



Striving for an inclusive labour market in Luxembourg

Positive actions and reasonable accommodation to facilitate hiring and employment of persons with disabilities involving employers and employer initiatives

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Positive actions and reasonable accommodation to facilitate hiring and employment of persons with disabilities involving employers and employer initiatives

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Table of contents

1	Executive summary	6
1.1	Support and incentives directed at employers to promote the employment of persons with disabilities, including guides on good practice, websites and advice services	6
1.2	Support and partnerships available to employers to assist them in making reasonable accommodations	7
1.3	Illustrative examples of good employer practice for providing reasonable accommodations for persons with disabilities	7
1.4	Recommendations	8
2	Support and incentives directed at employers to promote the employment of persons with disabilities, including guides on good practice, websites and advice services	10
2.1	Employment quotas	10
2.2	Tax relief / reduced social security contributions / wage subsidies for employers employing persons with disabilities	14
2.3	Reasonable accommodation	15
2.4	Other relevant actions targeted at employers	16
2.5	Examples of good practice	17
2.6	Good practice guides, websites and advice services directed at employers	18
3	Support and partnerships available to employers to assist them in making reasonable accommodations	20
3.1	Support available to employers for making reasonable accommodation .	20
3.2	Partnerships to assist employers to make reasonable accommodations.	21
4	Illustrative examples of good employer practice for providing reasonable accommodations for persons with disabilities	22
4.1	Good practice guides for employers regarding reasonable accommodation	22
4.2	Any other sources of information regarding good practice for employers regarding reasonable accommodation.....	22
4.3	Examples of individual reasonable accommodations which reveal good practice	22
5	Recommendations and guidance regarding good practice and reasonable accommodation.....	23
5.1	Recommendations regarding good practice and reasonable accommodation in recruitment and hiring	23
5.2	Recommendations regarding good practice and reasonable accommodation in initial employment	23
5.3	Recommendations regarding good practice and reasonable accommodation in promotion and career development	24
5.4	Recommendations regarding good practice and reasonable accommodation in retention, i.e. enabling people to stay in work if they develop an impairment or their impairment changes	24

1 Executive summary

1.1 Support and incentives directed at employers to promote the employment of persons with disabilities, including guides on good practice, websites and advice services

In Luxembourg, the support and incentives directed at employers to promote the employment of persons with disabilities include the following:

- Employment quotas applying to both public and private sector employers with more than 25 employees are provided for by Article 10 of the amended Law of 12 September 2003. The quotas vary between 2 % and 5 % of the total full-time workforce, depending on the type and size of the organisation. Public sector compliance is good, but in the private sector there are fewer requirements and the rate of compliance is lower. There is provision for financial penalties for employers who 'refuse' to comply.¹ However, state policy is to encourage companies via financial support measures, rather than penalising them;
- Tax relief is provided to employers where they reclassify internally an employee as a person with a disability, or where they hire a beneficiary of external reclassification;
- Reduced social security contributions apply to employers who employ a number of people with disabilities that exceeds the employment rate provided for by law;
- Wage subsidies apply where employment of a person with disabilities would entail a loss of earnings for the employer, who may then be entitled to an 'employee contribution' paid for by the state. Costs related to hiring an employee with disability are reimbursed by the National Employment Agency (*Agence pour le développement de l'emploi – ADEM*) at the request of the employer. The six additional leave days per year for employees with disabilities, as provided for in the Labour Code, are paid for by the state through a daily allowance;
- Reasonable accommodation in the context of the employment of persons with disabilities is defined as a duty under the general discrimination Law of 28 November 2006, which transposes European Directive 2000/78/EC. The provision applies to both private and public employers. However, only people who have a 30 % disability and have been officially recognised as such are entitled to claim a reasonable accommodation. Article 5 of the UN Convention on the Rights of Persons with Disabilities is relevant in this context, given that Luxembourg approved the Convention in the Law of 28 July 2011.

Overall, in Luxembourg, employers who hire an employee with disability may benefit from reimbursement for part of the salary costs, training costs, costs for adapting workstations and access to work and transport costs, as well as for the provision of adapted professional equipment and the employer's share of social security contributions.

¹ 'If the employer refuses to employ the prescribed number of disabled persons, a compensation tax must be paid to the Treasury for as long as the refusal continues. However, if ADEM is unable to find a suitable candidate, the employer is not obliged to pay this compensation tax.' (Handi)Cap' Emploi (2016), *Practical Guide to Disability in the Workplace*, p. 39, <https://adem.public.lu/fr/publications/employeurs/2016/Guide-handicap-FR.html>.

In Luxembourg, the employment of persons with disabilities is promoted by measures directed at employers such as the single point of contact for employers provided by ADEM; the awareness-raising kit for employers developed by IMS Luxembourg within the framework of the (Handi)Cap' Emploi project;² the online resources collected by Info-Handicap's 'Modes d'emploi' project and the *Practical Guide to Disability in the Workplace* produced by (Handi)Cap' Emploi.

The limited impact of quotas on the employment of people with disabilities indicates the limited impact of the above measures overall.

1.2 Support and partnerships available to employers to assist them in making reasonable accommodations

In Luxembourg, the provision of support services for employers and the implementation of various measures relevant to reasonable accommodation are coordinated and managed by ADEM. In addition, ADEM provides a contact and advice service to all employers with employees with disabilities on their payroll, on request (free of charge).

The organisation ADAPTH assists public and private employers specifically with regard to support for accommodations relating to the accessibility of premises and workstation adaptation. ADAPTH also assists building professionals in carrying out construction or renovation projects so that they are accessible to all.

This partnership is being reinforced by the new Law of 7 January 2022 on accessibility to all places open to the public, public roads and collective housing buildings. This Law will come into force by 1 July 2023.

No information could be identified on the effectiveness or strengths and weaknesses of the coordinated support available to employers and partnerships with employers to assist employers to make reasonable accommodations. However, the fact that the quotas are largely not met by private employers can certainly be interpreted as an indication that the existing measures are not effective.

1.3 Illustrative examples of good employer practice for providing reasonable accommodations for persons with disabilities

The *Practical Guide to Disability in the Workplace* provides guidance in relation to reasonable accommodation, directed at employers in the public and private sectors.

