

In-Work Poverty in Europe

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Founding Editor

The series started in 1970 under the dynamic editorship of Professor Roger Blanpain (Belgium), former President of the International Industrial Relations Association. Professor Blanpain, Professor Emeritus of Labour Law, Universities of Leuven and Tilburg, was also General Editor of the International Encyclopedia of Laws (with more than 1,600 collaborators worldwide) and President of the Association of Educative and Scientific Authors. He passed away in October 2016.

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In 2015 Frank Hendrickx, Professor of labour law at the Faculty of Law of the University of Leuven (Belgium) joined as a co-Editor. Frank Hendrickx has published numerous articles and books and regularly advises governments, international institutions and private organisations in the area of labour law as well as in sports law. He is the Editor-in-Chief of the European Labour Law Journal and General Editor of the International Encyclopaedia of Laws.

Introduction

The Bulletins constitute a unique source of information and thought-provoking discussion, laying the groundwork for studies of employment relations in the 21st century, involving among much else the effects of globalization, new technologies, migration, and the greying of the population.

Contents/Subjects

Amongst other subjects the Bulletins frequently include the proceedings of international or regional conferences; reports from comparative projects devoted to salient issues in industrial relations, human resources management, and/or labour law; and specific issues underlying the multicultural aspects of our industrial societies.

Objective

The Bulletins offer a platform of expression and discussion on labour relations to scholars and practitioners worldwide, often featuring special guest editors.

The titles published in this series are listed at the end of this volume.

In-Work Poverty in Europe
Vulnerable and Under-Represented Persons in a
Comparative Perspective

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CHAPTER 5

In-Work Poverty in Luxembourg

Antonio García-Muñoz

The chapter presents the situation of in-work poverty in Luxembourg, with a focus on specific groups of workers that are in a more vulnerable position in the labour market, the Vulnerable and Under-Represented Persons (VUP) Groups. The introduction provides the reader with an overview of the situation of in-work poverty in Luxembourg and the different elements in the labour law and social security regulation that may play a role. Subsequent sections provide a targeted analysis on each of the four selected VUP Groups. For each such groups, the relevant legal framework, composition, and impact of in-work poverty are assessed. The conclusions offer a summary of the main findings and ideas in the chapter.

§5.01 INTRODUCTION

The study of in-work poverty in Luxembourg is as fascinating as difficult. In the common imaginary, poverty is associated with weak economies, unemployment, crisis, or underdevelopment. Is not the case of Luxembourg, one of the strongest, more developed, and best performing economies of the world, almost untouched by recent crisis, with the highest GDP per capita in the European Union (EU).¹

And yet, the researcher is confronted with one of the highest levels of in-work poverty in the EU and has difficulties to identify the reasons behind, so many determinants having an influence on it. Indeed, in-work poverty is, per se, a complex reality influenced by several and interrelated factors that demand an extra effort to those researchers looking to understand the influence of one of them in particular.

1. According to Eurostat data, the Luxembourgish GDP per capita in 2021 was 86,550 euros, already higher than pre-pandemic levels. Ireland, the second-best, had a GDP per capita of 70,920 euros, https://ec.europa.eu/eurostat/databrowser/view/sdg_08_10/default/table?lang=en.

From the design and limitations of existing indicators to the very special characteristics of the Luxembourgish economy or the lack of data regarding casual or informal workers, there are many uncertainties and open questions that call for further research.

The present chapter focuses on the role of labour law and social security regulation and, more in particular, how these regulations shape and impact the working conditions of particular groups of workers, the VUP Groups, representing individuals more vulnerable to the risk of in-work poverty. The following paragraphs of this introduction aim to present the complexities of the topic and its study in Luxembourg, providing some information to contextualize the chapter. The subsequent sections are dedicated to the four VUP Groups under study: low or unskilled standard workers in low-wage sectors (VUP Group 1), solo self-employed (VUP Group 2), atypical workers (VUP Group 3), and casual and platform workers (VUP Group 4). The last section offers some conclusions.

[A] The Many Paradoxes of In-Work Poverty in Luxembourg

The study of the role that the current legal framework may play in the existence and reproduction of in-work poverty in Luxembourg is particularly challenging.

First, as for any other country, in-work poverty is a complex reality influenced by several and interrelated factors. The focus of the present book, i.e., labour law and social security regulation, is just one part of the many factors shaping in-work poverty. It is not only that other legal realms, such as tax law, also play an important role, but also, as explained in the introductory chapter of the present volume, that regulation is only one element among many others. The socio-demographic characteristics of individual workers, the composition of the household where the worker lives, the economic structure of the country, etc., are also important drivers in the occurrence of in-work poverty.

Second, Luxembourg can be described as a paradoxical case of study, due to a series of statistical ‘abnormalities’ in relation to in-work poverty that defy common sense. On the one hand, despite being a successful and robust economy, the level of in-work poverty in Luxembourg is among the highest in the EU, and it has steadily increased over time in the last decades. The share of employed persons living in poor households in 2019 was 12.1%, which makes Luxembourg the third worst EU performer after Romania and Spain.² At the same time, however, Luxembourg performs quite well compared to other EU countries in terms of material deprivation. In fact, the share of employed people living in households experiencing severe material deprivation is very low (0.9%), while the corresponding value for social and material deprivation is 2.4%.

Third, while the level of in-work poverty has increased over time in the last years, the labour law and social security regulatory framework has remained remarkably stable, and little affected by recent crisis. Indeed, despite the abrupt fall in the GDP

2. The rate of at-risk of in-work-poverty for employed persons in Luxembourg was 9.3% in 2007 and 11.2% in 2013. The source of these data is Eurostat (ilc_iw01).

following the 2008 crisis, employment adjustment remained small. Reforms on labour law and social security regulation were also minimal. The same seems valid in relation to the recent COVID-19 crisis. The successful and extensive use of reduced working hours' schemes and considerable financial support by the State may be part of the explanation. In any case, the described increase in the levels of in-work poverty does not seem to be related to legal reforms. This is a challenging scenario for the study of the role of regulation, since one of the variables of the study varies while the other seems, at first sight, stable.

[B] A Protective Regulation ... for Indefinite Workers

When compared to other EU Member States, the labour law and social security regulation of Luxembourg can be described as protective. The indefinite contract of employment continues to be the most common form of employment in Luxembourg: in 2019, 'only' 7.4% of the employed workers in Luxembourg were on temporary contracts.³ Likewise, working full-time is still the norm: part-time work occupied 17% of the employed resident persons in 2019, among which many are probably second-earners working part-time to strike a balance with care and housework.

Furthermore, labour law legislation provides, in comparative perspective, for a limited degree of flexibility in the use of atypical work contracts (temporary, part-time, and agency work). Casual work, platform work, and on-call work (which conforms VUP Group 4) are forms of employment that remain marginal or outside the legal framework in Luxembourg.

The legislator favours the indefinite contract, which is the 'default' form of work contract, as established in Article L.121-2 of the Labour Code.⁴ The use of temporary contracts is limited by law: in principle, fixed-term contracts can be used only for the execution of a particular task of limited duration,⁵ although there are some exceptions. The limitation in the use of temporary contracts is complemented by a number of legal measures to prevent abuse, such as a maximum duration of two years for the fixed-term contract (with some exceptions), a maximum number of renewals (two), and a temporal break for the use of successive fixed-term contracts.

A weakness in the system in relation to in-work poverty may come from the extension and content of Active Labour Market Policies (ALMP) strongly oriented to activation and employment creation. From the point of view of in-work poverty, the fact that ALMP allow on many occasions to deviate from the law, establishing or

3. The source of all data in this introduction is Eurostat, EU-SILC, unless otherwise indicated. The percentage of 7.4% of temporary workers includes temporary agency workers, which are a small number in Luxembourg.

4. Article L.121-2 Labour Code: 'Le contrat de travail est conclu sans détermination de durée. Toutefois, dans les cas et sous les conditions visées au chapitre 3 du présent titre, il peut comporter un terme fixé avec précision dès sa conclusion ou résultant de la réalisation de l'objet pour lequel il est conclu'.

5. Article L.122-1 Labour Code: 'Le contrat de travail à durée déterminée peut être conclu pour l'exécution d'une tâche précise et non durable; il ne peut avoir pour objet de pourvoir durablement à un emploi lié à l'activité normale et permanente de l'entreprise.'

favouring lower salaries (or allowances), the use of temporary contracts, etc., may result in the creation of employment of lower quality, increasing the risk of in-work-poverty. Further research, particularly on the capacity of ALMP to favour transitions into ‘standard’ employment, is needed in order to assess the concrete impact of these policies in relation to in-work poverty.

But despite the potential impact of ALMP, it can be said that labour law is relatively successful in limiting the use of temporary employment, thus favouring indefinite employment. To have an indefinite employment contract still protects against the risk of in-work poverty in most cases, although a little bit less in some particular sectors characterized by low-wage salaries (as is the case for workers in VUP Group 1).

The system is less successful, however, in protecting temporary and part-time workers. The risk of in-work poverty is, at 27.7% (2019), more than double among temporary workers than among those with an indefinite contract. Likewise, the in-work poverty levels of part-time workers are considerably high (20.1% in 2019). The combination of temporary and part-time employment results in a very low level of protection against in-work poverty, since almost one of every two of part-time workers with a temporary contract is at risk of in-work-poverty in Luxembourg. More details are provided in the analysis of VUP Group 3, in section §5.04 of this chapter.

