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Commission

SOCIAL ENTERPRISES  
AND THEIR ECOSYSTEMS  
IN EUROPE

Country report

**LUXEMBOURG**

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*Social Europe*

This report is part of the study “Social enterprises and their ecosystems in Europe” and it provides an overview of the social enterprise landscape in Luxembourg based on available information as of November 2019. It describes the roots and drivers of social enterprises in the country as well as their conceptual, fiscal and legal framework. It includes an estimate of the number of organisations and outlines the ecosystem as well as some perspectives for the future of social enterprises in the country.

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# SOCIAL ENTERPRISES AND THEIR ECOSYSTEMS IN EUROPE

Country report  
**LUXEMBOURG**

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This report provides an overview of the social enterprise landscape in Luxembourg based on information available as of November 2019. The report updates the previous version submitted by ICF Consulting Services to the European Commission in 2014. The current report has been prepared as part of a contract commissioned by the European Commission to the European Research Institute on Cooperative and Social Enterprises ([Euricse](#)) and the EMES International Research Network ([EMES](#)). David Hiez from the University of Luxembourg and Francesco Sarracino from STATEC were responsible for the revision of the report.

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Countries included in the three social enterprise mappings by the European Commission

No	Country	TYPE	2014	2016	2018-19
1	Albania	Fiche	-	-	✓
2	Austria	Report	✓	-	✓
3	Belgium	Report	✓	✓	✓
4	Bulgaria	Report	✓	-	✓
5	Croatia	Report	✓	-	✓
6	Cyprus	Report	✓	-	✓
7	Czech Republic	Report	✓	-	✓
8	Denmark	Report	✓	-	✓
9	Estonia	Report	✓	-	✓
10	Finland	Report	✓	-	✓
11	France	Report	✓	✓	✓
12	Germany	Report	✓	-	✓
13	Greece	Report	✓	-	✓
14	Hungary	Report	✓	-	✓
15	Iceland	Fiche	-	-	✓
16	Ireland	Report	✓	✓	✓
17	Italy	Report	✓	✓	✓
18	Latvia	Report	✓	-	✓
19	Lithuania	Report	✓	-	✓
20	Luxembourg	Report	✓	-	✓
21	Malta	Report	✓	-	✓
22	Montenegro	Fiche	-	-	✓
23	The Netherlands	Report	✓	-	✓
24	North Macedonia	Fiche	-	-	✓
25	Norway	Fiche	-	-	✓
26	Poland	Report	✓	✓	✓
27	Portugal	Report	✓	-	✓
28	Romania	Report	✓	-	✓
29	Serbia	Fiche	-	-	✓
30	Slovakia	Report	✓	✓	✓
31	Slovenia	Report	✓	-	✓
32	Spain	Report	✓	✓	✓
33	Sweden	Report	✓	-	✓
34	Switzerland	Report	✓	-	-
35	Turkey	Fiche	-	-	✓
36	United Kingdom	Report	✓	-	✓

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## List of acronyms

- > **ADEM** Agency for Employment Development (*Agence pour le Développement de l'Emploi*)
- > **ASBL** Not-for-profit Association (*Association sans but lucratif*)
- > **BCEE** State-owned Bank (*Banque et Caisse d'Epargne de l'Etat*)
- > **CELL** Centre for Ecological Learning Luxembourg
- > **CEPS** Luxembourg Research Centre on Population, Poverty and Socio economic Policies
- > **CMCM** Complementary Medicine Mutual (*Caisse Médico-Complémentaire Mutualiste*)
- > **EC** European Commission
- > **EGCA** Shelter Centers' Arrangement (*Entente des gestionnaires de centre d'accueil*)
- > **ERDF** European Regional Development Fund
- > **ESF** European Social Fund
- > **EU** European Union
- > **FNML** National Federation of Luxembourg Mutuals (*Fédération nationale de la mutualité luxembourgeoise*)
- > **FPE** Employment Forum (Forum pour l'Emploi)
- > **ICA** International Cooperative Alliance
- > **INSEE** French National Institute of Statistics (*Institut national de la statistique et des études économiques*)
- > **LCGB** Luxembourg's Christian Trade Union Confederation (*Lëtzebuenger Chrëschtleche Gewerkschaftbond*)
- > **MESA** Transition House (*Maison de la transition*)
- > **MLESSE** Ministry of Labour, Employment and Social and Solidarity Economy
- > **OGBL** Independent Trade Union Confederation of Luxembourg (*Onafhängege Gewerkschaftsbond Lëtzebuerg*)
- > **OPE** Full Employment Objective (*Objectif Plein Emploi*)
- > **SA** Public Limited Liability Company (*Société anonyme*)
- > **SARL** Private Limited Liability Company (*Société à responsabilité limitée*)



