forms of employment is to define them properly and embed them in a legal context, striving at equal rights for all workers.

The report highlights the social protection and entitlements of independent workers or workers in non-standard contracts. Specific attention is given to their protection and entitlements. A missing dimension in this overview might be that all kind of exemptions of contributions and taxes for certain categories of workers could erode the financing base of this social protection, maintaining the entitlements to social protection, or even worse, erode also those entitlements. A first impression of the provided information is that this danger seems not to be the case in the sense that the total balance between contributions and expenditures is maintained. Perhaps also because all kind of exemptions are less used.

Annex 1

Table A1.1 Summary table access social protection: self-employed

| | On her/his own account | With employees (self-employed employer) | Dependent on single client | Dependent on contractual relationship with client | Liberal professions (e.g. doctor, notary, lawyer) |
|---|------------------------|---|----------------------------|---|---|
| Healthcare - cash benefits and benefits in kind | Full | Full | Full | Full | Full |
| Sickness - cash benefits and benefits in kind | Partial | Partial | Partial | Partial | Partial |
| Maternity/paternity - cash benefits and benefits in kind | Full | Full | Full | Full | Full |
| Old age pensions (preretirement benefits and pensions) | Full | Full | Full | Full | Full |
| Survivors pensions and death grants | Full | Full | Full | Full | Full |
| Unemployment benefits | Full | Full | Full | Full | Full |
| Social assistance benefits | Full | Full | Full | Full | Full |
| Long-term care benefits | Full | Full | Full | Full | Full |
| Invalidity benefits | Full | Full | Full | Full | Full |
| Accidents at work and occupational injuries benefits | Full | Full | Full | Full | Full |
| Family benefits | Full | Full | Full | Full | Full |

Table A1.2 Summary table access social protection: contractual employment and non-standard contracts

| | Full-time employee | Part-time employee | Fixed-term employee | Temporary agency worker | Casual and seasonal workers | On-call workers | Zero-hour workers | Apprentices | Paid trainees | (Other) persons in vocational/professional training | ICT mobile worker | incoming cross-border worker | incoming posted workers |
|---|--------------------|--------------------|---------------------|-------------------------|-----------------------------|-----------------|-------------------|-------------|---------------|---|-------------------|------------------------------|-------------------------|
| Healthcare - cash benefits and benefits in kind | full | full | full | full | full | non-existent | non-existent | | full | | full | full | none |
| Sickness - cash benefits and benefits in kind | full | full | full | full | full | non-existent | non-existent | | full | | full | full | none |
| Maternity/paternity - cash benefits and benefits in kind | full | full | full | full | full | non-existent | non-existent | | full | | full | full | none |
| Old age pensions (preretirement benefits and pensions) | full | full | full | full | full | non-existent | non-existent | | full | | full | full | none |
| Survivors pensions and death grants | full | full | full | full | full | non-existent | non-existent | | full | | full | full | none |
| Unemployment benefits | full | full | full | full | full | non-existent | non-existent | | full | | full | full | none |
| Social assistance benefits | full | full | full | full | full | non-existent | non-existent | | full | | full | full | none |
| Long-term care benefits | full | full | full | full | full | non-existent | non-existent | | full | | full | full | none |
| Invalidity benefits | full | full | full | full | full | non-existent | non-existent | | full | | full | full | none |
| Accidents at work and occupational injuries benefits | full | full | full | full | full | non-existent | non-existent | | full | | full | full | none |
| Family benefits | full | full | full | full | full | non-existent | non-existent | | full | | full | full | none |

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European Foundation for the Improvement of Living and Working Conditions:
<http://www.eurofound.europa.eu/>

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Fédération Luxembourgeoise de travailleurs intellectuels Indépendents:
<http://www.fti.lu/index.php>

Guichet Unique: <http://www.guichet.public.lu/>

Centre Commun de la Sécurité Sociale: <http://www.ccss.lu/>

Le ministère de la Sécurité Sociale: <http://www.mss.public.lu/>

Le portail des statistiques du Grand-Duché de Luxembourg:
<http://www.statistiques.public.lu/>

Mutualité des Employeurs: <http://www.mde.lu/>

Zukunftskeess: <http://www.cae.public.lu/fr.html>

Legal texts

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