[C] The Role of Minimum Wage

In Luxembourg, there is a statutory minimum wage that applies to all workers, irrespective of the sector or contractual situation, although there are differences in the amount of the minimum wage depending on two criteria: age and qualification.⁶ This results in a floor for wages, i.e., wages cannot go below the minimum established. Moreover, in absolute terms this floor is very high, particularly when compared to the minimum salaries in other EU Member States. From October 2021, the gross monthly minimum wage is set at 2,256.95 EUR for an adult unskilled worker, or 2,708.35 EUR for an adult skilled worker. Shouldn’t this be enough to prevent in-work poverty? Unfortunately, the answer to this question is negative, for several reasons.

First, as explained in the introduction to this volume, research shows that there is no strong correlation between low salaries and in-work poverty. The concept of low-wage worker in Europe is *relative* (because it depends on the distribution of wages in the population) and *individual* (the situation of the household as a whole is not considered). In addition, low pay is measured on gross hourly earnings, while poverty is based on equivalent household disposable income measured over a full year. Even if it is true that the risk of poverty is higher for a low-paid worker, there is a weak

6. According to Article L.222-5 Labour Code, the minimum wage of teenagers below 18 years old is fixed as a percentage of the standard minimum wage, namely at 75% of the minimum wage for teenagers aged 15 and 16, and 80% for teenagers aged 17. For ‘qualified’ adult workers, the applicable minimum wage results from a 20% increase in the standard minimum wage. Qualified employees are those who exercise a profession that entails professional qualification, usually acquired through studies or formation and accredited by an official certificate.

correlation between these two indicators.⁷ Many low-paid workers are secondary earners in a household, and the first earner ensures that the household is not below the poverty line.⁸ Therefore, the minimum wage can only be part of a policy mix composed of several instruments to fight in-work poverty, as it will only have incidence in one of the risk factors, and not the most decisive one: low wages.

Second, the minimum wage is not an optimum instrument to protect those at risk of in-work-poverty because of low work intensity, which is the case not only for part-time workers, but also for temporary workers experiencing periods of no-work in-between contracts and for casual workers. Since the minimum wage is paid in its integrity only to full-time workers, any situation short to full time becomes problematic.

Third, although in absolute and comparative terms the minimum wage in Luxembourg can be considered to be very high, its level (for non-skilled) workers is fixed almost at the poverty line for Luxembourgish standards. This is problematic for some groups in particular, such as in the case of single-earners households with children. The differentiation between skilled and unskilled workers may be also particularly problematic for some workers in certain economic sectors where it is difficult to comply with the legal requisites to be considered qualified. These sectors are more likely to be low-wage sectors (VUP Group 1), where the occurrence of in-work poverty is higher.

Therefore, the minimum wage, although useful and helpful to maintain a decent level of salaries and prevent low salaries to go below the poverty line (among other functions) has its limitations to fight in-work poverty. In any case, it cannot be the only weapon, as there is not a single silver bullet to put an end to such a complex problem as in-work poverty is.

§5.02 VUP GROUP 1: LOW OR UNSKILLED STANDARD EMPLOYMENT

Although workers included in VUP Group 1 are relatively better off when compared to workers in other VUP Groups, still the in-work at-risk-of-poverty level of VUP Group 1 is significantly higher (19.6%) than the general in-work at-risk-of poverty level of the entire workforce employed full-time with permanent employment contracts (9%).⁹

7. Bertrand Maître, Brian Nolan, & Christopher T. Whelan, *Low-pay, in-work poverty and economic vulnerability: a comparative analysis using EU-SILC*. Manchester School, 80(1), 99-116 (2012); Salverda, W., 'Low earnings and their drivers in relation to in-work poverty', in *Handbook on In-Work Poverty*, 26-49 (Henning Lohmann & Ive Marx eds., Edward Elgar Publishing 2018).

8. Marco Gießelmann & Lohmann Henning, The different roles of low-wage work in Germany: regional, demographical and temporary variances in the poverty risk of low-paid workers, in *The Working Poor in Europe*, 96-123 (Hand-Jürgen Andreß & Henning Lohmann eds., Edward Elgar Publishing, 2008).

9. Data of 2019. Source: EU-SILC, Eurostat. Workers included in VUP Group 1 for Luxembourg are workers in occupations at level 1 and 2 as defined by the ILO in the International Standard Classification of Occupation (ISCO-08) working in the following sectors: 'accommodation and food service activities'; 'administrative and support service activities'; 'wholesale and retail trade and repair of motor vehicles and motorcycles'; 'arts, entertainment and recreation'; 'other service activities'. Only workers employed in enterprises with more than 10 employees are considered.

This may seem paradoxical at first sight. First, because in Luxembourg there is a minimum wage that is applicable to all workers and is set to a (relatively) high level. This minimum wage, as discussed in the introduction, should protect particularly those working full-time, as is the case of workers in VUP Group 1. However, the fact that the minimum wage is set at a lower level for unskilled workers (being this level close to the poverty threshold), results in a disadvantage specially for the workers considered in VUP Group 1. In this sense, making the minimum wage level dependent on the level of skills does not help to protect unskilled workers, or in any case the protection afforded to them is less powerful against in-work poverty (to the extent that it may be linked to low wages). Second, because full-time standard employment, that is the preferential form of employment in the Luxembourgish legal order, is supposed to provide for a decent standard of living and high standards of protection, also in terms of access to social security benefits. Obviously, to certain extent, this is not the case, particularly for workers belonging to VUP Group 1. The question is why is this so.

The present section attempts to provide some materials to better understand this apparent paradox. It seems that the structure of the economic sector and the individual socio-demographic characteristics of the workers play an important role on the level of in-work at-risk-of-poverty for VUP Group 1.

Workers included in VUP Group 1 in Luxembourg are concentrated in a few economic sectors. If we would limit ourselves to those sectors defined in the WorkYP Project as ‘poor’, i.e., those sectors where more than 20% of the employees are low-wage earners, only two sectors should be included in the analysis for Luxembourg, namely ‘accommodation and food service activities’ and ‘administrative and support service activities’. The sector ‘wholesale and retail trade; repair of motor vehicles and motorcycles’, with 18.54% of low-wage earners in 2018, and employing a relevant number of workers in Luxembourg (11%) comes next.¹⁰ Other relevant economic sectors in Luxembourg such as ‘construction’, ‘professional, scientific and technical activities’ and ‘financial and insurance activities’, employing each around 10% of the total of employees in the country, have a much lower share of low-wage earners. This seems to indicate that the problem with low or unskilled standard employment is very much located in some specific sectors, despite the fact that, as the next sections show, there are no particularities that deviate from the general rules in the labour law regulation of work in the sectors included in VUP Group 1.

[A] Composition of VUP Group 1

Who are the workers belonging to VUP Group 1 in Luxembourg? In 2019, roughly one of every ten workers in the country belonged to VUP Group 1.¹¹ The proportion of

Due to data constraints, low-skilled workers in the sectors ‘real estate activities’ and ‘professional, scientific and technical activities’ have been included in VUP Group 1.

10. These data refer to employees in enterprises with at least 10 workers. Source: Eurostat, Structure of Earnings Survey (earn_ses_pub1; earn_ses18_02).

11. Workers in VUP Group 1 represented 9.5% of the employed population.

young, non-Luxembourgish and less educated persons is higher in VUP Group 1 when compared to the employed population as a whole.

Women are overrepresented in this group. In 2019, 47.5% of workers in VUP 1 were women. This is close to the proportion of women in the whole population of employees (46.8%, *see* table 5.1), but considerably higher than the proportion of women in the population of employees in full-time and permanent jobs. This seems to indicate that in-work poverty in VUP Group 1 has a gender dimension.

In light of these data, individual factors, particularly the socio-demographic characteristics of the workers, seem to play a relevant role.

Table 5.1 Workforce Composition of VUP Group 1 in Luxembourg (2019)

	<i>Employed Persons</i>	<i>Employees Only</i>	<i>Full/time and Permanent Employees</i>	<i>FT and Permanent Employees in Low-skilled Occupation</i>	<i>VUP Group 1</i>
Proportion of employed population	100	95.4	70.8	28.4	9.5
Age group					
18-34	30.8	31.5	33.1	32.3	37
35-49	43	42.8	42.8	41.6	41.9
50 +	26.2	25.7	24.2	26.1	21.1
Gender					
Women	46.5	46.8	37.8	31.6	47.5
Men	53.5	53.2	62.2	68.4	52.5
Nationality					
Luxembourgish	45.4	45.2	43.8	40.7	27.8
Not Luxembourgish	54.6	54.8	56.2	59.2	72.2
Education					
Lower secondary/primary	20.6	21.2	19.1	41.5	39.8
Upper secondary or post-secondary	36.3	36.5	35.1	49	47.6
Tertiary	43.2	42.3	45.8	9.6	12.5

Source: EU-SILC, Eurostat.

[B] Relevant Legal Framework

There are no particularities in the labour law regulation affecting the labour conditions of full-time employees with permanent employment contracts in different sectors. Neither there are specificities affecting workers of VUP Group 1 when it comes to ALMP, vocational training, or unemployment benefits.

