

# Factsheet on Undeclared Work - LUXEMBOURG

## 1.1 Nature and Estimated Scale of Undeclared Work

### 1.1.1 Definition of undeclared work

Undeclared work, referred to in the context of Luxembourg law more precisely as clandestine labour (*travail clandestin*), is defined explicitly by the 1977 law<sup>1</sup> (and reinterpreted by a consecutive series of cases of jurisprudence since the introduction of the legal framework in the 1970s<sup>2</sup>) and reconsidered under article L.571-1 of the Code of Work introduced by law in 2006<sup>3</sup>. Undeclared work, concerning both wage earners and the self-unemployed, is defined in the law first for the self-employed as 'the activity on a self-employed basis of any occupational activities listed in Article 1er of the Law of 2 September 2011 regulating access to the professions of craftsman, traders and industrial to certain liberal professions without being in possession of the authorisation provided there' and second, for wage earners, in the case of 'the provision of wage labour, when the wage earner exercise, knows that the employer does not have the authorisation provided by the Law of 2 September 2011 mentioned above or, knows that his position as an employee is not lawful under the laws concerning deductions on wages or legislation on social security'<sup>4</sup>. The 2011 law<sup>5</sup> mentioned in the context of non-declared work does not only stipulate the access to these specific activities, but also ensures their protection as far as illegal access is concerned.

The definition followed by the main actors in Luxembourg is based on an existing legal framework and therefore broadly shared.

### 1.1.2 Characteristics of undeclared work

Research for this factsheet has not revealed any data on prevalent types of undeclared work in Luxembourg.

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<sup>1</sup> Loi du 3 août 1977 ayant pour objet : I. d'interdire le travail clandestin, II. de modifier l'article 26 a) de la loi du 2 juin 1962 déterminant les conditions d'accès et d'exercice de certaines professions ainsi que celles de la constitution et de la gestion d'entreprises, modifiée et complétée par la loi du 26 août 1975, Mémorial A, numéro 45, 8 août 1977 (Law of 3 August 1977 on the suspension of undeclared work).

<sup>2</sup> Some parliamentary questions introduced since the enforcement of the law have also dealt with non-declared work such as the latest to have been introduced in October 2014 (Parliamentary question Nr. 548, 25 September 2014, [www.chd.lu](http://www.chd.lu)).

<sup>3</sup>

Internet:

[http://www.legilux.public.lu/leg/textescoordonnes/codes/code\\_travail/Code\\_du\\_Travail.pdf](http://www.legilux.public.lu/leg/textescoordonnes/codes/code_travail/Code_du_Travail.pdf)

<sup>4</sup> For the purpose of this factsheet, the expert has translated the original French law as there is no official English translation available. The original text stipulates in the definitional context that '*Est considéré comme travail clandestin: 1. l'exercice à titre indépendant de l'une des activités professionnelles énumérées à l'article 1<sup>er</sup> de la loi du 2 septembre 2011 réglementant l'accès aux professions d'artisan, de commerçant, d'industriel ainsi qu'à certaines professions libérales, sans être en possession de l'autorisation y prévue; 2. la prestation d'un travail salarié, lorsque celui qui s'y livre: a) sait que l'employeur ne possède pas l'autorisation prévue par la loi du 2 septembre 2011 précitée, ou b) sait que sa situation en qualité de salarié n'est pas régulière au regard de la législation concernant les retenues sur salaires ou de la législation relative à la sécurité sociale*'.

<sup>5</sup> Loi du 2 septembre 2011 réglementant l'accès aux professions d'artisan, de commerçant, d'industriel ainsi qu'à certaines professions libérales et - modifiant l'article 542-2 du Code du travail; - modifiant la loi modifiée du 16 juillet 1987 concernant le colportage, la vente ambulante, l'étalage de marchandises et la sollicitation de commandes; - modifiant la loi modifiée du 10 juin 1999 relative à la profession d'expert-comptable; - portant abrogation de la loi modifiée du 21 février 1976 ayant pour objet d'instaurer un jour de fermeture hebdomadaire dans les stations de vente de carburant et de lubrifiant pour véhicules automoteurs, Mémorial A, number 198, 22 September 2011 (Law of 2 September 2011 regulating access to the professions of craftsman, traders and industrials, and to certain liberal professions, Memorial A, Number 198, 22 September 2011).