- > **SARL-S** Simplified Private Limited Liability Company (*Société à responsabilité limitée simplifiée*)
- > **SC** Cooperative Society (*Société cooperative*)
- > **SIS** Societal Impact Company (*Société d'impact societal*)
- > **SNCI** National Credit and Investment Company (*Société Nationale de Crédit et d'Investissement*)
- > **SSE** Social and Solidarity Economy
- > **STATEC** The National Institute of Statistics and Economic Studies of the Grand Duchy of Luxembourg
- > **ULESS** Social and Solidarity Economy Union of Luxembourg (*Union Luxembourgeoise de l'Économie Sociale et Solidaire*)
- > **VAT** Value Added Tax
- > **WIO** Work Integration Organisation
- > **WISE** Work Integration Social Enterprise

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## Executive summary

### Background

Europe's first ever ministry for social and solidarity economy (SSE) was established in Luxembourg in 2009. Such clear interest in social enterprise-related matters has nevertheless been an issue of long-term debate in the country; indeed, agreement on the sector's boundaries remains uncertain.

Historically, civil society activity outside of the Church was not very vibrant. New welfare state social services only emerged in the 1970s and work integration social enterprises (WISEs) in the 1980s. In the 2000s and 2010s, diverse initiatives began developing, but their categorisation was fiercely debated.

Various terms have been ventured over the years, including "solidarity economy", "social business", "social and solidarity economy", and "social enterprises"; of these, the two former terms have disappeared from use, whereas the latter two remain very much alive if unclearly defined.

Luxembourg's Social and Solidarity Economy Union (*Union luxembourgeoise de l'économie sociale et solidaire*, ULESS), which was established in 2013, adopted a legal definition of SSE in 2016 and yet, so far, has been unable to resolve categorisation issues. Although ULESS and the 2016 law deal explicitly with SSE, non-normative references are often made to social enterprise.

### Concept, legal evolution and fiscal framework

Luxembourg refers to both social enterprise and the SSE with a certain lack of consistency. ULESS's membership criteria and the 2016 legal definition specifically concern SSE in relation to four main factors: an enterprise's economic activity, its autonomy, social purpose and the allocation of profits for its development. Although these parameters largely match the European criteria for social enterprises, Luxembourg does not clearly distinguish between the two notions.

More importantly, Luxembourg has not as yet established the legal status of social enterprises. Despite this fact, in practice, it is difficult to avoid referring to the notion due to the country's history of not-for-profit associations (*Association sans but lucratif*, ASBLs), foundations, mutuels, cooperatives and, more recently, societal impact companies (*Société d'impact societal*, SISs). For example, although SISs are not formally associated with social enterprise, they are representative of social endeavour due to their legal form.

If all of these enterprises were submitted to certain general principles within the new law of 2016, the legal treatment would be conditioned by their legal status. The same is true of taxation: social and solidarity enterprises receive no distinct tax concessions, and yet some special rules may apply to those categorised under specific legal statuses. This is also the case for SISs that need submit to the same tax regulations as ASBLs when their capital is composed solely of impact shares.

## Mapping

According with the EU definition of social enterprise, in Luxembourg there are between 916 and 932 social enterprises. Since their creation in 2016, 16 SIS with 100% impact shares have been created and according to the estimation performed on data provided by the National Business Register, in 2017 there were 916 social enterprises. They employed nearly 6% of Luxembourg's total wage earners and, since 2012, the number of their employees has grown by nearly 2% annually. However, the overall number of social enterprises has remained substantially unchanged since 2012. The vast majority (92%) of social enterprises were either micro or small firms predominantly active within collective social and personal services (64.6%) and in health and social work (23.5%). In 2017 social enterprises with more than 250 employees engaged 55.5% of the 24,055 wage earners employed in Luxembourg's social enterprises. Small and medium-sized enterprises employed a further 38.6% employees. Full-time contracts rose from 15,211 to 17,062 units between 2012 and 2017, with an average growth rate of 2.4% per annum. In 2017 women constituted the sector's major workforce, with a total number of 16,640 wage earners, but their share over time has shown signs of decreasing.

## Ecosystem

The Luxembourg social enterprise ecosystem may appear alternatively small or more than satisfactory, but its major feature is surely the important support it receives from public bodies. This is particularly true of funding as a distinction is not always clearly made between subsidies and the payment of delivered services. Despite growing concern for decreasing state support, many enterprises still benefit from significant public funding. The Ministry of Labour, Employment and Social and Solidarity Economy (MLESSE), in collaboration with local municipalities, has played an important role in boosting the SSE and social enterprises.