The only statutory provisions worsening working conditions that may affect some economic sectors are on the rules for the use of temporary contracts, so they do not affect VUP Group 1 workers.

The fact that the minimum wage differentiates between skilled and unskilled workers, setting a lower amount for the second group, affects negatively VUP Group 1, since the floor of salaries for this group is lower than for skilled workers.

The role of collective bargaining is more difficult to assess. Data on trade union density and collective bargaining coverage in Luxembourg are not easy to find and the variations between different datasets are important.

When it comes to trade union density, the International Labour Organization (ILO) data for year 2016 estimated that 32% of employees (including non-residents) in paid employment were union members.¹² Organisation for Economic Co-operation and Development (OECD) data show a trade union density of 28.2% for year 2019,¹³ whereas the Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts (ICTWSS) database estimates union density at 31.8% in 2018,¹⁴ but only considering workers living in Luxembourg. The most recent data provided by the ILO on collective bargaining coverage for Luxembourg estimate a coverage of 55% of employees (including non-resident employees) in year 2014.¹⁵ The OECD estimates a collective bargaining coverage of 56.9% in 2018.¹⁶

To get an idea of collective bargaining coverage of workers in VUP Group 1, table 5.2 shows the proportion of workers covered by collective pay agreements in Luxembourg (for companies with at least 10 employees) for the year 2018.¹⁷ The data in table 5.2 are found in the Structure of Earnings Survey, that provides information on collective agreements by sector of activity.

12. ILO. ILOSTAT https://www.ilo.org/shinyapps/bulkexplorer4/?lang=en&segment=indicator&id=ILR_TUMT_NOC_RT_A.

13. OECD. Trade Union Dataset, <https://stats.oecd.org/Index.aspx?DataSetCode=TUD>.

14. Jelle Visser, ICTWSS Data base. Version 6.1. Amsterdam: Amsterdam Institute for Advanced Labour Studies AIAS. November 2019.

15. ILO. ILOSTAT, <https://ilostat.ilo.org/topics/collective-bargaining/>.

16. OCDE, <https://stats.oecd.org/index.aspx?DataSetCode=CBC>.

17. The percentages in table 5.2 refer to the proportion of employees that have the right to collective bargaining for which pay and or conditions of employment are determined by collective agreements.

Table 5.2 Proportion of Workers Covered by Collective Pay Agreements in Luxembourg (Enterprises with At Least 10 Employees), 2018

<i>Sector</i>	<i>Industry Agreement (%)</i>	<i>Company or Aingle-employer Agreement (%)</i>	<i>No Collective Agreement (%)</i>
Accommodation and food service activities	17.8	0.6	81.6
Administrative and support service activities	81.8	2	16.2
Wholesale and retail trade; repair of motor vehicles and motorcycles	17.3	27.2	55.5
Human health and social work activities	76.8	1.8	55.5
Real estate activities	NA	NA	NA
Transportation and storage	38.5	28.7	32.8
Manufacturing	4	62.6	33.3
Construction	64.4	9.8	25.8
Other service activities	9	10.4	80.6
Water supply; sewerage, waste management, and remediation activities	34.1	NA	26.4
Arts, entertainment, and recreation	29	12.1	58.9
Professional, scientific, and technical activities	NA	13.9	84.5
Information and communication	2.6	23.8	73.5
Financial and insurance activities	66.7	7	26.2
Education	86.7	6.8	6.5
Public administration and defence; compulsory social security	100	0	0

Source: Eurostat, Structure of Earnings Survey (earn_ses08_01).

Note: NA indicates data are not available. The activity sectors shown in the table are ordered by the proportion of low-wage earners from the highest to the lowest.

Data in table 5.2 show that it is not easy to find a clear relation between collective bargaining coverage and low-wage earnings. In the sector with the highest proportion

of low-wage earners (*accommodation and food service activities*), 81.6% of the employees are not covered, but in the second sector with higher low-wage earners' proportion (*administrative and support service activities*) 83.8% of the employees are covered by collective agreements. In the other end, in two of the sectors with the lowest percentage of low-wage earners (*professional, scientific, and technical activities; information and communication*) collective bargaining coverage is also very low, whereas in financial and insurance activities more than 66% of the workers are covered by collective agreements.

The data in table 5.2 seem to indicate, therefore, that the role of collective bargaining may not be as important as other characteristics of the particular sector.

[C] Impact Analysis

Working in one of the sectors defined as poor entails a higher poverty risk for workers in Luxembourg, but this affects differently different groups of workers depending on factors such as the household composition and other socio-demographic characteristics.

In terms of age, the risk of in-work poverty is the highest for older workers: of those aged 50 and more in VUP Group 1 in year 2019, 25.1% are considered in-work at-risk-of-poverty, whereas for workers aged 35-49 this percentage is 16% and 19.7% for the younger workers (aged 18-34).¹⁸ This differs from the general population of full-time and permanent employees, where the risk of in-work poverty is higher for workers aged 35-49 (9.6%) and the differences between the different cohorts of workers are not so stark.

The in-work poverty rate of VUP Group 1 is higher for women than for men, namely 20.9% of women in VUP Group 1 were at-risk-of-poverty in 2019, whereas the proportion reached 18.5% for men. This is an interesting difference with the general population of employees, for which there are no significant differences in the proportion of risk of in-work poverty between women and men.

Nationality and educational level are among the most relevant characteristics affecting in-work poverty levels. Regarding nationality, 12.2% of the workers in VUP Group 1 who were Luxembourgish were at-risk-of-poverty in 2019, whereas this percentage reached 22.6% among not Luxembourgish workers. When it comes to education, the highest the level of education, the lowest is the risk of in-work poverty. The proportion of workers in VUP Group 1 with lower secondary or primary education that were at-risk-of-poverty was 24.9%, whereas among those with tertiary education this proportion was 14.5%

Last but not least, the household composition matters. The size of the household, the number of children, and the number of workers in the household have an important effect on in-work poverty levels in Luxembourg. The risk of in-work poverty is much lower if there is more than one worker in the household (11.7% in 2019) than when the workers in VUP Group 1 are the only person working in the household

18. The source of all data in this section is EU-SILC, Eurostat.

(37%). When it comes to children, the risk of in-work poverty of workers in VUP Group 1 increases with the number of children: for households without children, the rate on in-work poverty is 17.5%, whereas it increases up to 24.1% in households with more than one child.

§5.03 VUP GROUP 2: SOLO AND BOGUS SELF-EMPLOYMENT

VUP Group 2 groups together solo/economically dependent and bogus self-employed. This group can be only imperfectly captured, as European Union Statistics on Income and Living Conditions (EU-SILC) statistics only distinguish between self-employed without employees and self-employed with employees. Those self-employed that are 'dependent', irrespective of them having employees or not, are therefore not visible, although we assume that most dependent self-employed are solo self-employed. As for bogus self-employment, due to its very nature, this category remains outside statistical information. Therefore, in the following analysis, VUP Group 2 is restricted to self-employed without employees.

The relevance of VUP Group 2 is limited in Luxembourg, where it represented only 2.3% of the resident workforce in 2019.¹⁹ Although the risk of in-work poverty among the self-employed without employees (13.6%, 2019) is higher than for the general population of employees (12%), the difference is rather small. This departs from the situation of other EU countries, where VUP Group 2 suffers a particularly higher risk of in-work-poverty than the general population of employees (*see* other national chapters in this book).

The legal framework in Luxembourg is very strict in distinguishing self-employed from employees. The application of labour law and social security rules is strictly limited to employees, and there is no any intermediate category. Technically, bogus self-employment is seen as a problem of misclassification and the legal sanction is re-qualification.

[A] Composition of VUP Group 2

This section tries to understand the composition of VUP Group 2 in Luxembourg. Several socio-demographic and professional dimensions are considered. As has been said, the analysis of VUP Group 2 is restricted to self-employed without employees, that is the closest we can get, with the existing data, to the original VUP Group 2.

Solo self-employed in Luxembourg are older, on average, than employees. In 2019, 51.1% of the self-employed without employees were aged between 35 and 49 years old, while this age group represented only 43% of the employees.²⁰

From a gender perspective, women are under-represented among the self-employed (with or without employees) in Luxembourg, since they represented only

19. Eurostat, EU-SILC.

20. The source of all the data in this section is Eurostat, EU-SILC. All data are referred to year 2019 unless otherwise indicated.

40.3% of the total in comparison to 46.5% of women in the employed population. However, if we focus only in solo self-employed, women represented 51% of the total, having experienced a significant increase over time: women were only 35.2% of the solo self-employed in 2007 and 47.2% in 2013.

When it comes to nationality of the solo self-employed, most persons in this group are not Luxembourgish nationals (56.7% of the solo self-employed in 2019 were not Luxembourgish). Furthermore, a stark decreasing trend is observed in the participation of Luxembourgish nationals in this group. In 2007, 63.4% of the solo self-employed were Luxembourgish. This is a stronger decrease than the one experienced in the general population of employees, where the proportion of Luxembourgish has shrunk from 52.1% in 2007 to 45.2% in 2019.

