

3 key topics for Luxembourg employers in 2023

January 2023 Update

From a Luxembourg employment perspective, a lot of companies have luckily well resisted the successive challenges over the previous months. It is fair to say, however, that the continuously high inflation is starting to take its toll. Cost-cutting measures are unfortunately, but clearly, picking up, including on the staff side with individual or collective actions.

Beyond these macro-economic trends, Luxembourg employers will have three specific local considerations to factor into their planning for the year 2023.

3 key topics for Luxembourg employers in 2023:

1. Implementation of the “Whistleblowing Directive” (Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law)
2. Implementation of the “transparent working conditions Directive” (Directive (EU) 2019/1152 of 20 June 2019 on transparent and predictable working conditions)
3. Index increases

1. Implementation of the “Whistleblowing Directive” (Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law)

Costs:



Legal complexity and planning:



Urgency:



What is the reform about?

- Whistleblowers are individuals who gained, in the course of their professional activities, knowledge and information of violations of national / EU law, and who report such violations via internal reporting channels or through external reporting channels directly to the competent authorities, such as the CSSF or the ITM. In addition, and subject to specific conditions, whistleblowers may directly disclose such violation to the public.
- The current **text of the bill of law extends the Directive’s material scope to all illicit actions under national law**, and thus also to Labour law.
- The bill’s personal scope applies to whistleblowers working in the private sector or in the public sector who obtained information about violations of EU /national law during the performance of their work. In addition, it covers, besides notably trainees, shareholders and members of the board of directors, also former employees and persons whose employment relationship has not yet begun, e.g. when information about violations was obtained during the recruitment process.
- Whistleblowers are **protected against retaliation**, subject to strict conditions:
 - Whistleblowers must have reasonable grounds to believe, in light of the circumstances/information available to them at the time of reporting, that the information they report were true and fall within the bill’s scope.
 - Whistleblowers must have reported a violation either via an internal or external reporting channel or a public disclosure in accordance with the bill’s provisions.
- All retaliatory measures, including threats and attempts, in response to the whistleblower’s reporting made in compliance with the procedure are prohibited. Moreover, specific forms of retaliation by the employer, such as dismissals, demotions, salary reduction, change of working hours, etc. are voidable.
- A whistleblower who knowingly reports or publicly discloses **false information** may be subject to a **prison sentence and a fine**.

What is the current status?


- The bill of law (n° 7945) is in **the final stages of the parliamentary process**. A vote on the text is expected in the coming weeks.

What do Luxembourg employers have to do?

- **Companies counting between 50 and 249 employees have until 17 December 2023 to establish so-called “internal reporting channels”**, i.e. a system and procedures allowing employees to internally report violations of EU /national law they became aware of in the framework of their job.
- **Employers with 250 employees or more are immediately (as of entry of the law) required to establish internal reporting channels** and corresponding procedures, whereas companies of less than 50 employees are free to decide to set up internal reporting channels and procedures. The biggest companies in terms of workforce shall hence not only closely monitor this bill but also be ready as from day 1, which requires a certain anticipation and planning in the internal decision-making.
- The introduction of a whistleblowing system requires the establishment of a “whistleblowing policy”, which has the legal value of an internal regulation and therefore requires the prior involvement of the staff delegation (if any). The level of the staff delegation’s involvement depends on the company’s headcount.
- Finally, the **employees must be informed** of the introduction of a whistleblowing policy and the subsequent mechanisms put in place. Hence, employers shall prepare a proper communication and maybe also an information session in order for employees to understand their rights and obligations.
- The bill is complex and employers will have to **properly prepare for its coming into force**, since many technical and practical points are to be factored in. Beyond legal considerations, one critical aspect will be to “educate” employees that the whistleblowing channels should not be misused or diverted from their actual aim. There will hence be a need to inform employees properly about their rights and obligations.

2. Implementation of the “transparent working conditions Directive” (Directive (EU) 2019/1152 of 20 June 2019 on transparent and predictable working conditions)

Costs: 

Legal complexity and planning: 

Urgency: 

What is the reform about?