Some private financial institutions have tried targeting support to social enterprises, but they remain marginal.

European support is meanwhile significant, most notably during an enterprise's start-up phase.

Research and training is not very developed in Luxembourg, largely due to the country's small size, its relatively young social enterprise-related sector and the fresh nature of any scholarly debate on the issue.

Public procurement is a good illustration of sectorial ambiguities: although the national law does provide certain opportunities for responding to social clauses based on its application of European legislation, even when adopted, they do not profit social enterprises; to date, no social enterprise has responded to public procurement calls. Two explanations can be ventured for this situation: on one hand, ASBLs are not allowed to take part in public procurement; on the other, most social enterprises are not yet clearly market-oriented.

## Perspectives

The social enterprise debate may have decreased in Luxembourg on a national level yet stakeholders remark on its progress over the last ten years.

There is common agreement that the country's legal status criterion does not define social enterprise. As a result, the legal and conceptual consequences for social enterprise are not explicit. When made, any distinction between social enterprises and SSE enterprises highlights the market orientation of the former, leading to specific funding constrains. However, this differentiation has no concrete meaning, since social enterprise is not a defined legal concept in Luxembourg.

The main question that arose in practice regarded which enterprises could apply for ULESS membership. The overall development of a social enterprise-related sector in Luxembourg has allowed new entrepreneurs to consider their businesses as social enterprises.

Significant recent attention has also been raised by the new SIS, which is attractive to some for its emphasis on social impact and tax concessions but considered restrictive to others for its administrative complexity and tax neutrality for enterprises that require investors.

Recently formed social enterprises are largely general interest-oriented or social innovation and market-oriented enterprises. One obstacle to their development could be the state's strong financial support for other enterprises and correlative lack of entrepreneurial spirit. More positively, the SIS could contribute to a better knowledge base and image of social enterprises in civil society.



LUXEMBOURG


# 1

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## BACKGROUND: SOCIAL ENTERPRISE ROOTS AND DRIVERS

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Europe's first ever ministry for social and solidarity economy (SSE) was established in Luxembourg in 2009. Historically, civil society activity outside of the Church was not very vibrant. New welfare state social services only emerged in the 1970s and work integration social enterprises (WISEs) in the 1980s. In the 2000s and 2010s, diverse initiatives began developing, but their categorisation was fiercely debated. In 2013, Luxembourg's Social and Solidarity Economy Union (ULESS) adopted a legal definition of SSE in 2016 and yet, so far, has been unable to resolve categorisation issues. Although ULESS and the 2016 law deal explicitly with SSE, non-normative references are often made to social enterprise.



## 16 | Background: social enterprise roots and drivers

In the 19<sup>th</sup> and 20<sup>th</sup> centuries, organisations traditionally related to civil society and social economy were not very well developed in Luxembourg. Most were associations that mainly targeted recreational activities or were charitable catholic associations. Some cooperatives were launched in rural areas but received little support from trade unions. In addition, some mutuels also existed that were connected with various social services but not involved in healthcare.

In terms of its social enterprise related legal structure, Luxembourg has been more influenced by Belgium than France, from where, for example, it adopted legislation regarding collectives.<sup>1</sup> Meanwhile, only Germany seems to share the same philanthropic culture that religious organisations have achieved in Luxembourg.

In the late 1970s, welfare activism emerged in Luxembourg through the activity of social entities, especially associations, which provided social services (e.g., orphanages and retirement homes) that would have otherwise needed to be delivered by the state. This development occurred during the iron and steel industry's major crisis, which had otherwise represented the country's only financial security throughout the 20<sup>th</sup> century. Although the state provided the main bulk of funding for these social entities, it benefited from a rapid increase in the country's wealth (e.g., through increased donations) related to an economic shift towards the financial sector. Organisations such as Caritas and the Red Cross Luxembourg began operating during this period and still play a central role in the country's social enterprise ecosystem.

Simultaneously, by the end of the 1970s and the beginning of the 1980s, the first active measures to promote work integration initiatives were initiated. This period saw the birth of a number of associations, which developed new perspectives on social assistance that focused on work integration, predominantly in the City of Luxembourg. They were supported by an act promoting jobs that could reintegrate young unemployed people into the labour market, which came into force on 19 December 1983 (Delaunoy 2007). Since then work integration organisations (WIOs) have become a chief characteristic of the national social economy, stimulating enterprises dedicated to providing suitable jobs and training to people outside the labour market. Besides work for disabled people, care associations remain one of the most important aspects of this sector even today.

