



Factsheet on undeclared work – LUXEMBOURG

March 2023

¹¹ This is an update of the [2017 factsheet](#)



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1.0 Nature and estimated scale of undeclared work

1.1 Legal definition

Although, there no definition of undeclared work in Luxembourg, specific legal definitions apply to the different facets of undeclared work. Firstly, the Labour Code's definition of '*travail clandestin*'² includes:

- ▶ undeclared waged work, when the person who engages in it, knows (a) that his/her employer does not have a business permit, or (b) that his/her employer does not comply with legislation concerning tax deductions from wages or with social security legislation, (i.e. undeclared work, or undeclared or under-declared social security or tax contributions);
- ▶ the independent exercise of a professional activity without being in possession of the relevant business permit (i.e. unregistered self-employment);
- ▶ the engagement of a company, a person or a group of persons not in possession of a business permit, within a service-provision framework, thus benefiting from undeclared work;
- ▶ the engagement of salaried workers for the provision of services unrelated to the purpose of the company and for which a business permit is required (i.e., undeclared work related to non-registration of economic activities).

It should be noted that in Luxembourg the Inspectorate of Labour and Mines (*Inspection du travail et des mines*, ITM) cannot impose sanctions on unregistered companies, self-employed workers or intermediaries (i.e., those operating without a business permit) when they engage undeclared workers. These types of infractions fall under the jurisdiction of the organisations responsible for the right of establishment.³ The ITM is only responsible for imposing sanctions on employees who engage in undeclared work⁴.

The Labour Code also defines situations of 'non-declaration of employer status' (*'mise à disposition illégale de main-d'oeuvre'*)⁵ which relate to illegal labour supply operations. In such cases, the business involved, and the employee are deemed to have entered into an open-ended labour contract from the beginning of the job.⁶

As regards bogus self-employed workers, according to the Labour Code, in cases where a worker is required to bear business risk without the power to prevent risk from occurring due to a lack of budgetary and organisational freedom, he or she will be considered an employee.⁷ The Courts have outlined several criteria that determine the existence or non-existence of an employment contract. Such indicators may include: a regular working time, no ownership of the tools being used, a fixed place of work, being subjected to the authority of another person, precise instructions being given by the employer, an obligation to carry out the work personally, fixed salary, regular remuneration, existence of pay slips, registration as an employee with the social security system, no financial risk,

² Arts. L.571-1 to L.571-7 of the Labour Code, <https://data.legilux.public.lu/filestore/eli/etat/leg/code/travail/20220416/fr/pdf/eli-etat-leg-code-travail-20220416-fr-pdf.pdf>, accessed on 29 November 2022.

³ Art. L. 573-1 of the Labour Code, op.cit.

⁴ ELA (2022) *Overview on responsibilities, inspection competences and legal frameworks in Member States*, Cooperation Support Unit, (March 2022), unpublished; Inspection du travail et des mines (ITM), Rapport Annuel 2021. Available at: <https://itm.public.lu/fr/publications.html>, accessed 4 December 2022, p.63

⁵ Arts. L.133-1 to L. 133-3 of the Labour Code, op.cit.

⁶ Art. L. 133-1 of the Labour Code, op.cit.

⁷ Art. L. 121-9 of the Labour Code, op.cit.



references to the provisions and rules of labour law, etc.⁸ Furthermore, all rights associated with the real contractual relationship (e.g. minimum wage, pension contributions) are also applied and the costs must be paid by the employer, as if the relationship had been correctly designated since the beginning of the employment relationship.⁹

Other provisions of the Labour Code provide that the ITM is responsible for imposing sanctions on employers that engage in 'cross-border undeclared work'¹⁰ involving 'letter box companies'¹¹ or in illegal work of third-country nationals, which is defined as "*travail illégal*"¹².

In the case of illegal work of third-country nationals, the ITM sanctions employers with an administrative fine for each of these illegal employees.¹³ However, if there are also aggravating circumstances, the Inspectorate of Labour and Mines draws up a report and forwards it to the Prosecutor General's Office (*Le procureur d'État, 'Parquet'*)¹⁴ with a view to possible prosecution of an offence provided in articles 382-1 to 382-8 of the Criminal Code.¹⁵ The ITM can only draw up reports about violations of labour legislation. The burden of proof of the existence of an employment relationship, as well as working conditions contrary to human dignity, rests with the Public Prosecutor.¹⁶

The range of elements that define working conditions contrary to human dignity include¹⁷:

- ▶ absence of a written employment contract and/or absence of affiliation to social security bodies;
- ▶ an employment contract that involves a salary lower than the applicable minimum social wage;
- ▶ an employment contract that involves total or partial non-payment of wages;
- ▶ excessive working hours;
- ▶ employment of third-country nationals residing illegally in the country or who do not have the required work permits;
- ▶ employment of bogus self-employed workers or engaging companies that do not have a business permit;
- ▶ work in unhealthy, dangerous conditions that do not comply with occupational health and safety standards;
- ▶ housing made available to employees for residential purposes that does not meet health, hygiene, safety and habitability criteria;

⁸ ILO, *Regulating the employment relationship in Europe: a guide to Recommendation No. 198*. International Labour Office. Governance and Tripartism Department. Geneva: ILO, 2013, p. 34.

⁹ Williams, C.C., Llobera, M., Horodnic I.A., *Tackling undeclared work in the collaborative economy and bogus self-employment*. European Platform tackling undeclared work, March 2020, p. 59.

¹⁰ Art. L. 141-1 (5) of the Labour Code, op.cit.; article 14(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems; article 4(2) of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

¹¹ Letterbox companies are defined as companies which have complied only with the bare essentials for organisation and registration in a particular country (e.g. book-keeping, administration), but whose actual commercial activities are carried out in another country. European Platform Undeclared Work, Glossary of Terms, October 2018.

¹² Arts. L. 572-1 to L. 572-10 of the Labour Code, op.cit.

¹³ ELA (2022) *Overview on responsibilities, inspection competences and legal frameworks in Member States*, Cooperation Support Unit, (March 2022), unpublished.

¹⁴ *Le procureur d'État*. Contact information at: <https://www.om-mp.be/fr/votre-mp/parquets-procureur-roi/luxembourg/contact>, accessed on 30 November 2022.

¹⁵ Grand-Duché de Luxembourg. [Code pénal. Version consolidée](#).

¹⁶ Ibid. p. 62.

¹⁷ ITM, Rapport Annuel 2021, op.cit., p. 61.



- ▶ work under violent physical or economic coercion.

1.2 Estimates of undeclared work

Estimates of undeclared work in this section are based on two available sources providing cross-country comparable data: Eurobarometer surveys and the Labour Input Method (LIM) study. Caution is required because of various limitations of the applied methodologies¹⁸.

Examining the extent of undeclared work in 2019 based on Labour Input Method (LIM) estimates,¹⁹ 6.7 % of total labour input in the private sector in Luxembourg was undeclared (compared with 5.4 % in 2013). Therefore, between 2013 and 2019, there was a growth in undeclared work, which indicates the room for improvement in tackling undeclared work. However, the extent of undeclared work in Luxembourg is lower, in terms of total labour input, than the EU-27 average (see Figure 1 below).