Solo self-employed have on average a higher educational level than the general population of employees. In 2019, 59.8% of the solo self-employed had tertiary education, in comparison to 42.3% of the employees. The self-employed are also more present in occupations that require a high level of skills compared to the employee's population (although there are no representative data on this last aspect for solo self-employed).

Last but not least, self-employed are concentrated in some particular sectors, namely real estate activities; professional, scientific, and technical activities; administrative and support service activities; human health and social work activities; and arts, entertainment, and recreation and other service activities.

[B] Legal Framework

The Luxembourgish legal framework is rather strict in its binary approach to the classification of workers: a person is either an employee or a self-employed. There are no intermediate categories. The key criterion to differentiate these two different legal categories is the existence of subordination. The definition of self-employed is a negative definition: are self-employed those workers that are not considered employees.

This division between subordinated workers (employees) and independent workers (self-employed) is central to define the scope of application of labour law. In a speech at the European Council in December 2020,²¹ the Luxembourgish Minister of Labour stated that Luxembourg is contrary to introduce third categories of workers between employees and self-employed. In some cases, the legislator has intervened to clarify the status of certain groups of workers, such as professional sportsmen and trainers (that are considered self-employed) and performance workers (*intermittents du spectacle*, that are considered employees).²²

In Luxembourg, there is no generally applicable definition of contract of employment, and the case law fills this gap by determining in each case whether there is an

21. <https://www.consilium.europa.eu/en/meetings/epsco/2020/12/03/>.

22. Putz, J.L. (2016), *Le travail flexible et atypique*, Larcier, 2016.

employment relationship (subordinate employment) or a service relationship (independent self-employed).²³ The courts have established in their case law a definition of labour contract where there are three elements to be considered for a contractual arrangement to be qualified as labour contract: ‘provision of work’, ‘in exchange of a salary’, and ‘under the subordination of another person’.²⁴ The qualification as an employee will depend therefore on an analysis of the relevant elements of the material reality of every contractual arrangement. Subordination is the key element of the analysis.

The concept of subordination refers to the ability of an employer to give orders, supervise and give instructions, check the achieved results and, eventually, sanction the non-performance.²⁵

In this legal framework, bogus self-employment is understood as a problem of incorrect qualification of the employment relationship: if a person is not a self-employed, then he/she is an employee. Re-qualification of the contractual arrangement into an employment relationship is the legal answer to bogus self-employment in Luxembourg.²⁶

Solo self-employed are considered as any other self-employed. They do not have any special status under Luxembourgish law. Economic dependency does not have any legal consequences, although it may be an indicator of subordination.

In this legal framework, there are obvious obstacles to the application of labour law and social security standards to workers in VUP Group 2. Since labour law is only applicable to employees, no labour law rules and standards are applicable to solo self-employed.

The situation is different when it comes to social security standards. Self-employed are obliged to affiliate and contribute to the social security system for some contingencies. This results in self-employed having access to most of the standard social security benefits, including monetary benefits for parental leave or pensions. Nevertheless, the social security regime of the self-employed differs in some important aspects from that of employees, for example in the access to unemployment benefits. The self-employed can claim unemployment benefits when they have stopped their activity because of economic and financial problems, health problems, or ‘force majeure’. To be eligible, they must prove at least two years of compulsory insurance (whereas for an employee the requisite established in Article L.521-6 is to have been employed a minimum of 26 weeks in the last 12 months).

23. Putz, J.L. (2017), ‘The concept of “Employee”’: The Position in Luxembourg’, in Waas, B., van Voos, G.H. (Eds), *Restatement of Labour Law in Europe. Volume 1. The Concept of Employee*, Hart, Bloomsbury.

24. CJS, cassation, 2 February 1989, WENZEL c/S.A TEXACO Luxembourg, where the labour contract is defined as ‘la convention par laquelle une personne s’engage à mettre son activité à la disposition d’une autre, sous la subordination de laquelle elle se place, moyennant rémunération’.

25. Putz, J.L. (2017), ‘The concept of “Employee”’, *supra* n. 23.

26. Putz, J.L. (2016), *Le travail flexible*, *supra* n. 22.

[C] Impact Analysis

It is necessary to be cautious when studying in-work poverty in VUP Group 2, because the measurement of income from self-employed is difficult.²⁷ Incomes of this group are often not constant over time and intertwine with business income. The coverage rate of self-employment income in relation to the national accounts is low.²⁸ This could partly explain why self-employed workers have a higher risk of income poverty in general than employees but do not necessarily have a higher rate of material deprivation (or do even have lower material deprivation rates in some countries).²⁹

The at-risk of in-work-poverty rate for self-employed without employees in 2019 was 13.6% compared to 12% for employees.³⁰ An interesting trend is that while the in-work poverty rate increased for employees in the last decade (from 10.1% in 2013 to 12%), it has strongly decreased among self-employed without employees (from 22% in 2013 to 13.6% in 2019). Material deprivation was lower among self-employed without employees (0.5% in 2019) compared to employees (2.5% in 2019).

The risk of in-work poverty is much higher for men than for women for VUP Group 2. The rate of risk of in-work poverty was 16.5% for men who are solo self-employed whereas it only affected 10.8% of the women in this group.

Nationality plays also an important role. Solo self-employed who are Luxembourgish have a much lower risk of in-work poverty (3.1% in 2019) than foreigners belonging to this group (21.7%).

A somewhat counterintuitive result is observed in relation to educational level. The risk of in-work poverty for solo self-employed increases with the level of education (whereas the opposite trend occurs for employees). In 2019, 17.3% of the solo self-employed with tertiary level of education were at risk of in-work-poverty. For solo self-employed with secondary or lower education level, the rate of risk of in-work-poverty was 8.3%.³¹

Finally, the household dimension plays an important role and, particularly, the number of children. Solo self-employed with children are at higher risk of in-work poverty (23.7% in 2019) than those without children (5.7% in 2019).

27. Horemans, J., Marx, I. (2017) 'Poverty and Material Deprivation among the Self-Employed in Europe: An Exploration of a Relatively Uncharted Landscape. *IZA Discussion Paper Series, n 11007*.

28. Atkinson, A., Guio A-C., Marlier, E., (2017), 'Monitoring the evolution of income poverty and real incomes over time', in Atkinson, A., Guio A-C., Marlier, E., (Eds) *Monitoring social inclusion in Europe*. Publications Office of the European Union.

29. Horemans, J., Marx, I., (2017) 'Poverty and Material Deprivation' *supra* n. 27.

30. The source of all the data in this section is Eurostat, EU-SILC.

31. This may be related to the aforementioned reasons regarding the difficulties to measure income for the self-employed. Furthermore, the sample for self-employed without employees is small, which can favour distortions.

**§5.04 VUP GROUP 3: FIXED-TERM, AGENCY WORKERS,
INVOLUNTARY PART-TIMERS**

VUP Group 3 includes the ‘typical’ forms of atypical employment: fixed-term work, temporary agency work, and part-time work.

[A] Fixed-Term Workers**[1] Legal Framework**

The Luxembourgish legal order is rather restrictive with the use of fixed-term work. The reference is the open-ended contract, that in principle must be used unless there is a cause not to do so.

Fixed-term contracts can only be concluded for the accomplishment of a specific and non-permanent task of the company. The law further specifies that fixed-term contracts cannot be used to provide work related to the normal activities of the company.

The law enumerates, in a non-exhaustive list, a number of situations where the use of fixed-term contracts is possible: replacement of temporarily absent employees; seasonal employment; accomplishment of occasional tasks that do not form part of the core business of the company; execution of urgent works linked to security reasons and prevention of accidents; employment of unemployed persons registered at the public employment agency of Luxembourg (ADEM, *Agence pour le développement de l'emploi*) and taking part in insertion or reinsertion programmes; some types of professional training contracts; employment of professors and researchers at the University of Luxembourg; and employment of students with some conditions. The use of temporary contracts is also admitted for contracting in particular economic sectors where the use of temporary contracts is widespread and systematic: audio-visual sector; some tasks in the banking sector; formation; professional sports; construction and public works; exhibitions; forestry; modelling; spectacles, musicians.

With the aim of preventing abuse, the regulation of fixed-term contracts includes a number of further limitations in their use and functioning consisting of maximum length of the temporary contracts; maximum number of renewals and limits to the succession of contracts. All temporary contracts must specify a minimum duration. Zero-hour contracts are not possible in Luxembourg.³²

First, temporary contracts have a maximum duration. The maximum length of a temporary contract is 24 months, including renewals and probation period (Article L.122-4 (1)). Seasonal contracts depart from this rule: they can be concluded for a maximum of 10 months within a reference period of 12 months, renewals included (Article L.122-4 (2)). An exception to this rule is employment at the University of Luxembourg and other public research institution, where temporary contracts with a maximum duration of up to 60 months are possible.

32. Putz, J.L. (2016), *Le travail flexible*, supra n. 22.

Second, temporary contracts can be renewed only twice within the period of maximum duration. The seasonal contracts may include a renewal clause for the following season. There are a number of exceptions in the limit to renewals for some cases when the employer is the State, the municipalities, or the University of Luxembourg.