- The bill of law requires **employment contracts to include the following items**, on top of the elements already mandatory today:
 - Regarding the **place of work**, in addition to the mention of the employer’s registered office and in the absence of a fixed or predominant place of work, the employment contract must foresee the principle that the employee will be employed in various places, and in particular abroad, or the principle that the employee is free to determine his/her place of work;
 - Regarding **working time**, the length of the employee’s standard working day or week and any arrangements for overtime and its remuneration and, where applicable, any arrangements for shift changes;
 - Regarding the **remuneration**, the indication of the initial basic amount (i.e. the base salary) as well as all other additional elements of remuneration the employee is entitled to (including ancillary remuneration elements, gratifications or shares) as well as the periodicity and modalities of payment;
 - Regarding **termination**, the procedure to be observed by the employer and the employee, including the formal requirements and the notice periods, where their employment relationship is terminated or, where the length of the notice periods cannot be indicated when the information is given (i.e. at the time of the signing of the employment contract), the method for determining such notice periods;
 - Regarding **trial periods**, in addition to the duration of the trial period, the indication of its condition of application;
 - Regarding **social security**, the competent social security authorities and applicable coverage;
 - Regarding **training rights**, the training entitlement provided by the employer, if any.
- The bill of law potentially opens the door to an **electronic transmission of the employment contract**. It is to be seen what this concretely means in practice; as things currently stand, the bill does however not seem to implement the possibility of a simple PDF signature of the employment contract.
- An **exclusivity clause** in an employment contract is **only allowed if properly justified** (for instance for the protection of trade secrets or to prevent conflicts of interest).
- Trainings required for the job count as working hours.
- In the framework of a fixed-term employment contract, an employee may, in certain circumstances, **annually request that his/her fixed-term employment contract be converted into an indefinite employment contract**. In case the employer does not grant a conversion, he/she has to provide the written grounds to the employee.

- In the framework of a fixed-term employment contract, the trial period cannot exceed one quarter of the duration of the fixed-term employment contract.
- An employee may, after the expiration of the trial period and after having at least six months of service, annually request that his/her part-time employment contract be converted into a full-time employment contract or that his/her full-time employment contract be converted into a part-time employment contract. In case the employer does not grant a conversion, he/she has to provide the written grounds to the employee.
- If the part-time employee and the employer did not agree on the working duration as well as its distribution during the week in writing, the employee is presumed to be hired as a full-time employee.

What is the current status?

- The bill of law (n° 8070) is in the **early stages of the parliamentary process**. A vote on the text is expected in Q2 or Q3 of 2023.

What do Luxembourg employers have to do?

- For new hires, the employment law documentation (employment contract) will have to be updated once the bill will have been voted. We consider that it is currently premature to conduct that exercise, since the text of the bill may still change in the parliamentary process. Once the process is close to the end (probably in Q2 2023), the work on the update of the documentation can be started.
- For existing employees, who have an existing employment relationship at the date of entry into effect of the law: they can request an employment contract aligned with the above requirements. The employer then has an obligation to **provide the employee with the required document within 2 months as from the date of reception of the request**.



3. Index increases

Costs:



Legal complexity and planning:



Urgency:



What is the reform about?

- In substance, **indexation is linked to the inflation of a number of commodities**, including petrol and other items.
- If the inflation on these items exceeds 2.5%, all salaries in Luxembourg – irrespective of the level of seniority of the relevant employee – are increased by 2.5%.
- Considering the current economic context of significant increase of inflation on a global level, the system has been put on hold for the year 2022. It had however been agreed politically, that **an index increase will occur in April 2023**.
- Last year, the ad hoc political body of the tripartite – which includes government, employer and employee representatives – has agreed on a number of measures, including a cap on energy prices, a VAT reduction for 2023 and also a re-application of the indexation system.

What is the current status?

- As a result of this, a first index increase of 2.5% is expected to take place in early 2023, **possibly as soon as March 2023**. This will then be **followed/accompanied by another (second) index increase of 2.5% in April 2023** (the one that had been postponed from 2022 to 2023).
- Depending on how inflation evolves, despite the cap on energy prices it cannot be excluded that an additional (i.e. third) index increase would happen later in the year 2023. If that latest scenario happened, the government has promised potential aids for companies, but full details are not yet known.

What do Luxembourg employers have to do?

- We do consider it important that companies have this on the radar in their salary planning exercises. In particular, when **merit increases are granted**, attention must be paid to **their coordination with the mandatory index increases**.

We are happy to discuss with you any of the above.

For further information on the topic, please reach out to your usual A&O contact, or any of the below relevant contacts.



André Marc

Partner

Tel +352 44 44 5 5724

andre.marc@allenoverly.com



Gilles Dall'Agnol

Partner

Tel +352 44 44 5 5104

gilles.dallagnol@allenoverly.com



Christophe Ernzen

Counsel

Tel +352 44 44 5 5112

christophe.ernzen@allenoverly.com



Maurice Macchi

Counsel

Tel +352 44 44 5 5231

maurice.macchi@allenoverly.com



Gabrielle Eynard

PSL-Senior Associate

Tel: +352 44 44 5 5115

gabrielle.eynard@allenoverly.com



Nathaël Malanda

Senior Associate

Tel +352 44 44 5 5206

nathael.malanda@allenoverly.com



Julian Kisslinger

Associate

Tel +352 44 44 5 5316

julian.kisslinger@allenoverly.com



Laurie Lougsami

Associate

Tel +352 44 44 5 5299

laurie.lougsami@allenoverly.com



Clara Duc

Associate

Tel +352 44 44 5 5180

clara.duc@allenoverly.com



Eric Weber

Associate

Tel +352 44 44 5 5462

eric.weber@allenoverly.com



Laure Varichon

Junior Associate

Tel +352 44 44 5 5510

laure.varichon@allenoverly.com

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