According to the 2019 Eurobarometer, 32 % of Luxembourg citizens stated that they personally know someone who works without declaring all or part of their income (the EU average is 33 %).²⁰ The proportion of respondents answering this way had decreased by 3 percentage points since the previous survey (2014). Moreover, 20 % of respondents stated that all their paid activity was undeclared, 12 % stated that they received envelope wages, and 32 % that they carried out undeclared activity outside their main job, on their own initiative.²¹ Trust in public authorities (i.e. vertical trust) in both Government and Parliament has decreased in Luxembourg over the past 10 years,²² and undeclared work has become more acceptable in Luxembourg between 2007 and 2019.²³

¹⁸ Undeclared work can be measured both directly and indirectly. Indirect methods are based on the comparison of macroeconomic aggregates (such as national accounts). Direct methods, on the contrary, are based on statistical surveys and have advantages in terms of comparability and detail, but tend to under-report the extent of undeclared work. There is a consensus among both practitioners and academics that a direct approach should be used more to explore the nature of undeclared work in terms of who engages in such work, why they do so, which forms of undeclared work they undertake, and their reasons for doing so. When estimating the magnitude of undeclared work, the consensus is supportive of the use of indirect methods that search for discrepancies in comparable sets of secondary macroeconomic data (i.e. data constructed and/or collected for other purposes). The LIM study is based on the indirect method, whereas Eurobarometer surveys on the direct method.

¹⁹ Williams, C.C., Bejakovic, P., Mikulic, D., Franic, J., Kedir, A. and Horodnic, I.A. (2017) [An evaluation of the scale of undeclared work in the European Union and its structural determinants: estimates using the Labour Input Method](#), European Commission, Brussels. Franic, J., Horodnic, I and Williams, C.C. (2022) *Extent of Undeclared Work in the European Union*, European Labour Authority, Bratislava.

²⁰ Special Eurobarometer 498, op.cit., p. 35.

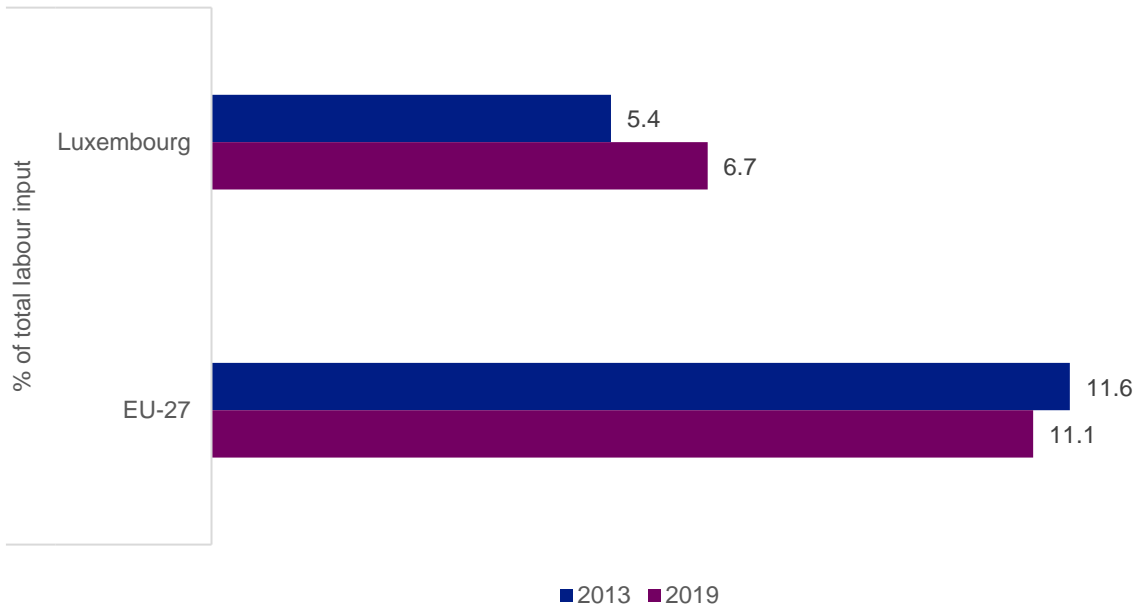
²¹ Ibid. QD22., p. T39.

²² Williams, C.C. and Horodnic, I.A., *Horizon scanning: early warning signals of future trends in undeclared work*, European Platform tackling undeclared work, June 2020, p. 17.

²³ Williams, C. C. and Horodnic, I. A. (2020). *Trends in the undeclared economy and policy approaches. Evidence from the 2007, 2013 and 2019 Eurobarometer surveys*, European Platform tackling undeclared work. Figure 10. Retrieved on 28 September 2022, p. 40.



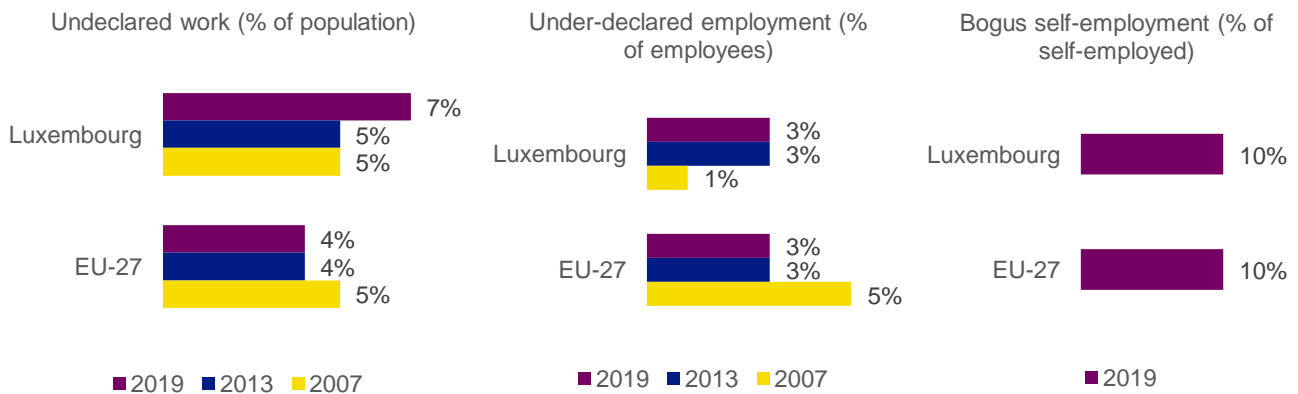
Figure 1. The scale of undeclared work in the private sector in Luxembourg and EU-27, 2013 and 2019.



Source: Franic, J., Horodnic, I.A. and Williams, C.C. (2022), Extent of undeclared work in the European Union, European Platform tackling undeclared work. Figures 3 and 6. Retrieved on 30 November 2022.