In the late 1980s, some of the country's largest WIOs were established with significant trade union involvement. For instance, LCBG created the country's two

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(1) Both of the laws on commercial companies, comprising cooperatives and non-profit associations, were lifted directly from Belgian laws: the 27 June 1921 Act on Non-profit Associations, Foundations, European Political Parties and the European Political Public Foundations [*Loi du 27 juin 1921 sur les associations sans but lucratif, les fondations, les partis politiques européens et les fondations politiques européennes*] (Mon. 1 July 1921, no. 1921062701, p. 5409) and the Coordinated Acts on Commercial Companies of 30 November 1935 [*Lois coordonnées sur les sociétés commerciales du 30 novembre 1935*] (5 December 1935, no. 1935113051, p. 7707).



largest integration structures—the Employment Forum (*Forum pour l'Emploi*, FPE)<sup>2</sup> and ProActif.<sup>3</sup> Independent Trade Union Confederation of Luxembourg (*Onafhängege Gewerkschaftsbond Lëtzebuerg*, OGBL) established another dynamic structure the Full Employment Objective (*Objectif Plein Emploi*, OPE),<sup>4</sup> which in the opinion of many stakeholders interviewed for this report was essential in popularising Luxembourg's concept on work integration.

Towards the end of the 1980s, significant public schemes were established that tackled unemployment. With the initial impetus coming from EU policies, the Luxembourg State continued to support initiatives with high-level funding even when EU-financed programmes were no longer in place. Nowadays, it is still common for the State to fund around 80-90% of a WIO's resources. By the beginning of the 2000s, around 40 WIOs were active, with around half of them conducting commercial activities. Most have since opted for association status (*Association sans but lucratif*, ASBL) (Delaunois 2007).

The OPE was once one of Luxembourg's largest and most influential WIOs due to its parent trade union's direct support. In the late 1990s, it took an ideological stance and promoted the concept of “solidarity economy”, explicitly inspired by French literature on the subject (Laville 1992). Within the Luxembourg context, the term was applied more to creating socially useful jobs of benefit to local communities and less on specific aspects of labour market integration. Indeed, the new terminology flourished to such an extent in the late 1990s that it was subsequently taken up by other organisations. In particular, it was used by care associations predominantly grouped under the Shelter Centres' Arrangement (*Entente des gestionnaires de centre d'accueil*, EGCA), which envisaged solidarity economy as a useful tool for evading mere philanthropy. However, both the OPE's and EGCA's promotional approaches struggled in the 2000s. Although it initially appeared that the OPE had succeeded in dominating the sector when its major claims were introduced into the 2009 governing agreement due to its connections with the socialist party, ULESS was subsequently created to adopt a more consensual concept of social and solidarity economy (SSE). Ultimately, the OPE went bankrupt due to both managerial problems and its loss of political support.

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(2) Created in 1998 by the LCGB as part of the European Employment Summit (Luxembourg), the FPE advocated the closer involvement of social partners in the application of policies combating unemployment. See <http://www.fpe.lu/> (Last accessed on 7 November 2019).

(3) Created in 1998, ProActif was born out of new policies favouring employment. Its social purposes include framing, initiating and supporting unemployment relief initiatives that favour jobseeker integration in the marketplace. See <http://www.proactif.lu> (Last accessed on 7 November 2019).

(4) The OPE's original objective was to avoid those who had lost their jobs due to changes in the economy and local development from ending up on the streets. It was funded in part by the Ministry of Labour (75%) and individual municipalities (25%). Due to financial difficulties and controversies related to the use of public funding, the OPE no longer exists.

## 18 | Background: social enterprise roots and drivers

Nowadays, Luxembourg's notion of solidarity economy has faded away and been replaced by SSE. In this respect, the country has clearly been influenced by French rather than German culture, which may have several causes. First of all, France's socialist traditions, which have always been more developed than Germany's, are clearly evident within this sector's European policy to which Luxembourg has always been sensitive. Secondly, many French people work in Luxembourg and bring their cultural influence with them. Luxembourg's notion of social enterprise has clearly been adopted from the European Commission (EC) model and yet Marie Terese, the Grand Duchess of Luxembourg, has simultaneously been lobbying for Professor Muhammad Yunus' social business model, whose connection to social enterprise has a more profit-generation basis even if not legally stated as such. As a result, the Luxembourg context is rather confused and attempts to elucidate proper national definitions have not yet been realised.