Third, there is also a legal limitation to the succession of contracts. Once a temporary contract has ended, the general rule is that, for the same position, a new temporary contract with the same or with a different employee cannot be concluded before a lapse of time equal to 1/3 of the duration of the first contract has passed. However, a number of exceptions are contemplated in the law, the most relevant of which are seasonal contracts, contracts of replacement in case of a new absence of the replaced employee, and temporary contracts related to employment policies as defined in the law.

In those sectors where the use of temporary contracts is widespread and systematic, the limits for the use of temporary contracts do not apply, which may be problematic in terms of in-work poverty.

A general principle of equality between temporary and indefinite workers applies: all the legal and conventional provisions applicable to indefinite workers are also applicable to temporary workers. This includes all the conventional provisions in collective agreements. The law explicitly establishes that conventional provisions applicable to indefinite workers are also applicable to temporary workers unless otherwise indicated by law (Article L.122-10).

The sanction in case of violation of the rules regulating the use of temporary contracts is re-qualification of the temporary contract into an indefinite contract.

ALMP have the potential to be a Trojan horse for the idea of a limited use of temporary contracts. The rationale of these policies is activation of unemployed workers, in the idea that offering them any type of job will work as a stepping stone into standard, non-subsidized, employment.³³ To this end, ALMP in Luxembourg allow from easing in the rules of the use of temporary contracts (and of pay) that may be problematic from the point of view of in-work poverty. For instance, the ‘employment reintegration contract, the employment support contract, or the employment initiation contract are all temporary contracts. The key in this point is to assess whether these contracts are really easing transitions from unemployment into standard employment or failing to do so and becoming traps of precarity (and, possibly, poverty). This analysis, that possibly will demand longitudinal studies on work transitions not available yet, is beyond the scope of the present chapter and must therefore be left unanswered.

33. European Commission, https://ec.europa.eu/info/sites/default/files/european-semester_thematic-factsheet_active-labour-market-policies_en.pdf.

[2] Group Composition and Impact Analysis

Temporary employment is relatively low in Luxembourg when compared to other EU countries. In 2019, 7.4% of the employed in Luxembourg were on temporary contracts.³⁴

Temporary workers are, on average, younger than the general population of employees, since 45.9% of the workers in this group were aged 18-34 years old, compared to 31.5% of employees in this same age group when the general population of employees is considered.

The gender distribution is similar for the group of all employees and for temporary workers. Temporary workers tend to be more often non-Luxembourgish, with lower educational level, and employed in low-skilled occupations than the general population of employees. The rate of foreign workers among the temporary workers was 61.2% in 2019 compared to 54.8% among the general population of employees. Up to 32.4% of the temporary workers had a low level of education (vs. 21.2% of the employees) and 65% of the temporary workers had a low-skilled job, whereas this was the case for 44.7% of the employees.

Workers with a fixed-term contract are at a much higher risk of experiencing in-work poverty than workers with indefinite contracts. Indeed, temporary employment is one of the factors that more clearly multiplies the risk of in-work poverty in Luxembourg. The at-risk of in-work-poverty rate for temporary employees in Luxembourg was as high as 27.7% in 2019. Moreover, it has grown significantly over time, at higher speed than the increase of the risk of in-work-poverty experienced by the general population of employees. In the year 2007, the risk of in-work-poverty was 14% for temporary workers, whereas it was 9% for employees. This data show that, among temporary employees, the risk of in-work-poverty has almost doubled since 2007, whereas it has increased from 9% to 12% among employees.

The effect of in-work poverty on temporary workers is also unevenly distributed between different groups when socio-demographic and household dimensions are considered. While the risk of in-work-poverty of men and women is similar when all the population of employees is considered, it is significantly higher for men than for women among the temporary workers (31.1% for men in 2019 compared to 23.9% for women).

Temporary workers are more likely to be at risk of in-work-poverty when they are not Luxembourgish (30.3%) than when they hold the Luxembourgish nationality (21.3%).

Although a higher level of education protects also temporary workers against in-work poverty, the risk of in-work poverty is higher for temporary workers when compared with the general population of employees for all educational levels. Even for those with tertiary education, the in-work at-risk-of-poverty rate is as high as 14% for temporary workers (compared to less than 7% for the general population of employees).

34. The source of all data in this section is Eurostat EU-SILC.

There are also important differences within temporary employment, since the length of the contracts and the work intensity are relevant in connection with the impact of in-work-poverty. The more the number of months in employment during a reference period, the lower is the risk of in-work-poverty among temporary workers. Similarly, working full time decreases the risk of in-work-poverty also among temporary workers: the in-work poverty rate is double for part-time workers with a temporary contract than for temporary workers working full-time. Nearly one in two temporary workers working part-time is at risk of in-work-poverty in Luxembourg.

Finally, the household dimension is also decisive. Both the number of adults at work in the household and the number of children affect the risk of in-work poverty. Having at least two workers in the household reduces the risk of in-work-poverty by more than two, from 39.9% when there is a single earner in the household to 18.9% when there is more than one. On the other hand, the more children, the higher the risk of in-work poverty. The rate or at-risk of in-work-poverty of temporary workers living in households without children is 20.5%, whereas it increases to 28.5% when there is one child in the household and up to 55.1% when there is more than one child.

[B] Temporary Agency Workers

[1] Legal Framework

The basic regulation of temporary agency work is in Article 131 of the Labour Code. Article L. 131-1 defines temporary work agency as ‘any person, natural or legal, whose business activity consists of hiring and remunerating employees with a view to placing them at the temporary disposal of users for the performance of a specific and non-permanent task’.³⁵ The law also refers to the user firm in Article L.131-4, but does not provide any definition.

There are also two collective agreements applicable to all temporary work agencies in the country. One of these agreements, signed originally in 2014 and renovated in 2018, deals with the relations between the temporary agency workers and the agencies.³⁶ The other applies to the permanent personnel of the agencies and, therefore, will not be analysed in this report. Both agreements have been declared of general application.³⁷

The declared aim of the agreements of 2014 and 2018 is to guarantee the coordination of working conditions and the social peace in the companies of the sector

35. Article L.131-1 Labour Code : ‘... est considéré comme «entrepreneur de travail intérimaire»: toute personne, physique ou morale, dont l’activité commerciale consiste à embaucher et à rémunérer des salariés en vue de les mettre à la disposition provisoire d’utilisateurs pour l’accomplissement d’une tâche précise et non durable, dénommée ci-après «mission»’.

36. *Convention collective pour les travailleurs intérimaires des entreprises de travail intérimaire*. The 2018 agreement is available (in French) at <http://www.fes.lu/wp-content/uploads/2018/09/Conventions-collectives-du-9-juillet-2018-applicables-aux-travailleurs-int%C3%A9rimaires-de-s-entreprises-de-travail-int%C3%A9rimaire.pdf>.

37. *Règlement Grand-ducal* 28 April 2014. Available online at <https://legilux.public.lu/eli/etat/leg/rgd/2014/06/10/n2/jo>.

while contributing to fight unfair competition and informal work. For the rest, it generally follows the same contents of the law, adding some detail to the principle of equality and its application.

Only authorized temporary work agencies can place workers at the disposal of third companies. The use of agency work is restricted to the same cases and for the same purposes that temporary contracts. Therefore, a 'mission' contract can only be concluded in the same cases and for the same purposes than those established for a standard temporary contract. The aim of the legislator is to restrict the use of temporary agency work to the temporary needs of user firms. However, the regulation of temporary agency work deviates from the regulation of 'standard' temporary contracts in one key aspect: the maximum duration of the mission contract is limited to 12 months, instead of the 24 months' maximum duration of temporary contracts. This maximum duration includes renewals. There is also a limitation in the number of renewals of the contract of mission: within the aforementioned 12 months, the contract of mission can be renewed a maximum of 2 times.

Another rule that tries to avoid abuses in the use of agency work is established in Article L.131-11, providing that at the end of a mission contract there can be no recourse to the use of yet another mission contract, with the same or another worker, for the same task or position, before a time lapse of minimum 1/3 of the duration of the first mission has passed. The same exceptions in the application of this rule than in the case of fixed-term contracts are established (seasonal contracts, contracts of replacement in case of a new absence of the replaced employee, use of agency work in one of the sectors where the use of temporary contracts is widespread and systematic or temporary contracts related to employment policies).

The temporary work agency is responsible for the payment of the salaries to the agency workers. These salaries cannot be inferior to those of a worker with the same or comparable qualifications in the user firm. If there is not a comparable worker, the salaries cannot be inferior to those established in the sectoral collective agreement applicable in the company for the position of the particular agency worker or, in any case, to the salary perceived by a worker with the same or comparable qualification in other company. Social contributions and taxes are also responsibility of the temporary work agency. On its part, the user firm is, during the execution of the mission contract, responsible for the application of all health and safety rules, as well as for the application of all other legal, conventional, and contractual rules regarding the working conditions of the agency workers.

The workers' representatives of the user firm must be consulted by the employer before using agency work. In addition, in case he/she is requested to do so, the employer must facilitate the service contracts for provision of work concluded with the agency to the workers' representatives. However, the role of these workers' representatives is only consultative, and they cannot prevent the employer to use agency workers.

