

# Luxembourg experience on preventing work incapacity

Roland Moes and  
Tom Dominique

General Inspectorate of Social Security (IGSS)

## Introduction

The present contribution presents recent national experience in the area of work incapacity. A first part of the paper gives an overview of characteristics of disability related benefit schemes in Luxembourg. A second part focuses on the work incapacity scheme and assesses outcomes of some of the policies that have been implemented and on the expected impacts of further reform initiatives.

## Part A. Disability related benefit schemes in Luxembourg

### Coverage of the public disability benefit schemes

Sickness cash benefits: By law, everyone in Luxembourg in gainful employment (employed or self-employed), or receiving replacement revenues from social security schemes, must be affiliated to the health care scheme. The health care scheme covers the incapacity for work resulting from sickness and involving suspension of earnings by providing periodic replacement payments. The scheme protects the health of the mother and that of the child by providing prenatal and postnatal maternity leave. Period replacement payments are provided in case of a significant risk to the mother's health and that of her child during pregnancy. Special parental leave for family reasons (e.g. sickness of children) are also considered.

Disability benefits: By law, everyone in Luxembourg in gainful employment (employed or self-employed), or receiving replacement revenues from social security schemes, must be affiliated to the general pension scheme providing periodic replacement revenues in case of disability.

### Sickness and disability benefit levels

Sickness cash benefit level: Full wage which the insured person would have earned if continued to work, up to 52 weeks. Payment ends if a disability pension is granted or in case of failure to comply with measures of control or of re-guidance towards another benefit scheme.

Maximum disability benefit level: Disability pensions are calculated in the same way as retirement pensions. A disability pension is made the basic part and the earnings-related part related (artificially augmented in the case of disability up to the age of 55).

The basic part is worth about 27% of the social minimum salary, subject to 40 years' coverage. For incomplete insurance, the benefit is reduced proportionally. The accrual rate for the earnings-related part is 1.85% of average lifetime income, re-valued in line with nominal earnings. The maximum pension is limited to 420% of the social minimum salary.

## Definition of disability and on waiting periods

Definition of disability: Any beneficiary who, as a result of prolonged disease or infirmity, has suffered a reduction in working capacity, preventing him from exercising the profession which he/she exercised most recently or another activity corresponding to his strengths and skills, is considered to be affected by disability. Workers presenting partial disability in respect to the last working place are redeployed either in the company where they work or on the labour market. If it has not been possible to redeploy a worker presenting partial disability in respect to the last working place through the general labour market during the statutory period for which full unemployment benefit is payable (in general 12 months), he or she is entitled to a tide-over allowance corresponding to the amount of the disability pension.

Mandatory waiting period: Entitlement to disability benefits requires the beneficiary to prove a period of 12 months of insurance periods during the three years preceding the date of occurrence of the disability certified by the social security medical counsel, or the expiry of the sickness benefit. Nonetheless this period is not required if the disability is attributable to an accident of whatever nature or a professionally recognised illness, occurring during the period of affiliation.

## Assessment procedure for disability benefit claims

Medical assessment: A prolonged sickness leave leads to a compulsory medical examination by the medical control service of the social security authority within the first four months of sick leave. If the worker is found able to return to work, benefit payments are stopped. If the worker is still found unable to work, sickness benefit payment continues and another medical exam is scheduled for a later date. If the worker is found likely to be disabled, application for a disability benefit or the redeployment measures are launched.

Benefit decision-making: In the case of disability pension, the decision is taken by the pension fund, on basis of the assessment of the medical control service of the social security authority. In the case of tide-over allowance, the decision taken by the pension fund, without special assessment of the medical control service of the social security authority.

Re-testing of disability benefit entitlements: Retesting of benefit entitlements is performed by the medical control service of the social security authority in case of temporarily limited disability pension. No re-testing in case of permanent disability benefit or tide-over allowance.

Disability-related benefit suspension and work incentives: While in receipt of the tide-over allowance, the worker must remain available for employment, and the allowance is only payable for as long as appropriate work has not been found for the recipient. The tide-over allowance is subject to the same conditions of revocation and the same abatement provisions as the disability pension. In case of tide-over allowance or disability pension, income up to pre-disability level allowed for the full benefit. The disability pension is granted on condition that the beneficiary ceases any self-employed activity subject to insurance (for which the professional income exceeds one third of the social minimum salary).

## Part B. Reforming the work incapacity scheme

## Guiding principles

Before 2002, employees who were unable to work exhausted their right to sickness benefits before applying for a disability pension. If their application was rejected because they did not fulfil the statutory criteria, their position became extremely precarious. In many cases, employment contracts were terminated because the period of legal protection had passed. In other cases, although the employer did not terminate the contract, the company doctor or a medical officer might certify that an employee was no longer able to resume his or her previous duties. The worker in question had a right of recourse to tribunal, but this procedure took time. In the intervening period, the worker had no entitlement to unemployment benefit, while the appeal itself was a sign of unfitness for the labour market. The only option left for such workers was the social assistance programme.

The measures enacted under the laws in 2002, 2004 and 2005 are designed, on the one hand, to speed up the prescribed procedures in the realm of social security by coordinating them with the rules safeguarding the right to work and, on the other hand, to supplement the present protective mechanism with occupational-reintegration measures for workers unfit to resume their previous duties.

To improve the follow up of people presenting long term sickness episodes, and hence being susceptible to access the disability scheme, the procedure requires a detailed medical report on the health condition, to be established by the attending physician, at the latest for the tenth week of absence from work over a twenty week period. Failing this, the sickness leave allowance is not granted any more. The medical report of the attending physician should make it possible to the medical control service of the social security authority to evaluate more reliably the health status of the beneficiary and to propose an adequate follow up: the resumption of work in the cases of abusive requests, the continuation of the sick leave benefit, the disability pension, or the redeployment measure if people most likely present partial work incapacity. The medical control service of the social security is not in charge of evaluating the work incapacity in such, but only gives a recommendation of a possible impairment on basis of the general health status.

