THE GOVERNMENT
OF THE GRAND DUCHY OF LUXEMBOURG
Ministry of Social Security

Luxembourg's plan for the implementation of the principles set out in the Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01)

Ministry of Social Security

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1) GENERAL DESCRIPTION OF LUXEMBOURG'S SOCIAL SECURITY SYSTEM

Social security is a competence shared between the EU and its Member States, in the sense that social security systems are primarily organised by each country's national legislation and that, on a subsidiary basis, the EU ensures that all the different national schemes are coordinated under the guarantee of the fundamental principles and freedoms of European Union law. In the area of social security, the aim of EU legislation is not to harmonise the various national social security schemes, i.e. to replace them with a single EU-wide system, but merely to coordinate them. Nevertheless, the Treaty on the Functioning of the EU (TFEU) gives the European legislator the option of introducing measures to modernise social protection systems, in certain circumstances.

Launched in 2000 at the Lisbon European Council and inspired by the European Employment Strategy, the Open Method of Coordination for Social Protection and Social Inclusion (Social OMC) is a key instrument designed to promote the upward convergence of Member States' social policies. With that goal in mind, Luxembourg has supported all of the horizontal objectives of the Social OMC and the Proclamation on the European Pillar of Social Rights (2017/C 428/09) (EPSR). Luxembourg fully supports all the initiatives under the EPSR Action Plan.

Social security is one of the cornerstones of Luxembourg society. Since its introduction in Luxembourg in 1901 to protect mine-workers from the risk of disease, it has experienced a rapid, continuous transformation into what is now a relatively vast and complex system. And while the scope of Luxembourg's social security law is indeed complex, it is also very well thought out. Luxembourg's social security system is regulated by law and as such it is also protected by law.

It is therefore up to the legislature to determine the essential aspects of this sphere of public law in such a way that ensures that it is objective and egalitarian. Based on the principle of solidarity, it is the State – exercising its sovereignty – that ensures equal access to high-quality, useful and necessary services for the country's population. In Luxembourg, social security is organised centrally by the State in the form of a public scheme that operates with public funds.

Compulsory insurance gives the insured person a certain degree of security should a social security risk materialise. This security is based on professional solidarity, or what could even be described as national solidarity. The social security risks covered under the Social Security Code are those related to sickness, maternity, old age, disability, workplace accidents, long-term care and family-related expenses. The Luxembourg legislature has established a legal framework determining the scope and purpose of the insurance as well as how it is financed, managed and organised.

Social security is organised in branches, with each branch allocated to the social security institutions responsible for managing the various social security risks mentioned above.

In accordance with Article 396 of the Social Security Code, there are currently ten social security institutions:

- the *Caisse nationale de santé* (CNS, National Health Fund)
- the three health insurance funds for the public sector
- the *Mutualité des employeurs* (Employers' Mutual Insurance Scheme)
- the *Association d'assurance accident* (AAA, Accident Insurance Association)
- the *Caisse nationale d'assurance pension* (CNAP, National Pension Insurance Fund),
- the *Fonds de compensation* (FDC, Compensation Fund)
- the *Caisse pour l'avenir des enfants* (CAE, Children's Future Fund)
- the *Centre commun de la sécurité sociale* (CCSS, Joint Social Security Centre).

These institutions answer to the Minister responsible for social security, with the exception of the Children's Future Fund, which comes under the Minister responsible for family affairs.

Four different national bodies manage the different social security risks.

The **National Health Fund** is responsible for managing social security insurance related to sickness and maternity, except where the health insurance funds for the public sector provide the necessary cover. It is also in charge of managing long-term care insurance. The three health insurance funds for the public sector retained residual powers when the National Health Fund was created. They are the *Caisse de maladie des fonctionnaires et employés publics* (Health Insurance Fund for Civil Servants and Public Employees), the *Caisse de maladie des fonctionnaires et employés communaux* (Health Insurance Fund for Communal Civil Servants and Employees) and *Entraide médicale de la société nationale des chemins de fer luxembourgeois* (Health Insurance Fund for the Luxembourg Rail Company). They mainly reimburse health care costs billed to and paid by insured persons.

The **Accident Insurance Association** manages accident insurance, which covers both workplace accidents and occupational diseases.