There are different types of sanctions in case of violation of the rules to use agency work. The first is requalification of the mission contract into an indefinite contract between the agency worker and the temporary work agency. However, this

sanction is interpreted narrowly by the courts that have been reluctant to apply the re-qualification of the mission contract into an indefinite one.³⁸ Re-qualification cannot be decided in relation to the user firm, as declared by the Court of Appeal in its judgment of 21 March 2013.³⁹ The second possible sanction may be applied when the provision of workers is considered an illegal provision of labour, which is the case when any employer different than a temporary work agency places workers at disposal of another company. In this situation, both the provider and the user of illegal labour are jointly liable for the payment of the wages and their accessories, as well as the allowances and the related security charges and taxes.⁴⁰ Finally, it is possible to apply other sanctions in several situations when there is a violation of the rules regulating the use of agency work. These sanctions may consist of fines or, in case of reiteration, even imprisonment of up to six months.

The principle of equal treatment is explicitly incorporated in the regulation of agency work in connection to salaries and equal access in the user firm, in the same conditions as indefinite workers of that company, to collective facilities, particularly restoration services and transport facilities.

The collective agreement further specifies this principle of equality, establishing, for example, that agency workers also have the right to the same work and security equipment that permanent workers have in the user firm. In connection to salaries, the collective agreement adds several interesting provisions. First, the contract of service must have an indication of the remuneration in the user firm for a permanent employee with the same or an equivalent remuneration of the agency worker.⁴¹ Second, Article 10 specifies that the remuneration of agency workers must include all the elements of remuneration existing in the user firm, including bonuses, primes, and accessory remuneration such as meal vouchers, transport costs, etc. It also states that any upgrade of the salaries applicable to the permanent employees of the user firm must be applied as well to agency workers.⁴²

However, the courts have established some limitations to the application of the principle of equality in relation to salaries. For instance, when a bonus or premium is payable in a certain moment of the year when the agency worker was still not in the user firm, then the agency worker is not entitled to it.⁴³ Likewise, a bonus established in the collective agreement is only payable if the agency worker is in the user firm in the moment of payment.⁴⁴

Temporary agency workers have the right to be informed by and consult the workers' representatives of the user firm. However, they do not have the right to be represented in the user firm, since Article L.413-6 Labour Code establishes that

38. Putz, J.L. (2016), *Le travail flexible*, *supra* n. 22.

39. CSJ, 3e, 21 March 2013, 37491.

40. Article L.133-3 Labour Code.

41. Article 3.1 of the convention collective du 9 juillet 2018 applicable aux travailleurs intérimaires des entreprises de travail intérimaire.

42. Article 10 sections 1 and 4 of the convention collective du 9 juillet 2018 applicable aux travailleurs intérimaires des entreprises de travail intérimaire.

43. CSJ, 8e, 8 March 2012, 36504.

44. CSJ, 3e, 14 March 2013, 38706.

temporary agency workers do not have the right to vote or to be elected to the workers' representative bodies.

Despite the existence of two collective agreements applicable to temporary work agencies, there are some objective elements in the nature of temporary work that make it more difficult for trade unions to adequately represent temporary agency workers, such as the temporal element and the high rotation of these workers. In addition, in Luxembourg most temporary agency workers are 'frontaliers' which adds further difficulties.⁴⁵

[2] Impact Analysis

The number of temporary agency workers in Luxembourg is low. According to data elaborated by the main Luxembourgish trade union (OGBL), only around 2% of the workers in Luxembourg, which is around 9,000 workers at a given moment, are temporary agency workers. Although given the high fluctuation of agency work in the first 6 months of 2018, a total of 18,000 workers were employed by temporary work agencies.⁴⁶ Therefore the relevance of these workers in VUP Group 3, and in Luxembourg in general, is limited. Moreover, during the COVID-19 pandemic, the use of agency work diminished by 2/3.⁴⁷

Who are the temporary agency workers in Luxembourg? Data from the general inspection of the social security of 2020 show that temporary agency workers are very much concentrated in the construction and industrial sectors, and only 25% of them reside in Luxembourg.⁴⁸

Due to the fact that, from a EU-SILC perspective temporary agency workers are included in the category of 'temporary workers' unless they are employed by the temporary work agency with an indefinite work contract, there is no information on the effect of in-work poverty for this subgroup of workers, although possibly some of the observations made for temporary workers above are valid also for agency workers.

[C] Involuntary Part-timers

[1] Legal Framework

As in many other jurisdictions, part-time work is defined in Luxembourg in a negative way: every worker who works less hours per week than a full-time worker in a particular company is considered to be a part-time worker.⁴⁹ This results in an

45. Putz, J.L. (2016), *Le travail flexible*, *supra* n. 22.

46. OGBL (2018), Intérim, Le travail intérimaire au Luxembourg Quels sont mes droits? http://www.ogbl.lu/syndicat-services-energie/files/2018/09/interim_brochure_fr.pdf.

47. Luxemburger Wort. 24/08/2020, available at <https://www.wort.lu/fr/economie/l-interim-fait-les-frais-de-la-crise-5f4397f1da2cc1784e364463>.

48. *Ibid.*

49. Article L.123-1 Labour Code : 'Est considéré comme salarié à temps partiel le salarié qui convient avec un employeur, dans le cadre d'une activité régulière, un horaire de travail dont la durée

extremely heterogeneous group that includes people working extremely low hours and some other working almost full time. Part-time workers can do so under a fixed-term or indefinite contract. The effect of in-work poverty is different for the different groups of part-time workers, as shown in the next section.

VUP Group 3 includes those part-time workers that are in working part-time against their will, i.e., involuntary part-timers. There is no legal definition of involuntary part-time. Some of the rules regulating part-time in Luxembourg aim at guaranteeing that people working part-time are doing so voluntarily. Such is for instance the spirit of the rule in Article L.123-3 Labour Code that seeks to facilitate the transition from part-time to full-time work if this is the will of the worker, or the rules limiting the possibilities to increase the duration of working time. Interestingly, the 1993 law that regulated part-time work for the first time in Luxembourg was titled law of voluntary part-time work.⁵⁰

Eurostat defines involuntary part-timers as those persons who explain that they work part-time because they cannot find a full-time job.⁵¹ According to Eurostat LFS data for the year 2019, 17% of employed persons aged 15 to 64 years are in part-time employment in Luxembourg, which represents a lower percentage than in neighbouring Germany, Belgium, and Netherlands and a similar percentage than in France. Among them, 12.9% affirmed that they work part-time because they cannot find a full-time job.

However, the definition of involuntary part-time job is debatable. First, it is possible that people who report working part-time in order to care for children or dependent adults are not really doing so ‘voluntarily’, but because of the lack of any (affordable) alternative. To define who are the involuntary part-time workers included in VUP Group 3, following the methodology used in the research project *Working, Yet Poor*, a broad definition of involuntary part-time is adopted. In the data on part-time work in EU-SILC, the following reasons for working part-time are offered as possible answers to the participants: 1) undergoing education or training, 2) personal illness or disability, 3) wants to work more hours but cannot find a job(s) or work(s) of more hours, 4) do not want to work more hours, 5) number of hours in all job(s) are considered as a full-time job 6) housework, looking after children or other persons 7) other reasons. Workers whose answers are 3, 6 or 7 are included, for the purposes of the present chapter, in VUP Group 3 as involuntary part-timers.

The regulation of part-time work in Luxembourg is rather complex. Rules on working time allow for a relatively high degree of flexibility. The law establishes that part-time workers can still work longer hours than those indicated in the contract per day or per week on the condition that they do not work on average more hours than what is stipulated in their contracts within a reference period of four months (Articles

hebdomadaire est inférieure à la durée normale de travail applicable dans l'établissement en vertu de la loi ou de la convention collective de travail sur cette même période.’

50. Loi du 26 février 1993 concernant le travail volontaire à temps partiel.

51. Eurostat (2020), EU labour force survey -methodology, Statistics explained, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=EU_labour_force_survey_-_methodology#EU-LFS_concept_of_labour_force_status.

L.123-2 and L.211-6 Labour Code). Unless otherwise provided for in the contract of employment, the actual daily and weekly working time of a part-time employee resulting from the possibility to work longer hours may not exceed by more than 20% the actual daily and weekly working time of the part-time employee. In an attempt to prevent abuse, the work contract of the part-time employee has some mandatory contents that include: a mention of the agreed working-time; the distribution of the working time in the different days of the week (this can only be modified if there is agreement of both parties); the limits and modalities for supplementary working time (that only can be modified at a later stage if there is agreement of both parties); the limits and modalities for surpassing the daily and weekly working time agreed in the contract.

An important instrument affecting the execution of part-time contracts is the working time plan regulated in Article L.123-1(4) of the Luxembourgish Labour Code. This working time plan is a legal obligation for all companies in Luxembourg. This plan consists on the description, at least one month in advance in those companies where the period of reference to calculate working time limits is longer than one month, the foreseeable working time schedule for every employee, thus making it possible for the workers to know in advance when they have to work.