The redeployment procedure is under the responsibility of a joint committee formed by representatives of the social partners (government, employers and employees). Employees and employers are supervised by particular unit at the employment administration. A medical adviser of the employer is in charge 1) of confirming the decision of medical control service of the social security in relation to the effective working place conditions and 2) of evaluating the remaining work ability and the possible work place arrangement.

The redeployment approach consists in the assignment of the employee to another working post on different terms and conditions. For internal redeployment, legislation requires mandatory redeployment within the companies with more than 25 employees which have not yet met their statutory obligations regarding the recruitment of people with disabilities. Internally redeployed workers are entitled to a compensatory allowance representing the difference between their old and new pay levels if their wage or salary is reduced. The old pay level on which this calculation is based is capped, however, at five times the social minimum income. Employers effecting this internal redeployment are entitled to the grants available for the recruitment of workers with disabilities and to tax relief.

If internal redeployment is not possible, the worker is automatically registered as a jobseeker and draws unemployment benefit. If the external redeployment process results in the worker obtaining

employment, he or she is entitled to a compensatory allowance on the same conditions as an internally redeployed worker, and the new employer is entitled to the same grants and tax relief.

If it has not been possible to redeploy a worker through the general labour market during the statutory period for which full unemployment benefit is payable, he is entitled to a tide-over allowance corresponding to the amount of the disability pension. While in receipt of the tide-over allowance, the worker must remain available for employment, and the allowance is only payable for as long as appropriate work has not been found for the recipient. The tide-over allowance is subject to the same conditions of revocation and the same abatement provisions as the disability pension. The allowance is allocated by the employment scheme, whereas the pension scheme is in charge of the tide-over allowance.

### Evaluation of the reform process

In 2006 Luxembourg participated to the study conducted by the OECD on sickness, disability and work. In 2008 the General inspectorate of social security (IGSS) made an evaluation of the measures regarding the professional reintegration of people with reduced work capacity. The joint committee, ministries and administrations concerned, as well as employer and trade unions, gave their appreciation of the cogency and the operation of the current procedures, by analysing the positive points and the problems encountered.

The conclusions of the report were submitted to the Commission of Health and Social security and the Commission of Employment of the parliament. The preliminary works of the interdepartmental work group of the IGSS and Ministry of Labour within the framework of professional redeployment led to proposals included in a preliminary draft of law aiming at providing active labour market solutions in opposition to market exit programme.

The major outcome of the evaluation process in term of the adaptation of the legal context is as follows:

Strengthen internal redeployment: Actually only companies with 25 employees and more are subject to internal redeployment. In addition, a quota system limits the number of employees an employer is supposed to redeploy internally. The evaluation process showed that on average only one third of all persons in the redeployment procedure stay with their employer. Two third of them pass in external redeployment, and due to the fact that most of them could not be effected for a new employment, they are to be considered as disability pension beneficiaries. Actually the design is such that the procedure presents a win-win situation for the employee and the employer in terms of early leave before legal retirement age and reorganisation of the company by reducing older employees. The reform project foresees to reduce the limit of 25 employees and at the same time to strengthen the quotas. It is to be expected that due to this more rigid conditions, people stay in the company. So in practice people with work incapacity will stay on the labour market and will continue to work for their employer. Due to the fact that physical impairments are present, people will possibly tend to reduce working hours while the loss in income is filled up by the compensatory allowance. In addition, employees could be in favour of this approach, allowing them to transform aged and costly full time work place to part time occupations.

Create of a specific statute: actual legislation foresees that people accepting an adapted or new work place while being redeployed loose the right to stay in redeployment procedure. This has as a consequence that especially people in the procedure on unemployment benefit are more than

reluctant in accepting a new post. The reform project foresees a specific statute for all persons concerned by the redeployment procedure. In case of redeployment within a new company, people will have the possibility to access a new redeployment within the context of the procedure if work conditions are such that the physical impairment does not allow performing the requested tasks at some moment in time. The concerned will lose the statute if a medical assessment states full recovery in working capacities.

Periodic reevaluate the degree of the impairment: actually no systematic and no period reevaluation procedure is foreseen. The reform project intends to introduce such medical assessments of people in the redeployment procedure. This approach allows on the one hand making sure that people leave the benefit scheme at some time if recovery is present. In addition, the approach allows adapting the procedure in case of a degradation of the health status.

Although the reform project has to be considered as a step forward to an active inclusion of people presenting partial work incapacity in the labour market, some major conclusions of the evaluation process have not been included in the reform project:

Standardize the evaluation of the work capacity: actual different medical advisers (attending physician, medical control service of the social security, medical advisor of the employer, medical advisor at the disposal of the special unit at the employment administration) intervene in the procedure. Even if the procedure seems to be clearly defining the responsibility of these different actors, the practice shows that each entity is mainly focused on its specific role in the procedure and coherent, comprehensible and global medical assessments in respect of health status as well as working conditions are missing.

Provide a regular follow-up of the benefit recipient: actually human resources available at the specific unit at the employment agency in charge of redeployment are largely insufficient. In addition, rehabilitation measures or education opportunities are mostly missing.

Implement a prevention policy of disability: in the area of prevention policy actions are restricted to work injury.

Reduce the level of the tide-over allowance: actually the allowance corresponds to the disability pension. In order to reduce this incentive for early retirement, the level of the allowance should be reduced.

Allow a flexible transition between labour market and retirement: partial old age pensions, in combination with income from work, should allow people to make this transition more flexible and reduce the use of the redeployment procedure for early retirement.