Guidance is also made available online as regards educational institutions. For example, the 'Code of Conduct of the University of Luxembourg', approved on 28 May 2020 by the board of governors of the University of Luxembourg, provides for an inclusion officer (*le délégué aux aménagements raisonnables*) and a committee for reasonable accommodation (*la commission des aménagements raisonnables*)

² (Handi)Cap' Emploi is the name of a series of projects (two of which have been finalised so far) initiated by the Luxembourg Diversity Charter, led by IMS Luxembourg, and co-financed by the European Social Fund (ESF), the Ministry of Labour, Employment and the Social and Solidarity Economy (MTEES), the Ministry of Family Affairs and ADEM – see: <https://chartediversite.lu/en/projects/handicap-emploi>.

dedicated to university students with specific educational needs.³ Similar information is made available by the state for pupils with special educational needs.⁴

No relevant information could be found on good practice for employers regarding reasonable accommodation.

No relevant information could be found on the effectiveness or strengths and weaknesses of the good practice guides and any other sources of information directed at employers to assist them to make reasonable accommodations.

1.4 Recommendations

Improvement opportunities to ensure that reasonable accommodation happens in practice in relation to recruitment and hiring would reside in the following:

- Upon ('automatic') registration with ADEM of an (unemployed) person newly recognised as a 'disabled employee', introducing a procedure to assess any specific accommodation needs;
- When collecting job vacancies from employers, introducing a questionnaire to collect information on potential accommodations;
- When processing job vacancies advertised by employers with ADEM, introducing a protocol/tool for matching them with the specific accommodation needs of potential candidates;
- Before assigning applicants to job vacancies, introducing an information and exchange session with them on their specific accommodation needs and the accommodations potentially offered by the employer.

Improvement opportunities to make reasonable accommodation happen in practice in relation to newly recruited staff would reside in the following:

- Before signing an employment contract, introducing a procedure to clarify the necessary and commonly agreed on accommodations with various stakeholders and funding instruments (the employer, the state, ADEM, FNS etc.), and recording them in the employment contract;
- Before integrating the workstation, introducing a protocol to elaborate and implement an accommodation action plan, in line with the employment contract provisions;
- Before integrating the adapted workstation, introducing an information session, eventually involving the inclusion assistant, in order to inform the employee about any adaptations, and assessing their adequacy;
- After integrating the adapted workstation, introducing a questionnaire to collect information on any issues or additional accommodation needs (newly disclosed);
- After integrating the adapted workstation, introducing a periodic (e.g. biannual) information and exchange session involving the employer, employee and inclusion assistant to address the status of specific accommodation needs.

³ See: https://www.wen.uni.lu/universite/presentation/gouvernance/delequee_aux_amenagements_raisonnables.

⁴ See: <https://guichet.public.lu/en/citoyens/enseignement-formation/enseignement-postprimaire/aides-postprimaire/amenagements-raisonnables.html>.

Improvement opportunities to make reasonable accommodation happen in practice in relation to promotion or career development of staff would reside in the following:

- before envisioning any assignment change with a potential impact on the specific accommodation needs, introducing a reassessment procedure in line with the above recommendations;
- on a periodic basis (e.g. annually), introducing an appraisal procedure to evaluate the adequacy of promotion or career development opportunities, and accordingly reassessing any relevant accommodation needs, in line with the above recommendations.

Improvement opportunities to make reasonable accommodation happen in practice in relation to existing staff who acquire an impairment, or whose impairment changes, during the course of their employment would reside in introducing a reassessment procedure in line with the above recommendations.

The above recommendations could be taken forward typically by readjusting some ADEM procedures, which may eventually need readjustments to their legal basis (relevant Grand Ducal regulations).

The National Action Plan for Digital Inclusion, published in 2021 by the Luxembourg Government, 'aims to facilitate the emergence of a digitally inclusive society and to counteract a digital divide that harms society as a whole'. It puts forward a number of important initiatives 'to make digital an economic and social lever for all those who choose digital', which also cover people with disabilities in general. Its current focus, which is mainly on public services and the general population, could be further extended to cover the reasonable digital accommodation needs of people with disabilities in the workplace.

2 Support and incentives directed at employers to promote the employment of persons with disabilities, including guides on good practice, websites and advice services

2.1 Employment quotas

In Luxembourg, the recruitment of persons with disabilities is regulated by the amended Law of 12 September 2003,⁵ which is integrated in the Labour Code.⁶ Article 10 of this national Law provides for quotas for the employment of people with disabilities. While the public sector⁷ is obliged to employ full-time employees who are recognised as disabled as up to 5 % of its total workforce, private employers are obliged to employ people with disabilities depending on the size of the organisation: at least one worker with disabilities for an employer with 25 to 50 employees; 2 % of the total staff for those with 50 to 300 employees, and 4 % for those with over 300 employees. Private sector employers with fewer than 25 employees are not affected by these quotas.

This Law is complemented by the Grand Ducal Regulation of 7 October 2004,⁸ which contains rules on the recognition of the status of 'disabled worker'. It provides for strong involvement by the National Employment Agency, ADEM.⁹ ADEM's Disability and Professional Reclassification Service is responsible for orientation, training, placement, re-education, integration and professional reintegration measures for people recognised as 'disabled employees' or as 'employees with reduced work capacity'.¹⁰ The Ministry of Labour, Employment and the Social and Solidarity Economy (MTEESS) implements the national action plans relating to the professional integration and reintegration of persons with disabilities.

The legal framework for the recognition of 'disabled employee' status is set out in Title VI of Book V of the Labour Code,¹¹ which defines it as 'any person who has a reduction in working capacity of at least 30 %, resulting from:

- an accident at work with a company legally established on Luxembourg territory;
- events of war or measures taken by the occupant;

⁵ The Luxembourg Labour Code and the Amended Law of 12 September 2003 on Disabled Persons (*Loi du 12 septembre 2003 relative aux personnes handicapées*) and its Implementing Regulation of 7 October 2004 are the national source documents. See: <http://legilux.public.lu/eli/etat/leg/loi/2003/09/12/n1/jo>.

⁶ Grand Ducal Regulation of 7 October 2004 (*Règlement grand-ducal du 7 octobre 2004*), Article L.562-3, available at: <https://legilux.public.lu/eli/etat/leg/rgd/2004/10/07/n1/jo>.