The **National Pension Insurance Fund** manages pension insurance, which covers the risks linked to old age and disability. The purpose of the Compensation Fund is to manage the compensation reserve of the general pension scheme, with a view to ensuring its sustainability.

The **Children's Future Fund** manages family benefits, which are intended to help cover the costs associated with raising children.

Alongside these four national bodies, the **Employers' Mutual Insurance Scheme** insures employers against wage costs arising from the legal obligation to continue paying their employees when they are off work due to sickness or following an accident. It also covers the allowance due to self-employed workers affiliated to the scheme during the period of suspension of the sickness benefit payment.

The **Joint Social Security Centre** is responsible for registering affiliations, for calculating, collecting and recovering contributions and for processing data. It does this for all of the social security institutions.

The two main sources of financing for the compulsory social security schemes are the contributions paid by those insured and by employers and those allocated by the State.

Contributions paid by those insured and, where applicable, by their employers are the traditional source of funding for social insurance schemes. They are calculated solely on the basis of work-related income, using the same rates for everyone, regardless of the person's individual situation (age, gender, family status, health), but specific to the risks insured.

Contributions-based funding makes it possible to cover benefits which constitute income replacement (for example pensions, annuities, sickness benefit payments), where the amount is proportionate to the income lost. This means that the contributions are the link between the income insured and the benefits paid out.

State contributions may take various forms, such as for example direct payment of certain benefits, a flat-rate contribution, or ex-post coverage of current expenditure or reserve deficit. These State contributions are mainly covered by taxes.

2) FORMAL AND EFFECTIVE COVERAGE

In Luxembourg, coverage of the entire working population was achieved by gradually subjecting the various economic sectors to compulsory insurance, as a result of which social security provides protection against the various risks to the entire working population, regardless of their employment status.

Indeed, all work carried out in Luxembourg gives rise to compulsory affiliation to the general social security scheme. Employees and self-employed workers cannot choose whether or not to be insured – they must be affiliated with the competent insurance bodies and for all the different risks.

Compulsory affiliation does not apply only to persons working in Luxembourg but also to those receiving income replacement and workers carrying out their work outside of Luxembourg, e.g. employees temporarily posted abroad by their employer, seafarers on a vessel flying the Luxembourg flag, young people working abroad in lieu of military service, youth volunteers or embassy staff.

The affiliation of individuals and employers in respect of all social security risks is centralised by the Joint Social Security Centre. Employers carry out the necessary affiliation formalities for their employees. Self-employed workers must register themselves.

Self-employed workers who only occasionally carry out one-off work assignments that they know in advance will take less than three calendar months per calendar year may apply to be exempted from the payment of sickness/maternity and pension contributions. Even if the occasional work can be exempted from compulsory sickness/maternity and pension insurance, it must nevertheless be declared to the Joint Social Security Centre and accident insurance contributions must still be paid.

For individuals who declare a person whom they employ in a private capacity, for example for house cleaning, childminding or providing home help for health reasons, the procedure for declaring employees is more straight-forward.

The principle of compulsory insurance guarantees equal and inclusive access to sickness/maternity benefits. Basic **universal healthcare coverage** makes it possible to offer basic healthcare via affiliation to the health insurance fund to all vulnerable members of society who usually live in Luxembourg and who are not subject to compulsory affiliation or do not have the means to join the scheme on a voluntary basis and cannot benefit from the support of a social welfare office. Contributions in respect of voluntary affiliation to the health insurance fund are paid from the State budget, as are any personal contributions that the vulnerable person is unable to pay owing to a lack of financial means.

For example, vulnerable people without financial means who are not eligible for financial support may have access to the health insurance benefits provided for in the Social Security Code.

This universal healthcare coverage is in line with Principle 16 of the EPSR, which states that '*Everyone has the right to timely access to affordable, preventive and curative health care of good quality*'. It also meets the United Nations Sustainable Development Goals (Agenda 2030) and more specifically SDG 3.8: '*Achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all.*'

The introduction of psychotherapy coverage as of 1 February 2023 is part of the extension of treatment reimbursed by Luxembourg's health insurance in order to ensure that mental health is also covered.

Lastly, as regards long-term care insurance, the Luxembourg system complies fully with the guidelines of the Council Recommendation on access to affordable high-quality long-term care

(2022/C 476/01).