National Labour Inspectorate (the *Inspection du Travail et des Mines* – hereafter the ITM<sup>6</sup>) data for 2016<sup>7</sup>, in respect to their own controls and investigations, show that the restaurant/accommodation industry, the transport and commerce industries, as well as the construction and industry sectors, are predominant sectors where undeclared work is found. Available data, however, does not indicate if these controls and investigations are directly related to non-declared work or if other missions by the ITM were carried out during these controls and investigations.

For the research of this factsheet, no data has been found on the relation between employer size and non-declared work. However, a succinct overview of press articles related to what is referred to as '*coup de poings*' (larger controls) reveals that both larger and smaller companies resort to various strategies of undeclared work. However, the material is scarce so that an overall picture of the situation is impossible to be drawn. An example of a larger control conducted by the ITM was reported in the press by the government in 2011 and dealt with undeclared work (together with controls of health, working conditions, and security standards) on a construction site with more than 21 companies controlled and a total of 129 employees<sup>8</sup>. This example shows the various aspects of controls, and their breadth both in terms of elements under control, inter-ministerial cooperation between agencies, as well as mobilisation of manpower.

A thorough archival research for this factsheet has revealed that the subject is still understudied, with no qualitative data on the motivations behind illegal work. Non-declared work in Luxembourg is difficult to measure and only estimations exist with a few components being studied. However, Clément and Maas (2007)<sup>9</sup>, in a pioneering work on non-declared work in Luxembourg and based on a larger trade union study - entitled '*Etude 2Plus*' - financed by the government and the FSE in 2006, sought to identify some potential motivations behind non-declared work. More broadly, these authors conclude that most drivers are in the majority of cases economy-related such as for example that non-declared work would permit avoiding paying social contributions and as a result increase company revenues. For employers, in particular, illegal work is identified as a means to avoid staff costs and the payment of VAT. The study also unravels the following potential pillars of undeclared work: administrative burdens for companies to declare jobs; or the reduction of costs when resorting to non-declared work as a company strategy to survive in competitive activity sectors.

Although these motivations should be cautiously evaluated (with an obvious bias due to the fact that the research was conducted by the trade union and no longer existing research centre, Jean Baptiste Rock), they have not lost their relevance and should constitute a guide for future studies in the field of non-declared work: VAT has increased since January 2015 (consumer consumption increased before implementation, but decreased afterwards) and the fact that some sectors (such as construction) remain highly competitive, especially if crisis-related tensions on the sectors are considered. At the same time, efforts have been made at the government and municipal levels to better regulate, but the impact on non-declared works remains unknown. Clément and Maas (2010), in their study, rightly point towards the still non-studied phenomenon of '*occult subcontracting*' (*sous-traitance occulte*), a phenomenon which involves companies under subcontracts for companies and with non EU workers who are conducting tasks inter-professionally. Another research focus could be the question of why non-declared work flourishes in particular in new activity sectors: this constitutes an element to be further explored in the face of a diversified economy in Luxembourg and new emerging sectors such as ICT, logistics or activities in the finance sector. Other potential motivations have been hinted at in the press reveal why individuals would resort to non-declared work for

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<sup>6</sup> Internet: <http://www.itm.lu/home.html>

<sup>7</sup> Internet: <http://www.itm.lu/files/live/sites/Itm/files/Itm/Rapports%20Annuels/06.pdf> (p. 34)

<sup>8</sup> Internet: <https://www.gouvernement.lu/756169/15-itm?context=971660>

<sup>9</sup> Franz Clément and Roland Maas, *Le travail non déclaré au Luxembourg*, Luxembourg Institute of Socio-Economic Research LISER (former CEPS/INSTEAD), col. Gouvernance et Emploi, Number 1, November 2007. Internet : [www.liser.lu](http://www.liser.lu)

financial reasons (i.e. jobseekers who like to earn some extra cash) or in the case when companies refuse to conduct smaller tasks in private homes for example<sup>10</sup>. More recently, related to the self-employed, the Minister of Labour and Employment has identified the phenomenon of so-called 'salarisés autoemployeurs' (a mix between adopting the status of employee and employer in parallel) and where the working relation is difficult to be made out<sup>11</sup>.