The figures below indicate the current state and development of undeclared and under-declared work and bogus self-employment between 2007 and 2019 for Luxembourg, based on Eurobarometer surveys. It should be noted that this is not a measure of the size of the undeclared economy. It only measures the proportion of the population who have engaged in undeclared work in the past 12 months. In some Member States, undeclared work may be more characterised by small-scale one-off acts of baby-sitting or home repairs and in others such work may be more regular wage employment relationships²⁴.

Figure 2. Composition of undeclared work, Luxembourg and EU-27, 2007, 2013, 2019



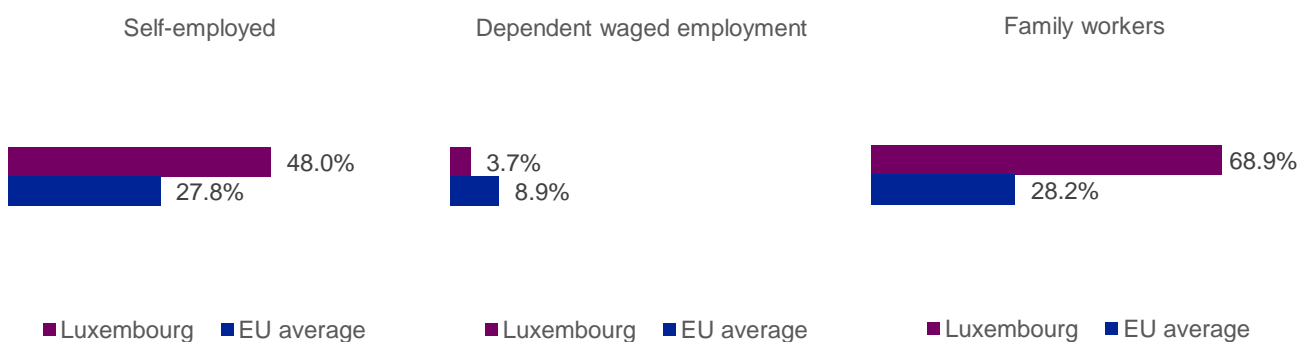
²⁴ Williams, C.C and Horodnic I.A. (2020). Trends in the undeclared economy and policy approaches Evidence from the 2007, 2013 and 2019 Eurobarometer surveys, European Platform tackling undeclared work. Figure 10. Retrieved on 28 September 2022.



Source: Williams, C.C and Horodnic I.A. (2020). [Trends in the undeclared economy and policy approaches Evidence from the 2007, 2013 and 2019 Eurobarometer surveys](#), European Platform tackling undeclared work. Figure 10. Retrieved on 28 September 2022.

There are also marked differences in the prevalence of undeclared work in different types of employment relationship. Figure 3 gives a detailed overview of the extent of undeclared work in different types of employment relationship, namely self-employment, dependent waged employment, and family work. Analysing the 2019 Labour Input Method (LIM) estimates,²⁵ in Luxembourg 3.7 % of waged employment is undeclared measured as a share of total labour input, the proportion of self-employment that is undeclared is 48 % (again measured as a share of total labour input) and the proportion of family work that is undeclared is 68.9 %²⁶.

Figure 3. Prevalence of undeclared work in the private sector by type of employment relationship, Luxembourg, EU- 27 average, 2019



Source: Franic, J., Horodnic, I.A. and Williams, C.C. (2022), Extent of undeclared work in the European Union, European Platform tackling undeclared work. Table 2. Retrieved on 30 November 2022.

Using the LIM estimates to analyse the structure of the undeclared labour market in Luxembourg in 2019,²⁷ the proportion of undeclared labour input that is waged employment is 51.7 % (compared with 62.9 % in the EU-27), 42.4 % of undeclared labour input is self-employment (36.3 % in the EU-27) and the proportion of undeclared labour input that is family work is 5.9 % (0.8 % in the EU-27). Therefore, compared with the EU-27, waged employment makes up a smaller proportion of undeclared work and self-employment a larger share. However, consideration should be given to the fact that Luxembourg has one of the lowest proportions of self-employed workers in the EU (9 %).²⁸

²⁵ Franic, J., Horodnic, I.A. and Williams, C.C. (2022), Extent of undeclared work in the European Union, European Platform tackling undeclared work.

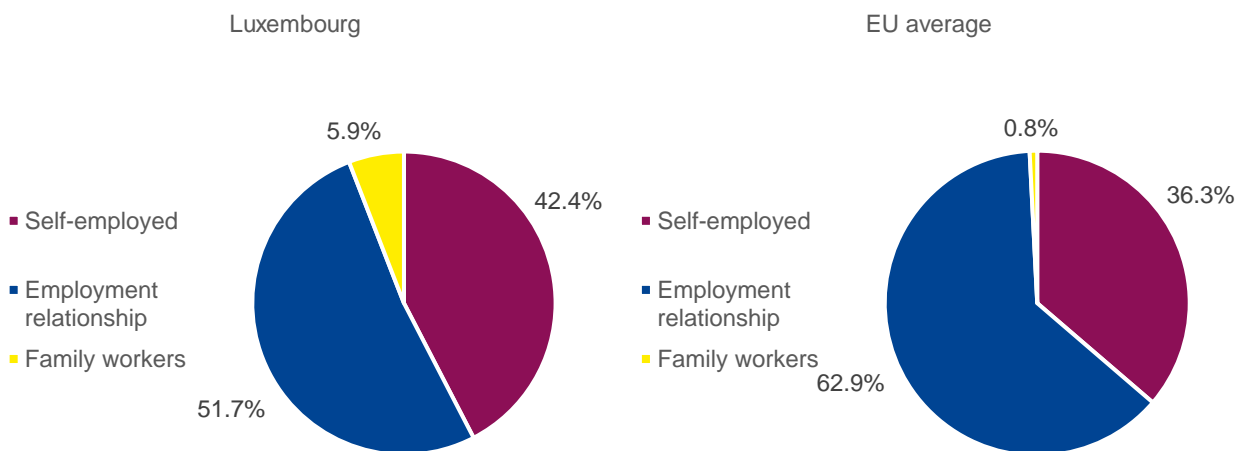
²⁶ This data (taken from the labour force survey), is based on a small sample, which might affect its statistical reliability.

²⁷ Franic, J., Horodnic, I.A. and Williams, C.C. (2022).

²⁸ Williams, C.C., Llobera, M., Horodnic I.A., *Tackling undeclared work in the collaborative economy and bogus self-employment*. European Platform tackling undeclared work, March 2020, p. 20.



Figure 4. Structure of the undeclared labour market in the private sector, Luxembourg and EU-27, 2019



Source: Franic, J., Horodnic, I.A. and Williams, C.C. (2022), Extent of undeclared work in the European Union, European Platform tackling undeclared work. Figure 8. Retrieved on 30 November 2022.