Following a declaration by the dependent person, the long-term care insurance may, under certain conditions, cover the informal caregiver's pension insurance contributions (the employer's share and the insured person's share). The contribution is calculated on the basis of the monthly minimum wage for an unskilled worker.

3) ADEQUACY

Under the social security scheme set up by the Luxembourg State to mitigate the financial consequences should a person be affected by any of the insured risks, coverage is provided in the form of benefits-in-kind and benefits-in-cash.

The benefits-in-kind take the form of direct payment or reimbursement of services or assistance provided to insured persons. For example, this might involve the payment of healthcare costs covered by sickness or maternity insurance or the payment of the cost of assistance and care provided by home help networks to beneficiaries of long-term care insurance.

Benefits-in-cash are financial allowances paid to beneficiaries on a regular basis. It is important to distinguish between three categories of benefits-in-cash, namely income replacement, complementary benefits and compensation.

Income replacement is provided to compensate for the loss of income which the beneficiary would usually receive in return for his or her work. For example, this could be a cash allowance paid to an employee who no longer receives his or her salary owing to illness or following an accident.

Complementary benefits compensate for an additional financial expense which may arise when the insured person has a child or requires regular assistance with carrying out essential everyday activities. It could, for example, take the form of a family allowance. Compensation is paid in the event of an accident at work or an occupational disease. It is awarded in proportion to the damage suffered.

The components of the insured person's work-related income are used as the basis for calculating the contributions for the different social security branches, taking into account the minimum and maximum amounts in respect of which contributions can be calculated.

The monthly contribution basis may not be lower than the basic minimum wage for an unskilled worker aged at least 18, except for apprentices, where the contribution is calculated on the basis of the apprenticeship allowance.

In the case of part-time employment, the minimum amount subject to contributions is reduced in proportion to the part-time hours worked, with 173 hours per month being the benchmark for full-time employment.

For work carried out in the service of an employer, the annual contribution basis may not exceed five times the basic monthly minimum wage calculated over twelve months for an unskilled worker aged at least 18.

If the total contribution basis of an insured person exceeds the contribution ceiling owing to the accumulation of several activities or benefits, the insured person may request a refund of the share of contributions for health insurance and pension insurance corresponding to the difference due to him or her.

The basis used to calculate the long-term care contribution levied on work-related income is the same as that used to calculate the health insurance contribution. However, it should be pointed out that for this contribution the basis is not increased to the minimum amount (equivalent to the minimum wage), nor reduced to the maximum amount (five times the minimum wage). The basis is lowered by a reduction corresponding to one quarter of the minimum wage for an unskilled worker aged at least 18. The reduction is calculated pro-rata on the basis of the number of hours declared compared with the benchmark figure of 173 hours, if the number of hours worked in the service of the employer is less than 150 hours per calendar month.

The contribution basis is subject to a minimum (the minimum wage) and a maximum (five times the minimum wage) for health, pension and accident insurance. The long-term care contribution basis has no minimum or maximum.

Self-employed workers pay their own social security contributions. They must make contributions in respect of health/maternity, pension, accident and long-term care insurance. They may choose whether or not to join the Employers' Mutual Insurance Scheme.

In general, when it comes to social protection it is worth noting that Luxembourg is one of the highest-ranking Member States in terms of the adequacy of social security benefits.

Indeed, the impact of social security benefits (including pensions) on reducing poverty among those aged 65 and over is higher than the EU average, and is trending very much in the right direction.

In addition, both the overall replacement rate as regards pensions (excluding other social security benefits) and the median relative income of those aged 65+ are well above the EU average and are rising significantly.

4) TRANSPARENCY

The different social security institutions are public establishments with legal personality. Legal doctrine defines public establishments as 'legal persons governed by public law and entrusted by law to manage certain public services in order to meet the specific needs of the population, under the supervision of, but separate from, the State or the municipalities, in application of the principle of the decentralisation of services'. As a reflection of its autonomy, each institution has assets which alone guarantee its commitments and deposits its assets with financial institutions. It draws up an annual budget separate from the State budget and a statement at the end of the management period.

The social security institutions are managed by management boards composed of elected representatives of employers, employees and self-employed workers. The State is represented within these boards by a State official, acting as chairperson, appointed by the Grand Duke following a proposal from the Government. The chairperson has the casting vote where the vote is tied. Board members are appointed by the various professional chambers on the basis of the results of elections for these chambers, except in the case of the Children's Future Fund, where the Minister responsible for family affairs appoints the board members.