⁷ State institutions, the communes, all public establishments and the Luxembourg National Railway Company (*Société Nationale des Chemins de Fer Luxembourgeois – CFL*).

⁸ Grand Ducal Regulation of 7 October 2004, <https://legilux.public.lu/eli/etat/leg/rgd/2004/10/07/n1/jo>.

⁹ ADEM is the public reference body in Luxembourg for any employer wishing to recruit employees with disabilities or employees with reduced working capacity, as well as for any person who has a disability or is undergoing professional reclassification.

¹⁰ An employee with an employment contract who is unable to carry out the tasks resulting from his or her last job, due to a prolonged illness, infirmity or wear and tear, and who is not recognised as 'disabled' by the Social Security Medical Board (*Contrôle médical de la sécurité sociale – CMSS*), may benefit from an internal or external professional reclassification, provided that he or she can prove that he or she has been at his or her last job for at least three years or that he or she is fit to be hired in that job.

¹¹ Labour Code (*Code du Travail*), <http://legilux.public.lu/eli/etat/leg/code/travail>.

- a physical, mental, sensory or psychological deficiency and / or because of psychosocial difficulties aggravating the deficiency;
- and who is recognised as capable of gainful employment in the regular labour market or in a sheltered workshop.’

A person with a disability who is working or is registered as a jobseeker may apply for recognition as a ‘disabled employee’. In accordance with the provisions of the Grand Ducal Regulation of 7 October 2004, the request must provide information about the applicant’s professional situation and qualifications as well as a medical report indicating her/his reduced work capacity and general health conditions. Subsequently, a medical commission set up at ADEM examines applications and determines the percentage rate of the reduced work capacity, based on an additional medical examination. The rate is assessed in comparison with a person without disabilities of the same age. It is ADEM’s responsibility to decide whether or not to grant recognition of the status.¹² The Occupational Counselling and Redeployment Panel (*Commission d’orientation et de reclassement professionnel – COR*)¹³ then makes an evidence-based decision on whether to guide the worker with disabilities into the mainstream labour market or into a sheltered workshop. Lastly, based on COR’s proposal, ADEM decides what action must be taken for the professional integration or reintegration of a candidate who has been guided into the mainstream labour market. Those recognised as ‘disabled workers’ are automatically registered with ADEM if they have no employment. This service is provided at national level and is free of charge for users. There is no waiting list per se, but the process can take several months.

In addition, the Law of 24 July 2020¹⁴ modified the internal and external reclassification system in Luxembourg following previous reforms in January 2016. The aim of this new Law is to improve the procedures for professional reclassification, as well as the financial situation of people undergoing professional reclassification. One of the main changes is the reintroduction of the provision according to which employees undergoing professional reclassification who are part of the company’s workforce are taken into account in the calculation of quotas relating to people with the status of ‘disabled employee’.¹⁵

An employer who does not comply with the provisions of the Law with respect to the quota may be sanctioned. They will have to pay a compensation tax equivalent to 50 % of the minimum social wage to the State Treasury. Given that since 1 April 2022, the monthly minimum social wage in Luxembourg is EUR 2 313.38,¹⁶ the defaulting

¹² In the event of disagreement with ADEM’s decision, a request for review by the Social Security Arbitration Tribunal (*Conseil arbitral de la sécurité sociale*) is possible. See: <https://justice.public.lu/fr/organisation-justice/juridictions-sociales.html>.

¹³ Occupational Counselling and Redeployment Panel (*Commission d’orientation et de reclassement professionnel – COR*).

¹⁴ Law of 24 July 2020 providing for temporary derogation from articles L. 524-1, L. 524-2, L. 524-5, L. 541-1 and L. 541-2 of the Labour Code (*Loi du 24 juillet 2020 portant dérogation temporaire aux articles L. 524-1, L. 524-2, L. 524-5, L. 541-1 et L. 541-2 du Code du travail*), <https://legilux.public.lu/eli/etat/leg/loi/2020/07/24/a639/jo>.

¹⁵ (Handi)Cap’ Emploi (2016), *Practical Guide to Disability in the Workplace*, p. 54, <https://adem.public.lu/fr/publications/employeurs/2016/Guide-handicap-FR.html>.

¹⁶ Government of Luxembourg, ‘Niveau du salaire social minimum à partir du 1er avril 2022’ (‘Level of the minimum social wage from 1 April 2022’), 12 April 2022, https://gouvernement.lu/fr/actualites/toutes_actualites/communiqués/2022/04-avril/12-salaire-social-minimum-avril.html.

employer will have to pay the state EUR 1 156.69 for each month that the default continues, and for each 'disabled employee' not hired. In calculating the number of vacancies, the figures reaching and exceeding half are to be rounded up, while the others are to be disregarded. Account is taken of persons who have obtained recognition as 'disabled employees' and of 'disabled employees' who are already in place.

According to the answer to a recent parliamentary question on the compliance of public and private employers with the employment quota,¹⁷ while the public sector overall fulfils its obligation of 5 %, the compliance rate in the private sector is quite low: 81 % of companies with a workforce of 25-49 employees do not meet their quota; 80 % of enterprises with 20-299 employees do not meet their quota; and 98 % of companies with more than 300 employees do not meet their quotas. This means that a total of 1 928 companies in Luxembourg do not meet their legal obligation to hire employees with disabilities. This is a small improvement in the situation compared with previous assessments. Mellouet (2019)¹⁸ reported that 0 % of companies in the private sector with over 300 employees had met the legal quota for hiring persons with disabilities.

In the Luxembourg public service, in January 2021, 914 civil servants with the status of 'disabled employee' were employed. In the private sector, the number of such employees reached 3 222.¹⁹

ADEM works with employers to coordinate the recruitment process, and provides a certain number of services to bring employers and jobseekers with disabilities together and to facilitate their integration in the workplace. Those include awareness-raising and training for employers, as well as making the necessary accommodations. The 'Duoday' initiative aims to raise companies' awareness by welcoming a person with disabilities for one day. Volunteer employees guide the person with disabilities through the expected professional tasks. The (Handi)Cap' Emploi initiative organises a series of 'employment cafe's' to support encounters between employers and jobseekers, creating meetings that generate real job opportunities.²⁰

The second Luxembourg National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities 2019-2024²¹ prioritises financial

¹⁷ Ronco, A. (2021), 'Überlegungen zur parlamentarischen Anfrage des Abgeordneten Sven Clement bezüglich der Anzahl der Unternehmen in Luxemburg, die die gesetzlich vorgesehenen Einstellungsquoten für behinderte Arbeitnehmer erfüllen' ('Reflections on the parliamentary question from MP Sven Clement on the number of companies in Luxembourg that meet the statutory recruitment quotas for disabled workers'), *Info-Handicap de Bulletin*, No. 2, March 2021, p. 6, <https://info-handicap.lu/bulletin-de-liaison/>.