According to Special Eurobarometer no. 498 (2019), undeclared employment varies by sector, amounting to 11% in agriculture, 13% in construction, 18% in hospitality (hotels / restaurants / tourism), 32% in personal services (childcare / care of the elderly / cleaning), 5% in industry and manufacturing, 8% in retail and repair services (e.g. electronics, car maintenance), 15% in education, health and social work and 28% in other sectors.²⁹ Moreover, 24% of these undeclared activities have been carried out in the collaborative economy.³⁰

Respondents also admit to having carried out specific undeclared activities, in particular, babysitting (16%), assistance for an elderly person or other dependant (4%), cleaning or ironing (16%), repairs or renovations (11%), gardening (18%), working as a waiter or waitress (13%), tutoring (10%), passenger transport (2%), helping move house (9%), creative, multimedia and software services (e.g. design, marketing support, web or software development) (11%), or selling other goods or services (7%).³¹

As regards under-declared wages, the proportion of domestic workers who fall below the minimum wage is triple the rate of non-compliance among other employees.³²

The key factors for participating in undeclared work were also analysed in Special Eurobarometer no. 498. The survey reported that in 2019, Luxembourg citizens who performed undeclared or partly declared work in the preceding 12 months cited benefit to both parties as the most prevalent reason (49%).³³ The second most frequently cited category at EU-27 level – believing that intentional non-declaration of a small secondary income is perfectly acceptable – was the first choice cited by 41% respondents in Luxembourg. The third most common

²⁹ Special Eurobarometer 498 – September 2019. *Undeclared Work in the European Union*. Report. QD17, p. T32.

³⁰ Ibid. QD19, p. T35.

³¹ Ibid. QD18, p. T33-T34.

³² International Labour Organization (2021). *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189)*, Geneva, p. 157.

³³ Special Eurobarometer 498, op.cit., Q21, p. T38.



category – believing that bureaucracy or red tape for minor or occasional activities is too complicated – was cited by 26% respondents in Luxembourg.³⁴

2.0 Institutional framework

2.1 Responsibilities and characteristics of organisations involved in tackling undeclared work

Table 1. Overview of key institutional features in Luxembourg

Key institutional feature	Existence
A high-level coordinating body in the country	Yes
A national strategy for tackling undeclared work	No
Common cross-government strategic objectives and KPIs/targets for tackling undeclared work	No

Source : Inspection du travail et des mines (ITM), Rapport Annuel 2021. Retrieved on: <https://itm.public.lu/fr/publications.html>, on 4 December 2022.

Undeclared work in Luxembourg is tackled through a network of several government agencies:

The high-level coordinating body nationally is the Inspectorate of Labour and Mines (ITM) (*Inspection du travail et des mines*).³⁵ It contributes to this fight with various units under the umbrella of the Ministry of Labour and Employment (*Ministère du Travail, de l'Emploi et de l'Économie sociale et solidaire*).³⁶ The ITM covers all sectors and operates at national level. The ITM's mission is to advise and assist employees and employers, to provide them with practical legal and technical information, and to monitor and ensure the application of labour legislation and collective agreements.³⁷ The ITM has the following administrative departments and units directly involved in the fight against undeclared work:

- The **Control Unit** (Inspections, contrôles and investigations, ICE). The ICE inspectors monitor the application of labour legislation and to put an end to situations which contravene legal provisions. The ICE is often required to collaborate with other bodies in Luxembourg, but also with the authorities of bordering countries in order to coordinate joint control activities.³⁸ ICE inspectors' powers include: (a) carrying out inspections on their own initiative (i.e. not based on a specific complaint); (b) the right to enter business premises and properties in the context of inspections, without prior notice; (c) carrying out identity checks; (d) inspecting identity documents;

³⁴ Ibid. Q21, p. T37.

³⁵ *Inspection du travail et des mines*. Contact information at: <https://itm.public.lu/fr.html>, accessed on 30 November 2022.

³⁶ *Ministère du Travail, de l'Emploi et de l'Économie sociale et solidaire*, <https://mteess.gouvernement.lu/fr.html>, accessed on 30 November 2022.

³⁷ ITM, Rapport Annuel 2021, op.cit., p.9.

³⁸ Ibid. p. 55.



(e) checking means of transport; (f) inspecting business documents; and (g) requiring the persons under inspection to cooperate.³⁹

- ▶ The **Help Centre**'s mission is to advise and assist employees and employers, and to provide them with practical legal and technical information.⁴⁰
- ▶ The Inspectorate of Labour and Mines' **Posting Unit** (*Service de détachement*, DET) is responsible for registering posting declarations and for monitoring companies that post workers to Luxembourg. DET agents carry out field investigations on posting as well as on labour law and occupational health and safety.⁴¹

Other bodies which are usually involved in the context of larger-scale controls are:

- ▶ **The Social Security Authority** (*Centre commun de la sécurité sociale*, CCSS)⁴² is responsible for the collection of registered employees' unpaid contributions.⁴³
- ▶ **The General Customs and Excise Authority** (*Administration générale des douanes et accises*, ADA)⁴⁴.
- ▶ **The Registration, Estates and VAT Authority** (*Administration de l'enregistrement, des domaines et de la TVA*, AED).⁴⁵
- ▶ **The national police** (*Police Grand-ducal*)⁴⁶.

2.2 Cooperation and collaboration between authorities and cross-border authorities

2.2.1 The legal basis

The main legal basis for the work of authorities involved in tackling undeclared work are as follows:

Table 3. Key authorities and their legal basis to tackle undeclared work

Authority	Legal framework
Inspectorate of Labour and Mines, ITM	Labour Code, Articles L. 612-1 et seq., L.571-1 to L.571-7; L.133-1 to L. 133-3; L. 121-9; L. 573-1.

³⁹ ELA (2022) Overview on responsibilities, inspection competences and legal frameworks in Member States, Cooperation Support Unit, (March 2022), unpublished.

⁴⁰ ITM, Rapport Annuel 2021, op.cit., p.30.

⁴¹ Ibid. p.41.

⁴² *Centre commun de la sécurité sociale*. Contact information at: <https://guichet.public.lu/fr/citoyens/sante-social/rdv-en-ligne-caisse-maladie/rdv-ccss.html#bloub-10>, accessed on 30 November 2022.

⁴³ Articles L. 338-3 and Art. 447. *Grand-Duché de Luxembourg. Code de la Sécurité Sociale. Version consolidée.*

⁴⁴ *Administration générale des douanes et accises*. Contact information at: <https://douanes.public.lu/fr.html>, accessed on 3 December 2022.

⁴⁵ *Administration de l'enregistrement, des domaines et de la TVA*, <https://aed.gouvernement.lu/fr.html>, accessed on 3 December 2022.

⁴⁶ *Police Grand-ducal*. Website for filing a complaint <https://police.public.lu/en/aide-aux-victimes/comment-porter-plainte.html>, accessed on 30 November 2022.



National Labour Inspectorate System Steering Committee	Labour Code, Articles 613-2.
The Occupational Health Division The Customs Authorities The National Civil Service Safety Department The Accident Insurance Association	Labour Code, Art. L.142-4.

Source: ELA (2022) Overview on responsibilities, inspection competences and legal frameworks in Member States, Cooperation Support Unit, (March 2022), unpublished. Code du travail, Législation. Mémorial a - 172 du 12 avril 2022, Service Central de Législation. Luxembourg. Prise d'effet : 16 avril 2022. Retrieved on: <https://data.legilux.public.lu/filestore/eli/etat/leg/code/travail/20220416/fr/pdf/eli-etat-leg-code-travail-20220416-fr-pdf.pdf>.