In accordance with ordinary law, board members of the social security institutions are responsible for executing their mandate and liable for any mismanagement.

The chairpersons of the social security institutions represent those institutions judicially and extrajudicially, including in respect of court cases and judicial documents for which a special power of attorney is required by law.

Actions taken by the chairpersons and management boards within the limits of their powers are binding on the social security institutions.

With a view to continuously improving governance within the social security institutions, their management boards must draw up three-year plans setting out the strategic targets to be achieved in line with their responsibilities.

They are required by law to adopt action plans setting out the priorities and the action to be taken in order to reach those targets and to manage the associated risks. This three-year plan must be sent to the General Inspectorate of Social Security and updated annually.

The management boards of the social security institutions must also establish the governance rules to be applied in the performance of their duties and in dealings with stakeholders; those rules must clearly set out the policies on internal and external communication, security and combating abuse and fraud.

While the management boards are responsible for the general management of the social security institutions, their chairpersons are responsible for their day-to-day management. In managing the institutions, the chairpersons are assisted by State officials. It is up to the chairpersons to decide how coordination of their institution’s work is to be structured. They must describe the institution’s departments and posts by drawing up an organisation chart and they must decide who should be assigned to the posts created. They are required to set up an internal department responsible for drawing up an annual report evaluating the implementation of the three-year plan, using specific indicators to measure the results obtained in comparison with the targets set. Each year they must submit their annual report to the General Inspectorate of Social Security, which will assess how the social security institutions are being managed.

The Employers’ Mutual Insurance Scheme and the Compensation Fund, which have few or no staff, are organised somewhat differently. A three-year plan does not need to be drawn up for the Employers’ Mutual Insurance Scheme, seeing as it is a reinsurance scheme for employers to protect against wage costs and its activities are closely linked to the services of the National

Health Fund and the Joint Centre for Social Security. Instead of a three-year plan, the management board of the Compensation Fund establishes directives concerning the principles and rules of asset management, including an investment strategy.

Any request by an insured party in relation to a benefit payable by this Fund is decided upon by the chairperson or his or her deputy. The decision is deemed final unless the party in question expresses their objection in writing within 40 days of being notified of the decision. The objection has no suspensive effect and is dealt with by the management board.

In a State governed by the rule of law, anyone who considers that they have been wronged has the right to apply to the courts to review their case. There are usually three possible steps, namely: going before a court of first instance, appealing before a court of appeal and appealing on a point of law.
The process is the same for matters relating to social security. Those claiming benefits have the right to take legal action in the event that they are denied benefits or if they wish to challenge the quality or amount of benefits. The means of redress can vary from one country to another. In some countries, the ordinary courts have jurisdiction. Other countries have established special social security courts or such matters fall within the jurisdiction of the labour courts. Social security courts are often composed of a presiding judge and two or more assessors selected from lists drawn up by workers' and employers' organisations.
This is the path that was chosen by the Luxembourg legislature. Courts specialised in social security were created at the end of the Second World War and were enshrined in the Constitution by the Law of 19 June 1989. Article 94 of the Constitution therefore provides that the law governs the organisation 'of courts specialised in social insurance, their duties, the manner in which their members are appointed and the duration of members' term of office'.

The Social Security Arbitration Tribunal (*Conseil arbitral de la sécurité sociale*, CASS) is the court of first instance for all social security disputes that may arise between those insured and the social security bodies. Appeals against judgments of the Arbitration Tribunal are decided by the High Council of Social Security (*Conseil supérieur de la sécurité sociale*, CSSS). Both these courts also have jurisdiction for certain disputes with healthcare providers. Appeals on a point of law are brought before the Court of Cassation. The Arbitration Tribunal and the High Council of Social Security are entirely funded from the State budget.

The use of digital technologies has been growing exponentially for many years now, with technology creeping into more and more areas of our private and professional lives. As a result of this, it has become a vehicle for integration. When designing services, the public authorities must ensure that they can be made available online and that they are inclusive so that everyone can reap the full benefits of digital technology.