¹⁸ Mellouet, S., 'Handicap et entreprises: un « bilan emploi » en demi-teinte', 22 February 2019, <https://www.fondation-idea.lu/2019/02/22/handicap-et-entreprises-un-bilan-emploi-en-demi-teinte/>.

¹⁹ 'Les handicapés restent exclus de l'entreprise', *Luxemburger Wort*, 13 January 2021, <https://www.wort.lu/fr/luxembourg/les-handicapes-restent-exclus-de-l-entreprise-5ffeaf81de135b9236fdf630>.

²⁰ Eurofound (2021), Disability and labour market integration: Policy trends and support in EU Member States, Publications Office of the European Union, Luxembourg, https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef20013en.pdf.

²¹ Ministry of Family Affairs, Integration and the Greater Region (2020), National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities 2019-2024 (*Plan d'action nationale de mise en oeuvre de la Convention relative aux droits des personnes*

measures to encourage employers to comply with the quota scheme through employing persons with disabilities rather than changing the law towards a mandatory quota scheme.

The Law of 1 August 2019²² supplements the national Labour Code by introducing the possibility for people with disabilities to benefit from some assistance with their integration into the mainstream labour market, and to maintain their jobs. The assistance is focused on the needs of not only employees, but their employers and colleagues in the company.²³

According to Article L. 553-2 of the Law, the assistance activity shall be carried out by an 'employment inclusion assistant'²⁴ and shall include:

1. the assessment of the work situation and the description of the specific problems and needs in the workplace;
2. the identification of the needs of the employer and employee, in particular with regard to preparation, information and awareness concerning health or disability conditions and any specific needs for sustainable inclusion;
3. the establishment of an individualised inclusion project containing a detailed work programme with a schedule of actions to be carried out, specifying the number of hours, duration and frequency of the assistance;
4. the drafting of quarterly statements and annual reports detailing the evolution of the situation of the 'disabled employee' or the employee undergoing external reclassification in the workplace and listing the actions carried out in accordance with the schedule provided for in point 3;
5. the drafting of a final report containing the conclusions of the assistant or assistance service as well as the recommended actions after the end of the assistance, to be submitted by the assistant or assistance service for inclusion in employment, to the director of ADEM within two months of the end of the assistance.

As indicated by the above statistics on the percentage of employers complying with the employment quotas and the number of persons with disabilities employed under the quota schemes since the entry into force of the Law in 2003, its impact on the employment of people with disabilities in the private sector has been limited, as 81.7 % of the 2 359 companies in the country with more than 25 employees do not respect the minimum quota set by law.²⁵

handicapées 2019-2024 – Version épurée), <https://mfamigr.gouvernement.lu/en/publications/plan-strategie/handicapacc.html>.

²² Law of 1 August 2019 supplementing the Labour Code by introducing assistance activity for employment inclusion for employees with disabilities and employees in external reclassification (*Loi du 1er août 2019 complétant le Code du travail en portant création d'une activité d'assistance à l'inclusion dans l'emploi pour les salariés handicapés et les salariés en reclassement externe*) *Mémorial A*, No. 545 14 August 2019, <https://legilux.public.lu/eli/etat/leg/loi/2019/08/01/a545/jo>.

²³ National Reform Programme of the Grand Duchy of Luxembourg under the European semester (2021), *National plan for smart, sustainable and inclusive growth: Luxembourg 2020*, https://ec.europa.eu/info/sites/default/files/2020-european-semester-national-reform-programme-luxembourg_en.pdf.

²⁴ An 'employment inclusion assistant' is taken on as a self-employed person or as a legal entity, licensed by the Ministry of Family Affairs, Integration and the Greater Region.

²⁵ 'Les handicapés restent exclus de l'entreprise', *Luxemburger Wort*, 13 January 2021, <https://www.wort.lu/fr/luxembourg/les-handicapes-restent-exclus-de-l-entreprise-5ffeaf81de135b9236fdf630>.

A recurring argument is that this situation is due to the lack of sanctions on non-compliant companies, as the Luxembourg Government prioritises the use of financial support measures.²⁶

2.2 Tax relief / reduced social security contributions / wage subsidies for employers employing persons with disabilities

Employers who reclassify internally an employee as a person with a disability or who hire a beneficiary of an external reclassification decision may use the tax credit (*bonification d'impôt*).²⁷

In the event that the employer employs a number of people with disabilities in excess of the employment rate provided for by law, the employer would benefit, on request from ADEM, from the exemption of the employer's share of social security charges for each of the employees with disabilities (which are then covered by the state budget).

Costs related to the hiring process of an employee with disability are reimbursed by ADEM at the request of the employer.

The Labour Code also provides six additional leave days per year for employees with disabilities, which are paid for by the state through a daily allowance. According to the latest (2020) MTEESS annual report,²⁸ in 2020, employers have been paid by ADEM for 842 days of such leave.²⁹

The Labour Code does not mention any special protection against dismissal for employees with disabilities, on the grounds that the aim is not to create special barriers to employment.

In some cases where the employment of a person with disabilities would entail a loss of earnings, the employer may be entitled to an 'employee contribution'.³⁰ The level of this state contribution depends, among other things, on the degree of reduction in the working capacity of the employee with disabilities. The state reimburses the employer for between 40 % and 100 % of the gross salary, including the employer's share of social security contributions. As the disability may evolve and/or the employee with disability may have to adapt to the work environment, this percentage may be adapted periodically by the management of ADEM on the advice of COR.

²⁶ See, for example, Ministry of Family Affairs, Integration and the Greater Region (2020), National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities 2019-2024, <https://mfamigr.gouvernement.lu/fr/le-ministere/attributions/personnes-handicapees/pan.html>.