In order to open a part-time position, the employer must inform in advance to the worker's representatives, who have a consultative role. Another relevant provision is Article L.123-3 Labour Code, that establishes the obligation to inform in advance about all new part-time or full-time positions to be opened in the company to those workers that have communicated their desire to work part-time (when they are working full-time) or full-time (when they are working part-time), provided that the new positions correspond to their qualifications and experience. However, this obligation to inform does not entail an obligation for the employer to hire the internal employees.⁵²

Luxembourgish law explicitly establishes a principle of equality between part-time and full-time workers. Article L.123-6 Labour Code states that part-time workers benefit from all the rights recognized to full-time workers in the law and applicable collective agreements, although at the same time opens the possibility that collective agreements may establish some exceptions.⁵³ The law also establishes a principle of equal remuneration between part-time and full-time employees, proportional to the time actually worked (Article L.123-7). For seniority rights and benefits, the law establishes a legal fiction by which part-time workers will be considered for these purposes as if they had been employed full-time. This is also the case concerning qualification for the application of minimum wages: the case law has established that the professional experience of part-time workers is calculated as if they had worked full-time.⁵⁴

52. Putz, J.L. (2016), *Le travail flexible*, supra n. 22.

53. Article L.123-6 Labour Code: 'Les salariés occupés à temps partiel bénéficient des droits reconnus aux salariés à temps complet par la loi et les conventions collectives de travail applicables à l'établissement, sous réserve, en ce qui concerne les droits conventionnels, de modalités particulières prévues pour leur exercice par la convention collective de travail applicable.'

54. TT Luxembourg, 14 juillet 2015, n.2975.

[2] Workforce Composition and Impact Analysis

The category of involuntary part-timers is not perfectly captured by existing statistics. Some part-timers who have worked 30 hours or more were not therefore questioned about the reason for part-time work, but may still be involuntary part-timers (the normal working time in Luxembourg in the private sector is 40 hours per week). Other part-time workers did simply not answer the question on the reasons to work part time. There is, therefore, a risk of underestimating the total number of involuntary part-timers. With the caveats mentioned in the previous section about how we do define involuntary part-timers using EU-SILC data for this chapter, we would obtain that, being a total of 17.3% of all employed persons in Luxembourg working part-time in 2019, a total of 5% would be involuntary part-time workers, with the mentioned risk of under-estimation.⁵⁵

Disaggregated data show that women are strongly overrepresented among part-time workers. Up to 84.9% of part-time workers in 2019 were women, which seems to indicate an important gender dimension of part-time work. This very high proportion of women working part-time indicates that, due to gender roles, gender pay gap, and other structural reasons women tend to be still more often second earners in the household, prioritizing (voluntarily or not) care work over full-time work. However, the proportion of men working part-time has increased over time (from 6.3% in 2017 to 15.1% in 2019).

Compared to the general population, part-time workers are more often Luxembourgish citizens (52% of part-time workers, versus 45.5% of Luxembourgish nationals when the general employed population is considered).

Part-time workers are also more likely to be less educated and to have a low-skilled occupation than the general employed population, although a higher proportion of involuntary part-timers have a tertiary education when compared with the total population of part-time workers.

Part-time workers are less frequently the only worker in the household when compared to the general employed population (29.9% of the part-timers are the only income earners of the household compared to 36.9% among the employed population). They are also more likely to be parents of two or more children, especially those in involuntary part-time (as defined for this chapter, i.e., including in this group those working part-time because of ‘housework, looking after children or other persons’). These data seem to confirm that a high percentage of involuntary part-time workers in Luxembourg are women, and work part-time, because family responsibilities make it impossible, or very difficult, to hold a full-time job.

Table 5.3 shows the impact in percentages of in-work at-risk-of-poverty of involuntary part-timers in comparison with some other groups in Luxembourg, also taking into consideration different socio-demographic characteristics and the household dimension.

55. The source of all data in this section is Eurostat, EU-SILC.

Table 5.3 *In-Work At-Risk-of-Poverty of Involuntary Part-Timers and Some Other Groups in Luxembourg (2019) in Percentage (%)*

	<i>Employed Persons</i>	<i>Employees Only</i>	<i>Part-time Workers</i>	<i>Involuntary Part-timers</i>
All	12.1	12	20.1	21
Age group				
18-34	11.7	11.8	27.6	25.4
35-49	12.7	12.7	21.7	25.4
50 or +	11.5	10.8	14.1	10.8
Gender				
Women	12	12	19	s.s
Men	12.1	11.9	26.3	s.s
Nationality				
Luxembourgish	6.7	6.6	12	12.1
Not Luxembourgish	16.4	16.2	28.9	30.8
Education				
Lower secondary/primary	24.3	23.9	33.1	27.7
Upper secondary or post-secondary non-tertiary	10.8	10.9	16.9	18.4
Tertiary	6.9	6.4	12.9	15.8
Occupation				
High skill (ISCO-08 level 3 and 4)	5.3	4.8	7.4	12.4
Low skill (ISCO-08 level 1 and 2)	20.8	20.8	30.4	27.9
Contract				
Permanent	-	10.3	16.3	s.s
Temporary	-	27.7	48.5	s.s
Number of in-work persons in the household				
1	18.8	18.9	35.6	42.3
> 1	8.1	8	13.5	13.7
Number of children (< 18)				
0	9.1	9.1	19.7	20.1
1	14.8	14.9	22.4	15.8

	<i>Employed Persons</i>	<i>Employees Only</i>	<i>Part-time Workers</i>	<i>Involuntary Part-timers</i>
> 1	17.8	17.4	18.7	25.5

Source: EU-SILC, Eurostat.

Note: s.s: small sample size.

The at-risk of in-work-poverty of part-time workers is higher than that of the employed population, more than 20% in 2019. In fact, part-time workers are, together with temporary workers, the most vulnerable group regarding in-work poverty risk in Luxembourg.

From a gender perspective, part-time workers who are men face a higher risk of in-work poverty than female part-time workers, probably due to the second-earner nature of many female part-time workers.

Nationality is also relevant: part-time workers who are Luxembourgish nationals experience a lower risk of in-work poverty than foreign part-time workers.

Educational attainment is a protective factor against in-work poverty for part-time workers (voluntary and involuntary). The in-work poverty rate of low-educated part-time workers went up to 27.7% in 2019, whereas it was 15.8% for part-time workers with tertiary education. To have a high-skilled job also protects against in-work poverty, although a little bit less in the case of involuntary part-time workers. Still, the risk of in-work at-risk-of-poverty of involuntary part-time workers in high-skill occupations was 12.4% in 2019 compared to 27.9% for the same group in low skill occupations.

The type of work contract is also very relevant. Indeed, for part-time workers the risk of in-work poverty is three times higher for those working on temporary contracts than for those working on indefinite contracts. The combination of part-time and temporary employment results in the most precarious group of workers in terms of in-work poverty in Luxembourg. Almost one of every two part-time workers with a temporary contract was at-risk of in-work-poverty in the year 2019 in Luxembourg (48.5%)

Finally, as for all the other VUP groups, the household dimension is relevant. Being the only worker in the household greatly increases the risk of poverty for part-time workers (voluntary or involuntary). For involuntary part-time workers living alone, the risk of in-work poverty in 2019 was 42.3%, whereas for the same group of workers living in a household with more adults at work this risk decreased to 13.7%.

A trend that differentiates part-time workers from all the other VUP Groups is that the effect of the number of children does not necessarily contributes to the increase of the risk of in-work poverty. Indeed, the risk of in-work poverty of part-time workers with one child is lower (15.8%) than the same risk for part-time workers without children (20.1%).

§5.05 VUP GROUP 4: CASUAL AND PLATFORM WORKERS

The study of VUP Group 4 in Luxembourg is not easy. The main problem is the lack of data, which limits any attempt to assess the situation of workers in VUP Group 4. Statistics at EU, international and national level do not seem to capture a significant presence of casual and platform workers in Luxembourg. Eurofound reports on ‘new forms of employment’ do not consider Luxembourg in the scope of their analysis.⁵⁶ Likewise the JRC’S COLLEEM Survey does not report any data from Luxembourg.⁵⁷ Different hypothesis try to explain why platform and other ‘new’ forms of work remain limited in Luxembourg. As in other countries, it may be the case that part of the platform workers have informal arrangements and do not declare their activities with platforms.⁵⁸ Other authors argue that the micro nature of the tasks performed via platforms, having as a consequence a low level of remuneration, would explain the low spread of such forms of employment in Luxembourg, due to the high cost of living.⁵⁹

The legal framework is also restrictive: no legal definition of casual and/or platform workers exist in Luxembourg. The law does not regulate these forms of work.

Despite these limitations, the following sections attempt to provide some information about VUP Group 4 workers.

[A] Composition of VUP Group 4

A specific characteristic of VUP Group 4 in Luxembourg may be the presence of foreign workers operating from neighbouring countries. The JRC’S COLLEEM Survey, provides some insights on the socio-economic profile of platform workers that can be extrapolate to Luxembourg (with all due cautions).⁶⁰ The quoted report found that platform workers are, on average, younger than employees and self-employed. Women are under-represented. The level of education seems to be higher than that of the general population.

[B] Casual Workers: Notion and Relevant Legal Framework

This category includes two distinct subcategories: intermittent work and on-call work.

56. Eurofound (2015), *New forms of employment*, Publication Office of the European Union; Eurofound (2018) *Employment and working conditions of selected types of platform work*, Publication Office of the European Union. See also Fabo, B., Beblavy, M., Kilhoffer, Z., Lenaerts, K. (2017), *An Overview of European Platforms: Scope and Business Models*. Publication Office of the European Union.