Technology should not be an artificial barrier for one or more groups of people, either because of where they live, their abilities, their disabilities, their age or even whether or not they have access to the tools needed to consult public services online.
The Government has adopted principles concerning the implementation of effective digital administration and has thus established the basic principles to ensure the availability of reliable, secure, efficient and rapid online services.

Formalities are therefore rendered less complex, because certain steps that were necessary when everything was carried out on paper are now obsolete in the online procedure. Formalities can be carried out more quickly electronically because the online forms are automatically filled in with the information already available and considerably fewer supporting documents are required. This saves time for users, but also improves the quality of data held by the State.

In recent years, considerable effort has been put into developing online procedures that adhere to these principles. However, very often, the procedures have been analysed and implemented in isolation by each authority.

These initiatives are to be viewed together with the Government's determination to improve its interactions with insured persons. Appropriate means will therefore be established to continue to improve how the social security authorities and institutions operate and to expand the services available to those insured and to service providers. More specifically, in recent years the Social Security Arbitration Tribunal – as the court with jurisdiction for social security, labour and family benefits – has seen its caseload soar owing to the increase in the number and complexity of cases. In an effort to address this problem and to revert to more acceptable time frames for issuing judgments, steps have been taken to provide the Arbitration Tribunal with additional resources. In addition, procedures are being analysed to see if there is scope to optimise and digitise them.

5) EVALUATION OF MEASURES IN RESPECT OF THE PRINCIPLES SET OUT IN THE RECOMMENDATION

In addition to a review of the measures in place in Luxembourg as regards multilateral surveillance tools in accordance with the European Semester and the Social OMC, on the basis of Article 22 of the Universal Declaration of Human Rights ('Everyone, as a member of society, has the right to social security') and principle 12 of the EPSR ('Regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection'), and taking advantage of the work of the United Nations Human Rights Council, Luxembourg is hosting a European technical seminar from 8 to 9 June 2023 focused on the topical priorities of the ISSA 2023-2025 triennium. Organised in collaboration with the International Social Security Association (ISSA) European Network (IEN) and with the support of the Luxembourg Association of Social Security Agencies (ALOSS), the Ministry of Social Security and the Permanent Representation of Luxembourg to the United Nations Office, the World Trade Organization and other international organisations in Geneva, this technical seminar will deal with human rights, ensuring access and combating the non-take-up of social benefits.

As things stand, despite full or almost full social security coverage in almost all European countries, issues surrounding access to social security rights and the non-take-up of benefits continue to pose significant challenges. Ensuring full and universal access to rights remains a key challenge for social security institutions.

The seminar will focus on three areas: human rights, ensuring access to social security rights and combating the non-take-up of social security benefits. After providing an overview of the fundamental importance of social security as a human right and painting a picture of the main challenges facing our societies in terms of non-take-up and access to rights, several European countries will share their experiences from different perspectives.

Starting with a focus on process transformation and automation, discussions will then turn to service provision and digital inclusion before moving on to issues surrounding communication and awareness-raising, including measures against stigmatisation. Particular attention will be paid to ensuring access for people with special needs. A determined effort will be made to ensure interaction between participants, so once the challenges have been identified they will have the opportunity to share ideas and brainstorm together on possible pathways to address those challenges.

In this context, Luxembourg will actively contribute by sharing its experience and highlighting social security's central role in Luxembourg. Luxembourg's contribution will also focus on the Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01), particularly on recital (36) ('This Recommendation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, this Recommendation seeks to promote the application of Article 34 of the Charter of Fundamental Rights of the European Union'), while also recognising that in this area Luxembourg implements the principles set out in the Recommendation on formal coverage, effective coverage, adequacy and transparency on the basis of the four topical priorities set by the ISSA for the new triennium, namely:

- Transformation and innovation in management and service delivery: focusing on the ingredients and strategies for accessible, data-driven, pro-active and high-quality delivery of social security benefits and services;

- Social security coverage for a diverse workforce: focusing on difficult-to-cover groups, new types of work (such as platform work), health coverage and unemployment insurance schemes, while ensuring that all eligible populations can access their social security rights;

- Protecting and supporting people during a changing life-course: focusing on analysing how social security systems can achieve their objectives in the context of changing patterns of work, family and demography;

- Social security supporting resilience and sustainability: focussing on social security systems' resilience and how to build institutional capacity and risk management approaches that ensure business continuity in times of crisis.

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