²⁷ (Handi)Cap' Emploi (2016), *Practical Guide to Disability in the Workplace*, p. 57, https://imslux.lu/assets/publication/21/Handi_CapEmploiGuide_pratique_du_handicap_en_entreprise_FR.pdf.

²⁸ Ministry of Labour, Employment and the Social and Solidarity Economy (2021), Activity Report 2020 (*Rapport d'activité 2020*), p. 136, <https://gouvernement.lu/dam-assets/fr/publications/rapport-activite/minist-travail-emploi/2020-rapport-activite/2020-rapport-activite-mteess.pdf>.

²⁹ For comparison, according to the (Handi)Cap' Emploi *Practical Guide to Disability in the Workplace* (bottom of page 40), the figure in 2014 has been 837 days (almost unchanged).

³⁰ Employee contribution (*participation salariale*).

The limited impact of quotas on the employment of people with disabilities, as highlighted in previous sections, indicates the limited impact of the above measures overall.

2.3 Reasonable accommodation

Under national law in Luxembourg, the reasonable accommodation duty in the context of employment is defined as follows: 'Employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.'

This definition can be found in Article 20 of the general discrimination Law of 28 November 2006,³¹ which transposes European Directive 2000/78/EC³² and also amends and finalises Article 8 of the Law of 12 September 2003 on persons with disabilities.

The provision applies to both private and public employers. However, only people who have a 30 % disability and have been officially recognised as such are entitled to claim a reasonable accommodation.³³ A mandatory duty to provide reasonable accommodation has not been explicitly imposed on public employers, i.e. the state or other administrations, in the public sector Law of 29 November 2006,³⁴ probably because the Law of 12 September 2003 is directed at all employers, both private and public.

³¹ Law of 28 November 2006 governing: 1. transposition of Council Directive 2000/43/EC of 29 June 2000 on the implementation of the principle of equal treatment between persons irrespective of race or origin ethnicity; 2. transposition of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; 3. amendment of the Labour Code and introducing a new Title V in Book II on equal treatment in employment and occupation; 4. amendment of Articles 454 and 455 of the Criminal Code; 5. amendment of the Act of 12 September 2003 on persons with disabilities (*Loi du 28 novembre 2006 portant: 1. transposition de la directive 2000/43/CE du Conseil du 29 juin 2000 relative à la mise en oeuvre du principe de l'égalité de traitement entre les personnes sans distinction de race ou d'origine ethnique; 2. transposition de la directive 2000/78/CE du Conseil du 27 novembre 2000 portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail; 3. modification du Code du travail et portant introduction dans le Livre II d'un nouveau titre V relatif à l'égalité de traitement en matière d'emploi et de travail; 4. modification des articles 454 et 455 du Code pénal; 5. modification de la loi du 12 septembre 2003 relative aux personnes handicapées*), available at: <https://legilux.public.lu/eli/etat/leg/loi/2006/11/28/n1/jok>.

³² The wording of the general discrimination Law of 28 November 2006 is almost identical to that of the Directive 2000/78/EC itself, particularly as regards the definition of reasonable accommodation for persons with disabilities, which amends Article 8 of the Law of 12 September 2003.

³³ According to Article 1 of the Law on Disabled Persons of 12 September 2003, the definition of a disability for the purpose of claiming reasonable accommodation is more restrictive than for claiming protection from discrimination in general, as only people who have a 30 % disability and have been officially recognised as such are entitled to claim under the duty to provide reasonable accommodation. This could be a breach of Directive 2000/78 in terms of personal scope.

³⁴ Law of 29 November 2006 amending 1. the amended Law of 16 April 1979 laying down the general regulations governing civil servants of the State 2. the amended Law of 24 December 1985 laying down the general regulations governing municipal civil servants (*Loi du 29 novembre 2006 modifiant: 1. la loi modifiée du 16 avril 1979 fixant le statut général des fonctionnaires de l'Etat; 2. la loi modifiée du 24 décembre 1985 fixant le statut général des fonctionnaires communaux*), available at: <https://legilux.public.lu/eli/etat/leg/loi/2006/11/29/n1/jo>.

The national law does not define what a disproportionate burden would be for employers. Such a burden would not be considered disproportionate where it is sufficiently remedied by the financial support measures contained in Article 26 of the Grand Ducal Regulation of 7 October 2004, which provides for financial measures to support the adjustment of working environments and access to a place of work; for the purchase of professional equipment; and for reimbursement of the costs for transport to the workplace. In the event of a dispute, it is up to a judge to assess on a case-by-case basis – based on the size, financial resources and the possibility of the company obtaining public funds or other assistance – whether or not the accommodation measure entails a disproportionate burden for the employer.

Failure to meet the duty of reasonable accommodation in employment for people with disabilities is not explicitly recognised as a form of discrimination by the law. Nevertheless, according to the European Commission's Luxembourg country report on non-discrimination, the interpretation of the laws should require that, if the laws are not respected, it will be deemed to be a case of discrimination.³⁵

Article 5 of the UN Convention on the Rights of Persons with Disabilities³⁶ is relevant in this context, given that Luxembourg approved the Convention in the Law of 28 July 2011. Individuals can rely directly on the UNCPRD before Luxembourg courts.

2.4 Other relevant actions targeted at employers

In Luxembourg, the state can intervene in various areas relating to reasonable accommodation to allow for the appropriate integration of the new 'disabled employee'. According to the Labour Code, the state may participate, on the advice of the Commission for professional orientation and reclassification and after a decision by the management of ADEM, in the following:

- the reimbursement of costs relating to the adaptation of the workstation or access to work;
- the reimbursement of professional equipment and special teaching materials for these employees, as well as the costs of trainers;
- reimbursement of transport costs.

Even if the state can cover these 'additional' costs of employing an employee with disabilities, the employer cannot neglect his or her role: it is the employer's responsibility to take appropriate measures to enable 'a disabled employee to have access to, to perform or to progress in a job, or to receive training', provided, however, that these measures do not place a 'disproportionate burden' on the employer.