57. Pesole, A., Urzi Brancati, M.C., Fernandez Macias, E., Biagi, F., Gonzalez Vazquez, I., (2018), *Platform Workers in Europe Evidence from the COLLEEM Survey*, EUR 29275 EN, Publications Office of the European Union, Luxembourg.

58. CEPS, EFTHEIA, and HIVA-KU Leuven (2020), *Study to gather evidence on the working conditions of platform workers*. European Commission.

59. Putz, J.L., (2016), *Le travail flexible*, *supra* n. 22.

60. Pesole, A., Urzi Brancati, M.C., Fernandez Macias, E., Biagi, F., Gonzalez Vazquez, I., (2018), *Platform Workers in Europe Evidence*, *supra* n. 57.

Intermittent work has no legal basis in Luxembourg. There are no contracts of intermittent work in the Luxembourgish legal order, and the case law has systematically considered invalid attempts to establish work contracts of intermittent work.⁶¹

Seasonal work exists in Luxembourg, but seasonal work arrangements cannot be considered intermittent work. The seasonal contract can, however, incorporate a clause that foresees the continuation of the relation for the next season or campaign. In these cases, and when the seasonal contract is repeated for more than two seasons, the temporary contract at the origin of season work is transformed in to a contractual relation with an indefinite global duration (*relation a durée globale indéterminée*) as foreseen in Article L.122-5(2) of the Labour Code. In any case, the use of seasonal work is very limited in Luxembourg, because these contracts can only be used in some particular sectors, namely agriculture, viticulture, and tourism.⁶²

The so-called intermittent contracts in the performance sectors (*intermittents du spectacle*) are not forms of intermittent work, but a succession of fixed-term contracts.⁶³

There are no legal provisions on on-call work in Luxembourg. In the Luxembourgish national conference on in-work poverty organized with stakeholders in June 2021 by WYP Project, trade unions denounced that some contractual practices in some sectors, such as on-call companies, incorporate provisions of extreme flexibility in the working time that, in practice, are almost equivalent to on-call. There are provisions in Luxembourgish labour law that would allow preventing these situations, such as the '*plan de organisation du travail*', regulated in Articles L.211-7 and following of the Labour Code.

[C] Platform Workers: Notion and Relevant Legal Framework

There is no regulation on platforms or platform workers in Luxembourg. It seems that most existing platforms face difficulties in qualifying the contracts with their collaborators. The clear division between employees and self-employed, with no intermediate categories, make it hazardous to qualify these collaborators as self-employed.

Despite the absence of statistical evidence on the number of platform workers, their status and their needs, the Workers Chamber (CSL) elaborated in December 2020 a legislative proposal to regulate platform work and submitted it to the Parliament.⁶⁴ The proposal shares the idea that platforms are to be considered intermediaries in the labour market.⁶⁵ Because platform workers, despite remaining statistically invisible, may hide a situation of bogus self-employment, the CSL' proposal advocates for a

61. Eurofound (2020), Labour market change: trends and policy approaches towards flexibilization. Challenges and prospects in the EU series. Publication Office of the European Union.

62. Règlement grand-ducal du 11 juillet 1989 portant application des dispositions des articles 5, 8, 34 et 41 de la loi du 23 mai 1989 sur le contrat de travail.

63. Putz, J.L. (2016), *Le travail flexible*, supra n. 22.

64. https://www.csl.lu/wp-content/uploads/2021/02/proposition-de-loi-de-la-csl_-travail-fourni-par-lintermediaire-dune-plateforme-francais-1.pdf.

65. Ratti, L. (2020), 'Les deux faces du travail sur plateforme numériques : crowdwork et work on-demand' in *Revue Pratique de Droit Social*, 6/2020.

system of presumptions that would help to discourage the use of bogus self-employment disguised as platform work. The proposal includes rules on ‘virtual’ displacement that considers application of the labour law rules of the country of the person that benefits from the work of the platform worker. Therefore, Luxembourgish labour law would apply when the service or work is received in Luxembourgish territory. In any case, this is just a proposal and has not been so far approved by the Parliament, that is not obliged to take a vote on the proposal. Moreover, legislative proposals coming from social partners or professional chambers do not even need to be discussed.

Existing rights and obligations of platform workers depend finally on the legal qualification of their contractual arrangement. There are two possible scenarios: platform workers are considered either independent contractors or employees.

When platform workers are considered independent contractors, the parties are entirely free to determine their mutual obligations, following civil law rules applicable to contracts in general. The only obstacle might come from the need to check whether individuals performing micro-tasks in a professional way could be required to get an *autorisation d’établissement*, which is an administrative license to exercise professional activities in Luxembourg. Furthermore, the tax and social security regimes of independent contractors may also have an impact on the spread of platform work.

If platform workers are considered employees, then labour law and social security rules would be applicable in full.

The current scenario of platform work in Luxembourg is still of legal uncertainty. The EU proposal for a Directive on improving working conditions in platform work⁶⁶ will, in case of approval, contribute to develop a legal framework for platform workers in Luxembourg.

§5.06 CONCLUSIONS

Due to the complexity of in-work poverty, a study focusing only on the role of labour law and social security regulation, as is the case in the present chapter, is necessarily limited in the description of the problem. Aspects such as the particularities of tax law, the structure of the economic sectors in Luxembourg, the lack of affordable accommodation, the income distribution, etc., play a very important role, but are outside the scope of the study. Therefore, the picture is partial and incomplete. Still, the preceding pages provide some hints of the in-work poverty situation in Luxembourg and some clues as to where the main problems lie, at least in relation to the groups studied.

A profile of the typical working poor, deriving from individual and household circumstances and situation in the labour market, can be traced: single earners with children, non-Luxembourgish workers, low-skilled workers employed in low-wage sectors, and those working part-time and/or with a temporary contract are the most at-risk of in-work-poverty. On the contrary, persons living in households without

66. European Commission, Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, COM (2021) 762 final.

children and with more than one earner, Luxembourgish nationals, highly qualified workers, and people working full-time with standard employment contracts have the lowest risk of becoming working poor.

In-work-poverty is concentrated in few sectors in Luxembourg, particularly, as we have seen in the analysis of VUP Group 1, in those with higher levels of low-wage workers. Within these sectors, unskilled workers are at a higher risk of poverty, particularly older workers, women and low-educated workers who are not Luxembourgish. For workers in VUP Group 1, living in a single-earner household with children also increases the risk of experiencing in-work poor. The standard employment contract, that is, indefinite and full-time work contract, is less protective for workers in VUP Group 1 than for the average worker. Being sector-specific legislation almost inexistent and without evidence of a decisive role of collective bargaining, it seems that the role of regulation is limited in connection to the situation of VUP Group 1. However, the fact that the minimum wage for unskilled workers is set at a lower level than for skilled workers affects negatively workers in VUP Group 1, and it can be very problematic in those particular sectors where the chance to get what the legislator considers as ‘qualified’ professional skills are very low. The structure of the economic sectors and the individual socio-demographic and household characteristics seems to play a very important role.

Despite these sector-specific problems, the labour law regulation in Luxembourg can be described as protective in comparative terms. It can also be said that, even if it is successful in limiting the use of temporary contracts, it fails to protect atypical workers, and particularly temporary workers.

Temporary employment and low work intensity are both important risk factors in relation to in-work poverty. Workers included in VUP Group 3 (and possibly a similar situation is true of those workers in VUP Group 4) are those experiencing a higher risk of in-work poverty of all the groups studied. When part-time employment is also temporary, the risk of in-work poverty is extremely high: almost one in two of these workers is at risk of being working poor.

Some gaps in the rules limiting of the use of temporary contracts may be problematic. First, the fact that in some sectors the use of temporary contracts is considered systematic and widespread, led the legislator to accept that the limitations in the use of temporary employment do not apply in them. This may result in the precarisation of those sectors. In light of the data on in-work poverty levels among temporary employment, we can suspect that in these economic sectors the prevalence of in-work poverty is high. Second, ALMP as designed in Luxembourg allow for deviations on the rules that limit the use of temporary employment, which may be also problematic.

With all the described caveats in relation with the data on incomes of the self-employed, the situation of workers in VUP 2 seems to be relatively acceptable, with a risk of in-work-poverty only slightly above the existing risk for all the employed population. This departs from the situation in other jurisdictions, where solo self-employed tend to be in a very precarious position. Furthermore, the size of this group

in Luxembourg is relatively small, so their weight in the population of working poor is accordingly limited.

Finally, regarding VUP Group 4, little can be said, as the limitations in available data are difficult to overcome. The size of this group of workers seem to be rather small in Luxembourg, but it is also possible that it hosts some of the most precarious workers, including what could be described as ‘informal’ workers, and therefore remain ‘invisible’. To a great extent, for those workers in VUP Group 4 that are ‘formal’, the applicable rules would depend on their qualification as employees or self-employed, with possible important consequences on the incidence of in-work poverty in this group.

To sum up, in-work poverty does not affect evenly all workers, since the risk to suffer in-work-poverty is considerably higher for some groups, as this chapter shows. It is difficult to assess what exactly the role of labour law regulation is, but some problems have been highlighted in connection to low-wage sectors, temporary work, and part-time work.