2.2.2 Cooperation between authorities in Luxembourg

Cooperation between authorities in Luxembourg is cross-cutting, inter-ministerial and multi-disciplinary. The National Labour Inspectorate System Steering Committee (*Comité de coordination du système national d'inspection*) is in charge of organising the collaboration between the various government agencies. The Steering Committee is made up of the ITM, the Occupational Health Division (*la Division de la santé au travail*), the Customs Authorities (*l'Administration des douanes et accises*), the National Civil Service Safety Department (*Service national de la sécurité dans la Fonction publique*), and the Accident Insurance Association (*Association d'assurance contre les accidents*).⁴⁷

Moreover, to enforce the rules on the posting of workers, the ITM coordinates occasional or systematic checks on construction sites involving the Grand-Ducal Police and authorities responsible for (a) the right of establishment; (b) health and safety; (c) immigration; (d) public works; (e) customs and excise administration; (f) bridges and roads; (g) public buildings; (h) employment; (i) direct tax contributions; (j) registration and estates; and (k) accident insurance. The ITM also coordinates data exchange among all these bodies through IT tools.⁴⁸

2.2.3 Cooperation with other Member States

Luxembourg has concluded bilateral agreements with France, Portugal and Poland as well as with the Netherlands and Belgium. within the legal framework of the Treaty establishing the Benelux Union.⁴⁹ Among other issues, these Agreements provide the legal framework for cross-border joint inspections. Authorities of other Member States can take part in an inspection carried out in Luxembourg, though only as observers, while evidence gathered during an inspection conducted in another Member State can be used as evidence in administrative and judicial proceedings in Luxembourg, on the basis of supporting documents in the context of an infringement of national legislation.⁵⁰

Luxembourg, Belgium and the Netherlands have committed to working together to combat undeclared work under the 2015 Benelux Recommendation.⁵¹ This cooperation includes sharing good practices and successful approaches to data matching and data mining at national level, as well as data sharing across borders. A pilot

⁴⁷ Art. L. 613-2 of the Labour Code.

⁴⁸ Art. L.142-4 of the Labour Code.

⁴⁹ Traité Benelux, <https://www.benelux.int/fr/benelux-unie/nouveau-traite-benelux>, accessed on 3 December 2022.

⁵⁰ European Labour Authority, Guidelines for concerted and joint inspections, December 2020, ELA/MB/2020/057.

⁵¹ *Recommandation du Comité de Ministres Benelux relative au développement d'une coopération multilatérale dans la lutte contre la fraude sociale transfrontalière au niveau du Benelux et de l'Union européenne*, [M (2015) 7], 23 septembre 2015. https://www.benelux.int/files/8914/4308/2200/M20157_FR.pdf, accessed on 3 December 2022.



project on sharing and matching data on posted workers successfully detected a high number of irregularities related to cross-border fraud and errors in posting workers.⁵² In particular, the 2015 Benelux Recommendation includes the following specific initiatives:

- ▶ the establishment of consultation procedures on labour legislation to tackle undeclared work and social fraud, especially in the areas of bogus enterprises, benefit fraud and bogus temporary work agencies;
- ▶ multidisciplinary cooperation and data exchange through cross-border use of databases, including the implementation of a system of key performance indicators;
- ▶ adoption into national law of EU posting enforcement rules⁵³ in the three countries under analogous parameters;
- ▶ improvement of electronic notification at Benelux level, using existing national systems;
- ▶ cooperation to prevent 'A1 forms' from being used to evade social security contributions;⁵⁴
- ▶ joint inspections between Benelux national inspection services to effectively combat social dumping;
- ▶ the effective application of cross-border sanctions.

A follow-up has been added to 2015 Benelux Recommendation, adopting measures to tackle shell companies and fight social dumping⁵⁵, including the following initiatives:⁵⁶

- ▶ joint controls and inspections in the posting of workers, to prevent abuse of EU Regulations;
- ▶ the development of a harmonised conceptual framework to tackle undeclared cross-border work;
- ▶ the implementation of data-mining processes to analyse information contained in A1 forms and posting declarations;
- ▶ the development of identity control systems in the workplace, in order to quickly and reliably identify persons suspected of fraud;
- ▶ a working group on 'Shell companies and social dumping' (SOC-SSOF) has been set up.

Another area of cooperation is focused on the control of bogus temporary employment agencies, including the following initiatives:

- ▶ a register of bogus cross-border temporary work agencies in the Benelux;
- ▶ cooperation to develop measures against bogus cross-border arrangements;

⁵² European Labour Authority, *Different forms of cross-border undeclared work, including through third-country nationals*, September 2021, p. 21.

⁵³ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')

⁵⁴ Concerns have been raised over the abuse of A1 forms by letterbox companies with the intention of evading social security contributions. An A1 form is a statement of applicable legislation; it allows companies to pay social security contributions in the sending EU country during a posting or when the employee works in several countries at the same time. This type of fraud actually appears more often in cases where A1 forms are issued for the pursuance of activities in two or more Member States (covered by Article 13 of Regulation (EC) No 883/2004). Llobera, M. (2019). *Tackling letterbox companies: challenges and policy options. Input paper to the thematic discussion*. European Platform Tackling Undeclared Work Plenary meeting 12-13 March 2019, p.8.

⁵⁵ <https://www.benelux.int/fr/post/la-belgique-et-le-luxembourg-inspectent-dans-le-cadre-de-leur-lutte-contre-le-dumping-social-24-entreprises-dans-le-secteur-de-la-viande-bnlsecurity2017/>, accessed 2 December 2022.

⁵⁶ https://www.benelux.int/files/8914/4308/2200/M20157_FR.pdf



- ▶ joint controls based on risk analysis and building on these, to ensure the systematisation of information and allow instructions for inspectors to be improved;
- ▶ the establishment of a procedure to efficiently and correctly identify people who have been active as temporary workers on both sides of the border;
- ▶ Setting up a working group on 'Fraudulent temporary work agencies' (SOC-AIFU).