Reduced working hours may constitute a necessary, appropriate and reasonable accommodation measure when it eliminates the various barriers to employment and

³⁵ Hoffmann, T., (2020), *Country report: Non-discrimination – Transposition and implementation at national level of Council Directives 2000/43 and 2000/78 – Luxembourg*, European Commission, European network of legal experts in gender equality and non-discrimination, p. 19, <https://www.equalitylaw.eu/downloads/5510-luxembourg-country-report-non-discrimination-2021-951-kb>.

³⁶ See: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-5-equality-and-non-discrimination.html>.

allows the 'disabled employee' to continue working: the employer is therefore obliged to offer this accommodation to the 'disabled employee'.³⁷

2.5 Examples of good practice

Good practice in financial incentive measures directed at employers in Luxembourg comprises the measures on the costs of training, rehabilitation and vocational re-education mentioned above, which are covered by ADEM's Disability and Vocational Rehabilitation Service. These costs include, in particular, allowances for rehabilitation,³⁸ initiation and returning to work, as well as related costs such as those for registration, transport, meals and small teaching materials. In 2020, ADEM's Disability and Vocational Rehabilitation Service covered financial participation in 29 measures.³⁹

Employers who hire a 'disabled employee' may further benefit from reimbursement for part of the salary costs, training costs, costs for adapting workstations and access to work and transport costs, as well as for the provision of adapted professional equipment and the employer's share of social contributions.

In 2020, ADEM covered:

- the social security contributions for eight individuals with disabilities;
- the cost of adapting workstations and access to work for 18 employees with disabilities;
- training for 19 employees with disabilities;
- transport costs for one employee with disability from the Greater Region; and
- 842 reimbursements for the additional six working days of leave granted to employees with disabilities.⁴⁰

Good practice in support measures directed at employers in Luxembourg comprises measures such as the 'Duoday' initiative; ADEM's single point of contact for employers (see Section 2.6); the 'employment cafe's' initiative to stimulate encounters between employers and jobseekers; and the introduction of inclusion assistants. These constitute a coherent and complementary set of support services for raising companies' awareness; providing information and guidance on relevant topics such as recruitment procedures and incentives; and facilitating the integration of people with disabilities into the mainstream labour market and sustaining their jobs.

Trade unions can also be a reference point for employers who wish to integrate a 'disabled worker'. The Confederation of Independent Trade Unions of Luxembourg

³⁷ (Handi)Cap' Emploi (2016), *Practical Guide to Disability in the Workplace*, p. 42, available at: <https://adem.public.lu/fr/publications/employeurs/2016/Guide-handicap-FR.html>.

³⁸ 'Réentrainement à l'effort'.

³⁹ Ministry of Labour, Employment and the Social and Solidarity Economy (2021), *Activity Report 2020 (Rapport d'activité 2020)*, p. 112, available at: <https://gouvernement.lu/dam-assets/fr/publications/rapport-activite/minist-travail-emploi/2020-rapport-activite/2020-rapport-activite-mteess.pdf>.

⁴⁰ Ministry of Labour, Employment and the Social and Solidarity Economy (2021), *Activity Report 2020 (Rapport d'activité 2020)*, available at: <https://gouvernement.lu/dam-assets/fr/publications/rapport-activite/minist-travail-emploi/2020-rapport-activite/2020-rapport-activite-mteess.pdf>.

(*Onofhängege Gewerkschaftsbond Lëtzebuerg – OGB-L*)⁴¹ has a ‘disabled workers’ department to represent the trade union and the political, and social demands of workers with disabilities. In addition, the Luxembourg Confederation of Christian Trade Unions (LCGB)⁴² commits to reinforcing the integration of persons with disabilities in the corporate world and to encouraging companies to accomplish true integration of ‘disabled workers’.

2.6 Good practice guides, websites and advice services directed at employers

In Luxembourg, the employment of persons with disabilities is promoted by some measures directed at employers.

ADEM provides several resources. ADEM’s Employer Service makes available online quite comprehensive information and guides in relation to employment in general,⁴³ and the employment of persons with disabilities more specifically.⁴⁴ ADEM’s monthly and annual employment reports may also provide relevant information.⁴⁵

The non-profit organisation Info-Handicap Asbl⁴⁶ is in charge of publishing and disseminating thematic information on disability topics, which is also directed at employers.⁴⁷

Within the framework of the (Handi)Cap’ Emploi project,⁴⁸ financed by the ESF, MTEESS, the Ministry of Family Affairs and ADEM, IMS Luxembourg has developed an awareness-raising kit for employers.

ADEM has recently set up a service that acts as a single point of contact for employers (and jobseekers). It aims to provide callers with an immediate answer to their questions and allows ADEM counsellors to have uninterrupted face-to-face meetings with their clients.⁴⁹ The contact centre is staffed exclusively by employees with either a disability or an otherwise reduced work capacity. An ADEM internal monitoring group ensures that coaching and personal assessment is provided throughout the training process.⁵⁰

Info-Handicap’s project ‘Modes d’emploi’⁵¹ was launched on 29 November 2016, on the occasion of the International Day of Persons with Disabilities. It is aimed at

⁴¹ See: <http://www.ogbl.lu/de/>.

⁴² Luxembourg Confederation of Christian Trade Unions (*Lëtzebuenger Chrëschtliche Gewerkschaftsbond*).

⁴³ See: <https://adem.public.lu/en/employeurs.html>.

⁴⁴ See: <https://adem.public.lu/en/employeurs/demander-aides-financieres/embaucher-salarie-handicape-ou-reclasse.html>.

⁴⁵ See: <https://adem.public.lu/en/publications.html>.

⁴⁶ Luxembourg’s National Disability Information Centre; see: <https://info-handicap.lu>.

⁴⁷ In Luxembourg, the Ministry for Family Affairs, Integration and the Greater Region is in charge of coordinating national policy for persons with disabilities, and is advised by the Higher Council of Persons with Disabilities on all draft laws or regulations relating to disability. Info-Handicap Asbl supports the Ministry in performing its mission.

⁴⁸ See: <https://chartediversite.lu/en/projects/handicap-emploi>.

⁴⁹ On the other hand, this service will provide women and men with special needs or who have lost their jobs because of a disability, with an opportunity to regain employment.

⁵⁰ European Association of Service providers for Persons with Disabilities (2013), ‘10 Best Practices in Employment Support for People with Disabilities’, p. 12, available at: https://engage.dss.gov.au/wp-content/uploads/2016/11/annex_3_10_best_practices-1.pdf.