### **1.1.3 Estimated scale of undeclared work**

Research for this factsheet reveals that data on the number of cases of non-declared work in Luxembourg are not available<sup>12</sup>. The only found estimations on non-declared labour for 1998 are identified in the 2007 study by Clément and Maas (2007): between 15 000 and 42 000 (representing between 6.3 % and 17.7 % of the working population of 236 400 at the time of this publication. Since the publication, the study on the estimated number of non-declared workers has not been re-conducted and no additional data has become available. The study only provides an estimated number, while the scale in different sectors as well as the type of non-declared work has not been estimated. In terms of controls, ITM provides the following data in its 2014 report<sup>13</sup>: 680 controls were conducted (among which there were 13 in industry, 51 in the construction sector, 60 in commerce, 120 in the transport sector, 283 in accommodation and catering, and 69 in ICT and financial activities; further, a total of 105 investigations were carried out with 13 in industry, 7 in the construction sector, 60 in commerce, 65 in accommodation and catering, and 2 in ICT and financial activities, with a majority of these occurring at the level of the Luxembourg-city branch. No information on the number and type of business entities controlled are disclosed. More linked to non-declared work (related to health and safety at work), 257 were conducted out of which 31 breaches of law were identified<sup>14</sup>. At the moment of writing, no data on fines, lost revenue, or the share of the different types of non-declared work in the estimated size of non-declared work could be identified.

Considering the rapid growth of the workforce since the publication of the above study, it is likely that the abovementioned figures have increased too. The law also stipulates that activities of 'a lesser importance' are not regarded as clandestine work so that it is difficult to identify a final number of non-declared cases.

## **1.2 Institutional Framework**

### **1.2.1 Responsibilities for addressing undeclared work**

Undeclared work in Luxembourg is tackled through the cooperation of a network of several government agencies. The interacting network is referred to as the Inter-administrative unit to fight against illegal work (*Cellule inter administrative de lutte contre le travail illégal* - CIALTI). The main actor is the National Labour Inspectorate (ITM). Other actors which are usually mobilised in the context of larger controls are: the National Police (*Police Grand-ducal*), the Customs and Tax Administration (*Administration des douanes et accises*), the National Tax Administration (*Administration de l'enregistrement et des domaines*), the Prosecutor General's Office (*Parquet*), as well as various responsible units from the major ministries (i.e. the unit dealing with health at the workplace within the Health Ministry or the national PES).

In the context of controls related to non-declared work, it can be underlined that the various actors have specific missions and are mobilised for different purposes. Officials mobilised from the Ministry of Health check for instance if employees are in the possession of an occupational certificate (*certificat d'aptitude valide*): they are more

<sup>10</sup> L'essentiel, *Le travail au noir, une banalité cachée*, 6 February 2013.

<sup>11</sup> Le Quotidien, *Inspection du travail: quel chantier!*, 13 November 2015.

<sup>12</sup> This part refers to desk research conducted by the expert.

<sup>13</sup> Internet: <http://www.itm.lu/files/live/sites/Itm/files/Itm/Rapports%20Annuels/06.pdf> (p. 34)

<sup>14</sup> Ibidem, p. 35.

broadly in charge of controlling if health standards are met. The potential violation by the employer of the right of establishment is for example controlled by the Tax Administration.

### **1.2.2 Characteristics of the responsible organisations**

As mentioned above, organisations involved in the fight against non-declared work are mobilised for specific controls and according to their missions. The main actor, the ITM, overhauled by law in 2007<sup>15</sup> (with ongoing discussions regarding a new overhaul), operates through its various units under the umbrella of the Ministry of Labour and Employment and whose mission it is to contribute through support to the general well-being of employees and the security of companies. ITM covers all sectors and operates at the national level and based on a legal framework (Art. L. 613-4 of the 2007 law on the reform of the ITM) through three regional branches (Luxembourg, Esch-sur-Alzette, Diekirch) with a total of 92 employees (among which are currently 23 inspectors). Besides a management board and an administration, the National Labour Inspectorate comprises the Labour Inspectorate based on two departments and several units, among which are a 'Help Center' and – more significant for the subject under analysis – a control unit (*Inspections, contrôles and investigations* - ICE). The internal organisation of the various units is defined by grand-ducal legislation. More broadly, non-declared work is one of the many missions to be conducted by ITM, as the administration deals more generally with health and security issues at the workplace.