In 2021, the ITM took part in five negotiation meetings organised by the Benelux Secretariat on drawing up a preliminary draft treaty to improve and strengthen multidisciplinary cooperation between the Benelux countries to tackle undeclared work and social fraud, and to ensure occupational health and safety and decent employment conditions for cross-border workers. Negotiations on the draft treaty continued in 2022 under the Luxembourg Presidency of the Benelux Union.⁵⁷

At EU level, the ITM's mission, as the national authority responsible for the posting of workers, is to cooperate with its counterparts in other Member States, in particular through the Luxembourg Liaison Office (*Bureau de liaison luxembourgeois*, BLL). These cooperation activities aim to combat illegal work of third-country nationals ('*travail illégal*') and to prevent accidents at work and occupational diseases. They involve regular communication with the competent authorities in neighbouring countries, as well as the exchange of best practices and administrative data. The Internal Market Information System (IMI) system⁵⁸ facilitates the exchange of information and data with the inspectorates in other Member States, particularly in the context of investigations into companies that post workers to or from Luxembourg. In 2021, the Luxembourg Liaison Office sent 111 official requests to other Member States, and it received 25 requests from them during the same period.⁵⁹

3.0 Policy focus and measures

3.1 Policy approach

In Luxembourg, policy approaches mostly relate to controlling companies and workers and to setting up deterrent measures through fines, penalties and imprisonment. However, the effort directed towards investigating infractions related to undeclared work is rather exiguous. In 2021, activities related to illegal work of third-country nationals represented just 0.36 % of the of the ITM's total activities (0.31 % in 2020, and 0.16 % in 2019), while activities investigating 'travail clandestin' represented 0.81 % (0.69 % in 2020, and 0.58 % in 2019). In contrast, activities devoted to the posting of workers represented 9.44 % (8.66 % in 2020, and 7.16 % in 2019).

In 2021, six investigations conducted by the Inspectorate of Labour and Mines into labour conditions, the posting of workers, and occupational health and safety, revealed signs of human trafficking. These investigative procedures were carried out by the ICE and the DET Posting Unit (*Service de détachement*). In this regard, Luxembourg allows third-country nationals in an irregular situation who are victims of severe labour exploitation to stay until they receive back payments. This is allowed for under Article 13(4) of the Employers Sanctions Directive (2009/52/EC) but is not an obligation, and few Member States have established such a right in favour of foreign workers. In some cases, if they cooperate with the authorities' investigations, they can also receive a residence permit.

⁵⁷ ITM, Rapport Annuel 2021, op.cit., p. 119.

⁵⁸ http://ec.europa.eu/internal_market/imi-net/index_en.htm

⁵⁹ ITM, Rapport Annuel 2021, op.cit., p. 54.



At the preventative level, Luxembourg has introduced tax reduction schemes to target undeclared work in the personal and household services (PHS) sector, to promote work on a declared basis. Due to its geopolitical situation, Luxembourg devotes a large proportion of its efforts in tackling cross-border undeclared work. In 2021, the Inspectorate of Labour and Mines' Posting Unit, in cooperation with the General Customs and Excise Administration (ADA), carried out 5 509 investigations in 2021 on the basis of the information compiled from the 65 161 registered posting declarations. This represented an increase of 28.21 % compared to 2020 (4 297 investigations).⁶⁰ As a result, 3 577 infringements were notified to foreign companies, representing an increase of 6.15 % compared to 2020 (3 398 infringements). The amount of the fines imposed was EUR 4 088 500.⁶¹ However, official data are not broken down in such a way as to determine how many of these proceedings relate to cross-border undeclared work.

At national level, in 2021, 75 investigative procedures were carried out on '*travail clandestin*' as defined in the Labour Code (84 in 2020, and 39 in 2019), which resulted in 3 formal infraction proceedings (9 in 2020, and 4 in 2019) and EUR 10 000 in fines (EUR 23 500 in 2020, and EUR 8 000 in 2019).⁶²

While, in 2021, 70 investigative procedures were carried out on illegal work of third-country nationals (54 in 2020, and 130 in 2019), resulted in 52 formal infraction proceedings (45 in 2020, and 68 in 2019) and EUR 162 500 in fines (EUR 175 000 in 2020 and EUR 222 500 in 2019).⁶³

Collective bargaining in Luxembourg is an important instrument to help tackle undeclared work. Collective agreements have been declared of general application in sectors where undeclared work is more prevalent, and these agreements, in their first article, expressly declare that their main purpose is to regulate industrial relations and working conditions, with a view to safeguarding social peace in the sector and to combating undeclared work and unfair competition.⁶⁴ They also include a specific provision on undeclared work ('*travail clandestin*' in the terms of Arts. L.571-1 of the Labour Code):

- Declaring that undeclared work endangers employment in companies in the sector. Thus, the social partners undertake to combat it jointly.

⁶⁰ Ibid. p. 49.

⁶¹ Ibid. p. 52.

⁶² ITM, Rapport Annuel 2021, op.cit., p. 21. Inspection du travail et des mines (ITM), Rapport Annuel 2020, p. 20. Retrieved on: <https://itm.public.lu/fr/publications.html>, accessed 04 December 2022. Inspection du travail et des mines (ITM), Rapport Annuel 2019, p. 18. Retrieved on: <https://itm.public.lu/fr/publications.html>, accessed on 4 December 2022.

⁶³ ITM, Rapport Annuel 2021, op.cit., p. 21. ITM, Rapport Annuel 2020, op.cit., p. 20. ITM, Rapport Annuel 2019, op.cit., p. 18.

⁶⁴ Règlement grand-ducal du 22 mars 2017 portant déclaration d'obligation générale de la convention collective de travail pour le personnel du secteur « nettoyage de bâtiments » signée en date du 6 décembre 2016 conclue entre la Fédération des Entreprises de Nettoyage, d'une part et les syndicats OGB-L et LCGB, d'autre part. - Journal Officiel du Grand-Duché de Luxembourg Mémorial A n° 392 de 2017; Règlement grand-ducal du 18 décembre 2019 déclarant l'obligation générale d'un texte coordonné de la convention collective de travail du bâtiment (01.01.19–31.12.21) concluded between the Groupement des Entrepreneurs du Bâtiment et des Travaux Publics and the Federation of Luxembourg Construction and Civil Engineering Companies, on the first part, and the OGB-L and LCGB trade unions, on the second part. Journal Officiel du Grand-Duché de Luxembourg Mémorial A n° 895 du 24 décembre 2019; Règlement grand-ducal du 24 novembre 2021 portant déclaration d'obligation générale de l'avenant à la convention collective de travail pour le métier de carreleur-marbrier-tailleur de pierres conclue le 1er avril 2018 prolongeant la validité de la convention collective de travail du 01.04.2021 au 31.08.2021 et de la convention collective de travail signée le 8 septembre 2021 (valable du 01.09.2021 au 31.08.2024) conclus entre la Fédération des Entreprises de carrelages du Grand-Duché de Luxembourg, d'une part et les syndicats OGBL et LCGB, d'autre part. Journal Officiel du Grand-Duché de Luxembourg Mémorial A n° 821 du 25 novembre 2021; Règlement grand-ducal du 22 mars 2017 portant déclaration d'obligation générale de la convention collective de travail pour les métiers d'installateur sanitaire, d'installateur de chauffage et de climatisation conclue entre les syndicats OGB-L et LCGB d'une part et les fédérations réunies des patrons installateurs sanitaires et des patrons installateurs de chauffage et de climatisation du Grand-Duché de Luxembourg, d'autre part. Mémorial A n° 413 de 2017.



- ▶ Establishing that employees are required not to engage in undeclared work for third parties (e.g., on days off). Otherwise, sanctions set out in the Labour Code shall apply. Undeclared work is considered serious misconduct vis-à-vis the company (unfair competition) and can therefore give rise to dismissal without notice.
- ▶ The employer is obliged to apply the provisions of the collective agreement, under pain of administrative sanctions from ITM, or that the employee takes action against the employer at the Labour Court. The non-respect of the provisions of the collective agreement is not penalised.