⁵¹ Modes d’emploi (Ways of working) project: <http://www.modesdemploi.lu/>.

employees with disabilities, companies, human resources departments, services and associations and, in general, anyone who is interested in the subject of work and employment in relation to disability, and it brings together, via a website, online resources to support the professional inclusion of people with disabilities.

The awareness-raising kit for employers produced by (Handi)Cap' Emploi consists of different infographics to be displayed in an organisation's corridors and awareness-raising videos to be distributed internally and shared via social networks, as well as a booklet and a USB key containing all the materials. This kit is available in English and in French.⁵²

The *Practical Guide to Disability in the Workplace*, also produced by (Handi)Cap' Emploi, provides employers with information on the following topics:

- why they should commit to a disability-friendly approach;
- what constitutes 'disability' and its typologies;
- disability stakeholders in Luxembourg;
- disability figures and statistics;
- the legal framework for disability in Luxembourg, including the UN convention;
- the procedure for recognising the status of 'disabled employee';
- how to recruit a 'disabled employee';
- support measures for hiring a 'disabled employee';
- integrating a 'disabled employee';
- procedure for reclassifying an employee with disabilities;
- measures to support job retention;
- measures to promote the integration of employees with disabilities into the labour market, including (Handi)Cap' Emploi, professionalisation internships, reinsertion-employment contract, partnerships with sheltered workshops, supported employment: job coaching and job carving, and the joint charter of trade unions OGBL, LCGB, UEL and INDR;
- tips for disability-friendly behaviours in a professional environment;
- details on the different types of disability;
- the European legal framework;
- useful contacts.

The e-book produced by (Handi)Cap' Emploi⁵³ aggregates the project results between 2015 and 2017 and makes them available online. While addressing relevant topics in relation to employment, management, sustaining a job and the performance and productivity of employees with disabilities, this e-book is unique in providing information on 'best practices' in each of these areas.

Public technical or HR advice services to employers of people with disabilities are provided free of charge.

No relevant information could be found on how the guides, websites or advice services are being used by employers or on any effect they are having.

⁵² See: http://www.modesdemploi.lu/online/www/menu_content/home/FRE/index.html and https://imslux.lu/fra/news/115_un-kit-de-communication-pour-sensibiliser-a-la-thematique-du-handicap.

⁵³ See *(Handi)Cap' Emploi – Mise en pratique dans l'entreprise*, <https://indd.adobe.com/view/3f778b9e-b05a-400e-b0b5-4a1d8c49858e>.

3 Support and partnerships available to employers to assist them in making reasonable accommodations

3.1 Support available to employers for making reasonable accommodation

Some limited information on this topic might be found in the country reports by the European Equality Law Network⁵⁴ (Country report: non-discrimination), in Section 2.6 of each report on reasonable accommodation. However, further research will be needed to provide all the requested information.

In Luxembourg, support available to employers for making reasonable accommodation is regulated overall by the general discrimination Law of 28 November 2006, which transposes European Directive 2000/78/EC.⁵⁵ According to the European Commission's country reports on non-discrimination,⁵⁶ Article 5 of the UN Convention on the Rights of Persons with Disabilities⁵⁷ is relevant in this context, given that Luxembourg approved the Convention in the Law of 28 July 2011.

Relevant financial support measures are contained in Article 26 of the Grand Ducal Regulation of 7 October 2004.

The provision of support services to employers and the implementation of different measures relevant to reasonable accommodation, indicated in Sections 2.3 and 2.4, are coordinated and managed by ADEM. Both public and private employers are eligible to receive support.

ADEM provides a contact and advice service to all employers with 'disabled employees' on their payroll, on request.⁵⁸

No relevant information could be found on the take-up of the support.

No information could be identified on whether the availability of the support is taken into account in determining whether making a reasonable accommodation would amount to a disproportionate burden.

No information could be identified on the strengths and weaknesses of the support. However, the fact that the quotas are largely not met by private employers can certainly be interpreted as an indication that the existing measures are not effective.

⁵⁴ See: <https://www.equalitylaw.eu/>.

⁵⁵ The wording of the general discrimination Law of 28 November 2006 is almost identical to that of the Directive 2000/78/EC itself, in particular as regards the definition of reasonable accommodation for persons with disabilities, which amends Article 8 of the Law of 12 September 2003.

⁵⁶ Hoffmann, T., (2020), *Country report: Non-discrimination – Transposition and implementation at national level of Council Directives 2000/43 and 2000/78 – Luxembourg*, European Commission, European network of legal experts in gender equality and non-discrimination, p. 18, available at: <https://www.equalitylaw.eu/downloads/5510-luxembourg-country-report-non-discrimination-2021-951-kb>.

⁵⁷ UN Convention on the Rights of Persons with Disabilities, 'Article 5 – Equality and non-discrimination', <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-5-equality-and-non-discrimination.html>.

⁵⁸ ADEM Employment Service (*Service Employeur*), '*Prise en charge de certains frais*', <https://adem.public.lu/fr/employeurs/demander-aides-financieres/embaucher-salarie-handicape-ou-reclasse/sh/Prise-en-charge-frais.html>.

3.2 Partnerships to assist employers to make reasonable accommodations

In Luxembourg, ADAPTH⁵⁹ assists public and private employers specifically with regard to support for accommodations relating to the accessibility of premises and workplace adaptation.⁶⁰ It also assists building professionals in carrying out construction or renovation projects so that they are accessible to all.⁶¹

This partnership is being reinforced by the new Law of 7 January 2022 on accessibility to all places open to the public, public roads and collective housing buildings.⁶² This Law will come into force by 1 July 2023 and will introduce some new measures, including the following:⁶³

- accessibility requirements are no longer limited to places open to the public in the public domain, but will now have to be applied to all places of collective use, public and private;
- 10 % of dwellings will have to meet additional requirements in order to achieve a gradual increase in adaptable dwellings for people with disabilities;
- the introduction of the concept of solutions of equivalent effect to provide flexibility in the regulations and to allow for innovative and creative technical solutions in places open to the public;
- the creation of an Accessibility Advisory Council, whose mission is to issue opinions on requests for exemptions and solutions of equivalent effect. The creation of this new council also allows for the active involvement of those directly concerned;
- the introduction of penal sanctions in the event of work not complying with the requirements or in the event of refusal to bring an existing property into compliance.