### **1.2.3 Cooperation and collaboration between authorities and cross-border authorities**

Broadly, the cooperation is cross-cutting, inter-ministerial, and pluri-disciplinary. The 2007 law on the reform of the National Labour Inspectorate stipulates under articles L. 613-1 and L. 613-2 the creation of the 'Steering committee of the national labour inspectorate system' (*Comité de coordination du système national d'inspection du monde du travail*) which is in charge of organising the collaboration between the various government agencies and establishing synergies and with the objective to pursue a global vision. The Ministry of Work is not represented in the aforementioned Steering Committee. The Steering committee is composed of the ITM, representatives from the Ministry of Health, the Customs authorities, the National Service in charge of the security in the Civil Sector (*Service national de la sécurité dans la Fonction publique*), and the Insurance associations against accidents (*Association d'assurance contre les accidents*).

No information on data exchange and related exchange protocols exists to the knowledge of the author at the time of writing.

No evidence regarding effectiveness was identified in the research process for this factsheets. A review of press articles reveals that cooperation between the various actors shows some degree of efficiency, but this material should be further studied through qualitative research with the involved administrations in order to get a more thorough overview of cooperation efforts in dealing with non-declared work.

ITM regularly conducts controls with agencies in the neighbouring countries (i.e. Belgium and France) although no specific data exists to the knowledge of the author at the time of writing. Contacts with international agencies such as the French Training Institute for Inspectors (INTEFP) were broadened, and ITM participated in 2014 in the project '*Euro-détachement*' based on the exchange of information and data between countries<sup>16</sup>.

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<sup>15</sup> Loi du 21 décembre 2007 portant réforme de l'Inspection du travail et des mines, Mémorial A, numéro 249, 31 décembre 2007 (Law of 21 December 2007 on the reform of the Labour and Mines Inspectorate, Memorial A, Number 249, 31 December 2007).

<sup>16</sup> Internet : <http://www.eurodetachment-travail.eu>

## **1.3 Policy Focus and Measures**

### **1.3.1 Policy approach**

The government has mainly opted for a deterrence approach in the fight against non-declared work. This approach is also identified for other violations of the Labour Code such as the non-payment of the social minimum wage or violations against health standards at the workplace. In the case of non-declared work, articles L.571-5, L.571-5 and L.571-6 stipulate sanctions: if the law is violated, penalties of EUR 251 to a maximum of EUR 5 000 are applied; if violations are repeated within the period of five months after the first violation, an imprisonment period of between eight days and six months (based on documents by the Tax customs) is applied, or double of the maximum penalty applies. Other measures include VAT recovery by the National Tax Authority (*Administration de l'Enregistrement et des domaines*), or the withdrawal of the commercial authorisation is decided by the Department of Small and Medium sized Enterprises of the Ministry of the Economy.

### **1.3.2 Measures to tackle UDW**

As described above, the Labour Code stipulates a series of penalties to be applied in the context of non-declared work. These include fines, imprisonment or the withdrawal of authorisations. More broadly, in terms of policy, research for this factsheet has unveiled that Luxembourg intends to reinforce efforts to tackle undeclared work, and continue its efforts already voiced under the Luxembourg Presidency and in the context of the EU Council decision of March 2016 on establishing a European Platform to tackle undeclared work.

No information on the effectiveness of measures exists to the knowledge of the author at the time of writing.

### **1.3.3 Good practice**

No case of good practice was identified regarding the fight against non-declared work. Nonetheless, available data analysed for this factsheet highlights the strong cooperation between the various administrations and the mobilisation in cases of controls, as well as the embeddedness of non-declared work in the national Labour Code.

### **1.3.4 Challenges and barriers**

Some challenges and barriers are identified in the Clément and Maas study (2010). Two groups of challenges can be identified. The first group of challenges concerns the administrative level and focuses on the training aspect of agents dealing with controls. The improvement of training is a current issue in critical debates around the current ITM reform, especially as the occupational career of an inspector does not exist in Luxembourg<sup>17</sup>. The second group mainly deals with the changing labour market and the inherent challenges therein, such as the emergence of new sectors (ICT, logistics), intricate forms of subcontracting, as well as issues of migration.

These challenges are addressed by a plan to further reform the ITM, details of which are not yet available. There seems to be no change announced in the way the Labour Code tackles non-declared work, such as for example an overhaul of penalties.

A key remaining challenge, as far as available data is concerned, deals with training issues within the ITM and the number of staff ready to conduct controls. It also remains to be seen if, as the 2007 study points out, issues such as further efforts in terms of better regulation at the national and municipal level, or subsidies for companies, could lead to a decrease of non-declared work.

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<sup>17</sup> For a discussion, see Le Quotidien, *Inspection du travail: quel chantier!*, 13 November 2015.