At sectoral level, the Luxembourg Independent Trade Union Confederation (*Onafhängege Gewerkschaftsbond Lëtzebuerg*, OGBL) has published the texts of the various collective agreements – in several languages given the linguistic difficulties of many foreign workers in the construction sector – so as to facilitate workers' understanding of the agreements and thus promote their application among a greater number of employees.⁶⁵

3.2 Main policy measures

The 2022 holistic approaches study⁶⁶ indicates that four types of measures are commonly used in Luxembourg to tackle undeclared work - predominantly the use of:

- ▶ Penalty measures;
- ▶ Initiatives to increase the risk of detection (e.g., inspections);
- ▶ Incentives to make declaring work easier and more beneficial;
- ▶ Education and awareness-raising campaigns and initiatives to modernise authorities to improve trust in government.

Annex 1 provides more detail on the specific policy measures used to tackle undeclared work.

3.3 Good practices⁶⁷

Good practices in tackling undeclared work have been explored by the European Platform Tackling Undeclared Work. The following good practice addressing undeclared work is identified in Luxembourg:

- ▶ [Benelux cross-border cooperation in detecting and tackling social fraud and error – pilot project in the construction sector](#) (2017). The Benelux has been a forerunner in cross-border cooperation in fiscal matters and in tackling cross-border social fraud. As early as 2012, Belgium, the Netherlands and Luxembourg agreed to tackle different types of social cross-border fraud, resulting in the creation of three working groups at the end of 2013; these were dedicated to fraudulent temporary work agencies (SOC-AIFU), bogus corporative arrangements (SOC-SSOF) and benefit fraud (SOC-UFA). In March 2015, the members of the Benelux working group on bogus corporate arrangements decided to launch two pilot projects (one pilot project on sharing and matching data on posted workers and one on benefit fraud).

Other practices available on the European Labour Authority [website](#).

⁶⁵ OGBL. Syndicat Bâtiment, Artisanat du Bâtiment et Constructions métalliques. <http://www.ogbl.lu/syndicat-batiment/>, accessed on 4 December 2022.

⁶⁶ Williams, C. and Horodnic, I. (2022). *Progress of national authorities towards a holistic approach, Study using a common assessment framework*. May 2022. European Platform Tackling Undeclared Work.

⁶⁷ [Virtual library | European Labour Authority \(europa.eu\)](#)



3.4 Challenges and barriers

Although, Luxembourg has a high-level coordinating body for tackling ‘undeclared work’ at national level, namely the Inspectorate of Labour and Mines (ITM) (*Inspection du travail et des mines*).⁶⁸ as well as solid legal grounds for cooperation with other Member States, Luxembourg does not have a legal definition of undeclared work per say. Challenges may arise from the absence of a national strategy, common cross-government strategic objectives and KPIs/targets for tackling undeclared work.

Between 2013 and 2019, there was a growth in undeclared work in Luxembourg, which indicates the room for improvement. Educational initiatives and awareness-raising campaigns could play a key role in tackling undeclared work. Besides, there are a limited range of measures to foster commitment to declared work. Supply-side measures (i.e., to stimulate suppliers to operate declared) and demand-side measures (i.e., to encourage purchasers to buy declared goods and services) are also rather exiguous.

The information contained in the 2020 ITM annual report concerning the distribution of cases handled by the Inspectorate of Labour and Mines, showed that only 0.40 % of inspection cases were carried out in the agricultural sector, which normally involves significant undeclared work. Given the low percentage of inspections carried out in agriculture, the ILO has requested the government to take steps to ensure the application of the labour legislation in agriculture and to continue providing information on the number of inspection visits carried out in this sector.⁶⁹

Overall, relatively little effort is devoted to investigating infractions. In 2021, activities investigating ‘*travail clandestin*’ represented 0.81 % (0.69 % in 2020, and 0.58 % in 2019); while activities related to illegal work of third-country nationals represented just 0.81 % of the ITM's total activities (0.31 % in 2020, and 0.16 % in 2019).⁷⁰

Table 4. Level of tax morale, horizontal and vertical trust, Luxembourg and the EU

	Tax morale*	Horizontal trust**	Vertical trust: Tend to trust tax authority ***	Tend to trust labour inspectorate
Luxembourg	8.76	32 %	57 %	56 %
EU-27 average	8.55	36 %	49 %	49 %

Source: Williams, C.C and Horodnic I.A. (2020). [Trends in the undeclared economy and policy approaches Evidence from the 2007, 2013 and 2019 Eurobarometer surveys](#), European Platform tackling undeclared work. Figures 35, 36 and 37. Retrieved on 28 October 2022.

*Tax morale is an index where respondents were asked to rank five different types of undeclared work on a scale of 1 to 10 (recoded here as 1 representing ‘totally acceptable’ behaviour and 10 representing ‘totally unacceptable’ behaviour).

**Horizontal trust was measured as the percentage of respondents who personally know people engaged in undeclared work.

***Vertical trust was measured as proportion of respondents who tend to trust the main state institutions tackling undeclared work.

Additional macro-economic and structural conditions of institutions affecting the prevalence of undeclared work in Luxembourg are provided in Annex 2.

⁶⁸ *Inspection du travail et des mines*. Contact information at: <https://itm.public.lu/fr.html>, accessed on 30 November 2022.

⁶⁹ ILO. Reports of the Committee of Experts (CEACR). Convention no. 81 / Direct Request adopted in 2021, and published in the 110th of the International Labour Conference session (2022), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13203:0::NO::P13203_COUNTRY_ID:102757, accessed on 30 November 2022.

⁷⁰ ITM, Rapport Annuel 2021, op.cit., p. 20. ITM, Rapport Annuel 2020, op.cit., p. 19. ITM, Rapport Annuel 2019, op.cit., p. 17.



Annex 1: Approaches used to tackle undeclared work

Table A.1. Approaches used to tackle undeclared work

Approaches used	Existence
PENALTIES	
Use of penalties and fines to prevent participation in undeclared work	Yes
Use of penalties to transform undeclared work into declared work	Yes
Penalties for people or businesses who buy undeclared work	Yes
Reclassifying false employment relationships (e.g., bogus self-employment)	No
Use of non-compliance lists ('blacklists')	No
Previous non-compliance excludes firms from bidding for public procurement contracts	No
'Naming and shaming' lists	No
RISK OF DETECTION	
Workplace inspections	Yes
Online/desk-based inspections	No
Joint inspections with other national inspectorates	Yes
Announced inspections	Yes
Cross-border inspections	Yes
Registration of workers prior to first day at work	No
Data matching and sharing to identify risky businesses	No
Use data mining to determine risky businesses for inspection	No
Coordination of data mining and sharing across government departments	No
Coordination of strategy on undeclared work across government departments	No
Use of complaint reporting tools (e.g. telephone hotlines) ⁷¹	Yes
Certification of business, certifying payments of social contributions and taxes	No
Notification letters	Yes
Mandatory ID in the workplace	No