At the request of an employer, occupational health services may intervene to assess a workstation and provide (reasonable) accommodation recommendations.

⁵⁹ See: <https://www.adapth.lu/j4/index.php/services/adaptation-du-poste-de-travail>.

⁶⁰ See: <https://www.adapth.lu/>.

⁶¹ (Handi)Cap' Emploi (2016), *Practical Guide to Disability in the Workplace*, p. 20, available at: <https://adem.public.lu/fr/publications/employeurs/2016/Guide-handicap-FR.html>.

⁶² Law of 7 January 2022 on accessibility to all places open to the public, public roads and collective housing buildings (*Loi du 7 janvier 2022 portant sur l'accessibilité à tous des lieux ouverts au public, des voies publiques et des bâtiments d'habitation collectifs*), available at: <https://legilux.public.lu/eli/etat/leg/loi/2022/01/07/a26/jo>.

⁶³ Government of Luxembourg, 'Nouvelle loi sur l'accessibilité des lieux publics aux personnes handicapées' ('New law on the accessibility of public places for people with disabilities'), 27 January 2022, https://gouvernement.lu/fr/actualites/toutes_actualites.gouv_mfamigr%2Bfr%2Bactualites%2B2022%2Bloi.html.

4 Illustrative examples of good employer practice for providing reasonable accommodations for persons with disabilities

4.1 Good practice guides for employers regarding reasonable accommodation

The *Practical Guide to Disability in the Workplace* publication provides guidance in relation to reasonable accommodation directed at employers in the public and private sectors.

Guidance is also made available online as regards educational institutions. For example, the 'Code of Conduct of the University of Luxembourg', approved on 28 May 2020 by the board of governors of the University of Luxembourg, provides for an inclusion officer (*le délégué aux aménagements raisonnables*) and a committee for reasonable accommodation (*la commission des aménagements raisonnables*) dedicated to university students with specific educational needs.⁶⁴ Similar information is made available by the state for pupils with special educational needs.⁶⁵

4.2 Any other sources of information regarding good practice for employers regarding reasonable accommodation

No relevant information could be provided here.

4.3 Examples of individual reasonable accommodations which reveal good practice

Education institution employee

In a recent case, a higher education institution with about 300 faculty members and 7 000 students, in conjunction with local occupational health services, and following their recommendations, provided a newly hired employee with physical disabilities with a specific chair and adjustable desk accommodations.

⁶⁴ See: https://www.wen.uni.lu/universite/presentation/gouvernance/delequee_aux_amenagements_raisonnables.

⁶⁵ See: <https://guichet.public.lu/en/citoyens/enseignement-formation/enseignement-postprimaire/aides-postprimaire/amenagements-raisonnables.html>.

5 Recommendations and guidance regarding good practice and reasonable accommodation

5.1 Recommendations regarding good practice and reasonable accommodation in recruitment and hiring

Improvement opportunities to make reasonable accommodation happen in practice in relation to recruitment and hiring would reside in the following:

- upon ('automatic') registration with ADEM of an (unemployed) person newly recognised as a 'disabled employee', introducing a procedure to assess any specific accommodation needs;
- when collecting job vacancies from employers, introducing a questionnaire to collect information on potential accommodations;
- when processing job vacancies advertised by employers to ADEM, introducing a protocol/tool for matching them with the specific accommodation needs of potential candidates;
- before assigning applicants to job vacancies, introducing an information and exchange session with them on their specific accommodation needs and those accommodations potentially offered by the employer.

5.2 Recommendations regarding good practice and reasonable accommodation in initial employment

Improvement opportunities to make reasonable accommodation happen in practice in relation to newly recruited staff would reside in the following:

- before signing an employment contract, introducing a procedure to clarify the necessary and commonly agreed on accommodations with different stakeholders and funding instruments (the employer, the state, ADEM, FNS etc.), and recording them in the employment contract;
- before integrating the workstation, introducing a protocol to elaborate and implement an accommodation action plan, in line with the employment contract provisions;
- before integrating the adapted workstation, introducing an information session, eventually involving the inclusion assistant, in order to inform the employee about any adaptations, and assessing their adequacy;
- after integrating the adapted workstation, introducing a questionnaire to collect information on any issues or additional accommodation needs (newly disclosed);
- after integrating the adapted workstation, introducing a periodic (e.g. biannual) information and exchange session involving the employer, employee and inclusion assistant to address the status of specific accommodation needs.

5.3 Recommendations regarding good practice and reasonable accommodation in promotion and career development

Improvement opportunities to make reasonable accommodation happen in practice in relation to promotion or career development of staff would reside in the following:

- before envisioning any assignment change with a potential impact on specific accommodation needs, introducing a reassessment procedure in line with the recommendations in Sections 5.1 and 5.2;
- on a periodic basis (e.g. annually), introducing an appraisal procedure to evaluate the adequacy of promotion or career development opportunities, and accordingly reassessing any relevant accommodation needs, in line with the recommendations in Sections 5.1 and 5.2.

5.4 Recommendations regarding good practice and reasonable accommodation in retention, i.e. enabling people to stay in work if they develop an impairment or their impairment changes

Improvement opportunities to make reasonable accommodation happen in practice in relation to existing staff who acquire an impairment, or whose impairment changes, during the course of their employment would reside in introducing a reassessment procedure in line with the recommendations in Sections 5.1 and 5.2.

The above recommendations could be taken forward typically by readjusting some ADEM procedures, which may eventually need readjustments to their legal basis (relevant Grand Ducal Regulations).

The National Action Plan for Digital Inclusion, published in 2021 by the Luxembourg Government, 'aims to facilitate the emergence of a digitally inclusive society and to counteract a digital divide that harms society as a whole'.⁶⁶ It puts forward a number of important initiatives 'to make digital an economic and social lever for all those who choose digital', which cover people with disabilities in general. Its current focus, which is mainly on public services and the general population, could be further extended to cover the reasonable digital accommodation needs of people with disabilities in the workplace.

⁶⁶ Ministry for Digitalisation (2021), National Action Plan for Digital Inclusion (Plan d'action national d'inclusion numérique), available at: <https://digital.gouvernement.lu/en/publications/document-de-reference/panin-2021.html>.

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