⁷¹ [Information and tools for working declared | European Labour Authority \(europa.eu\)](https://european-labour-authority.europa.eu/information-and-tools-for-working-declared)



Supply chain responsibility (e.g., joint and several liability, due diligence)	Yes
INCENTIVES	
Supply-side measures (i.e., to stimulate suppliers to operate declared)	
Simplify procedures for complying to existing regulations (e.g., easier registration procedures; simplify forms; reduce duplication)	Yes
Compliance lists	No
Society-wide amnesties	No
Individual-level amnesties for voluntarily disclosing undeclared activity	No
'Formalisation' advice to start-ups	No
'Formalisation' support services to existing businesses	No
Targeted VAT reductions	No
Provide free record-keeping software to businesses	No
Provide fact sheets on record-keeping requirements	No
Provide free advice/training on record-keeping	No
Gradual formalisation schemes	No
Initiatives to ease transition from unemployment into self-employment	Yes
Initiatives to ease transition from employment into self-employment	Yes
Access to free marketing	No
Demand-side measures (i.e., to encourage purchasers to buy declared goods and services)	
Service vouchers	No
Targeted direct tax incentives (e.g., income tax reduction/subsidy)	No
Targeted indirect taxes (e.g., VAT reductions)	No
Initiatives for customers to request receipts (e.g., Lottery for receipts)	No
FOSTERING COMMITMENT TO OPERATE DECLARED	
Campaigns to inform suppliers of undeclared work of the risks and costs of working undeclared	Yes
Campaigns to inform suppliers of undeclared work of the benefits of formalising their work (e.g., informing them where their taxes are spent)	Yes
Campaigns to inform users of undeclared work of the problems of purchasing goods and services from the undeclared economy	No
Campaigns to inform users of undeclared work of the benefits of declared work (e.g., informing citizens of the public goods and services they receive with the taxes collected)	No



Normative appeals to businesses to operate on a declared basis	Yes
Measures to improve the degree to which customers of the enforcement agencies believe they have been treated in a respectful, impartial and responsible manner	No
Measures to improve labour, tax and/or social security law knowledge	Yes
Public information on the work and achievements of the enforcement authorities	Yes

Source: Platform member



Annex 2: Dashboard: overview of key indicators relevant to undeclared work

The dashboard below provides an overview of the key structural conditions that are associated with the extent of undeclared work. The trends in each driver display whether it improved ('green') or worsened ('red') in Luxembourg. For comparative purposes, the trends in each driver of undeclared work are also presented for the EU-27.

Table A.2. Trends in key structural drivers of undeclared work

LUXEMBOURG				
INDICATOR	YEAR:		TREND 2009 vs. 2019	EU-27, 2019 ****
	2009	2019		
A. FORMAL INSTITUTIONS				
I. FORMAL INSTITUTIONAL RESOURCE MISALLOCATIONS AND INEFFICIENCIES				
1. Level of modernisation of government				
Government effectiveness (-2.5 to 2.5 (strong performance))	1.74	1.73	■	-
2. Formal institutions acting in a corrupt manner				
Corruption Perceptions Index (CPI) (0-100 (very clean)) *	80	80	■	-
Control of corruption (-2.5 to 2.5 (strong performance))	1.96	2.11	■	-
II. FORMAL INSTITUTIONAL VOIDS AND WEAKNESSES				
1. Modernisation Explanation - Level of 'development'				
GDP (current prices, euro per capita)	78 380	100 360	■	31 300
Human Development Index (HDI) (0-1 (highest development))	0.905	0.927	■	-
Social Progress Index (SPI) (0-100 (high)) **	83.62	87.92	■	-
Self-employment (% of total employment)	7.4	7.4	■	13.4
2. State intervention				
Burden of government regulation (1-7 (best))	4.2	4.5	■	-
Business flexibility index (0-10 (high))	7.42	8.06	■	-
Expense of government (% of GDP)	38.7	39.3	■	36.6
Research & Development expenditure (% of GDP)	1.59	1.18	■	2.23
Tax revenue (% of GDP)	23.8	26.4	■	19.7
Social contributions (% of revenue)	30.5	29.2	■	33.0
Impact of social transfers on poverty reduction (%)	44.81	33.96	■	32.38
Labour market policy (LMP) expenditure (% of GDP)	1.33	1.18	■	1.65
Unemployment rate (% of active population)	5.1	5.6	■	6.8
People at risk of poverty/social exclusion (% of total population)	17.8	20.6	■	20.9
Severe material deprivation rate (% of total population)	1.1	1.3	■	5.5
Inequality of income distribution (income quintile share ratio)	4.31	5.34	■	4.99
Gini coefficient (0-100 (perfect inequality))	29.2	32.3	■	30.2
Labour productivity (% change on previous period)	-4.2	-1.2	■	0.7
III. FORMAL INSTITUTIONAL POWERLESSNESS				
Reliability of police services (1-7 (best))	6.2	6.2	■	-
Judicial independence (1-7 (best))	6.0	6.1	■	-
Rule of law (-2.5 to 2.5 (strong performance))	1.82	1.79	■	-
Regulatory quality (-2.5 to 2.5 (strong performance))	1.64	1.70	■	-
Voice and accountability (-2.5 to 2.5 (strong performance))	1.56	1.49	■	-
Trust in Government (% tend to trust)	68	68	■	35
Trust in Parliament (% tend to trust)	59	56	■	34
IV. FORMAL INSTITUTIONAL INSTABILITY AND UNCERTAINTY				
Democracy Index (0-10 (full democracy)) ***	8.88	8.81	■	-
Political stability (-2.5 to 2.5 (strong performance))	1.45	1.35	■	-
B. INFORMAL INSTITUTIONS				



	2013	2019		
Social capital (0-100 (high))	64.8	63.3	■	-
Tax compliance (0-10 (high))	9.34	9.38	■	-
	Year:			
	2013	2019		
<i>Acceptability of undeclared work (% total 'unacceptable')</i>				
Firm hires worker on undeclared basis	87	81	■	82
Undeclared work by firm for firm	91	84	■	85
Undeclared work by individual for private household	55	65	■	67
Undeclared work by firm for private household	86	80	■	82
Someone partially or completely conceals their income	85	73	■	78
<i>Personally know people engaged in undeclared work (% 'yes')</i>	35	32	■	36
TREND (2009-2019): ■ = positive ■ = unchanged ■ = negative				

Notes: * 2009 data not available; 2012 data used instead; ** 2009 data not available; 2014 data used instead; *** 2009 data not available; 2010 data used instead; **** EU-28 average for Expense of government (% of GDP); Tax revenue (% of GDP) and Social contributions (% of revenue)

Source of methodology: 2022 update by Horodnic, I.A. of the study by Williams, C.C. and Horodnic, I.A. (2020). [Horizon scanning: early warning signals of future trends in undeclared work](#), European Platform tackling undeclared work. Extraction date: 30 October 2022.