In the governmental coalition agreement of 2005-2009, the Ministry of Family was appointed as the responsible body for solidarity economy. In 2009 a new Department of Solidarity Economy was established within the Ministry of Economy and Commerce alongside a separate post of Minister for the Solidarity Economy. The department's creation was symbolically important, as it was the only one of its kind in Europe at that time.<sup>5</sup> One of its principal goals was to better define the boundaries of SSE and stimulate the creation of a platform for all of its actors.

In addition, the 4<sup>th</sup> International Forum on Globalisation of the Solidarity, which took place in Luxembourg in 2009, received significant media coverage and contributed greatly to solidarity economy's popularity.<sup>6</sup>

In 2013 the Department of Solidarity Economy was adopted by the Ministry of Labour, Employment and Social and Solidarity Economy (MLESSE) and, as a result, was renamed the Department of SSE. Interestingly, one of the implications of this change—the addition of “social” to the department's previous name—was preceded by some lively debate. Some stakeholders saw the relocation of the department as evidence of its importance being weakened.<sup>7</sup>

The Department of Social and Solidarity Economy created its union, the ULESS, in July 2013.<sup>8</sup> As Luxembourg's only national SSE network, it both directly and indirectly represents more than 300 sectorial enterprises, which are predominantly social

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(5) See <http://alternatives-economiques.fr/blogs/abherve/2010/08/24/la-vision-du-ministre-en-charge-de-leconomie-solidaire> (Last accessed on 7 November 2019).

(6) Opinion expressed by Luxembourg's national expert, whose advice was sought while drafting the 2014 report.

(7) View expressed by the University of Luxembourg representative during the 2014 study process.

(8) See <http://www.uless.lu> (Last accessed on 7 November 2019).

services and labour integration associations that collectively employ two thirds of SSE employees.<sup>9</sup>

The ULESS facilitates and lobbies on behalf of its members. Its mission is to defend, promote, federate and represent SSE sector actors.<sup>10</sup> The union is totally independent of the government when relaying its members' opinions. However, the government is its close partner not least because SSE organisations are aware that their financial support is inadequate to enable the union's functional independence without the benefits of a national support structure. The union is Luxembourg's official representative of SSE.<sup>11</sup>

The SIS is a new legal scheme for social enterprises, which was recently proposed by the ULESS and the Department of SSE. The scheme, which came into force through the legislative act of 12 December 2016, has considerably changed the legal environment in which social enterprises can operate. This legal form facilitates the establishment of social enterprises as limited profitability enterprises in line with traditional companies. The root of this legal development can be traced back to 2009 when the Ministry for Solidarity Economy was created. At that time, the OPE advocated the establishment of a new legal person, the *association d'initiative citoyenne*, whose purpose would have been to provide a suitable legal status for collective enterprises. Notably, the proposal addressed the precarious legal situation of associations regarding their economic activity and the aspiration to improve employee involvement in the organisation. However, the OPE's decreasing influence led the ministry to return to the Belgian ***société à finalité sociale*** model.<sup>12</sup> Close discussions between the financial sector and the Ministry for Solidarity Economy focused on the potential creation of a new market for financial sector investment that could substitute state funding. However, major social sector organisations quickly lobbied for a new legal organisation that could fit their expectations, especially in relation to taxation. The final version of the project adopted by the government and presented to the parliament satisfied their expectations; the financial sector soon understood that main social sector organisations anticipate funding free of charge rather than financial investments.

Even though the ministry and ULESS were established earlier, it is commonly acknowledged that this act was the first legal recognition of social enterprise in Luxembourg. Many stakeholders agree that it has been an important milestone towards better recognition of SSE actors.

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(9) Interview with ULESS representative.

(10) <http://www.uless.lu>.

(11) As referenced in the act from 12 December 2016 that created the social impact company: [*Loi du 12 décembre 2016 portant creation de la société d'impact societal*] (Mémorial A, no. 225, 15 December 2016, art. 12-1).

(12) It is worth noting that Belgian law is the predominant model for association and commercial company law in Luxembourg.

## 20 | Background: social enterprise roots and drivers

Both “social and solidarity economy” and “social enterprise” concepts are outlined in the act that future reforms will likely follow.<sup>13</sup> On the one hand, SSE’s importance is clearly evidenced in chapters dedicated to its definition. On the other hand, many official references align the SIS with social enterprise.<sup>14</sup> Although it is considered the proper legal form for social enterprises and, therefore, an answer to European expectations, in practice, the SIS fits perfectly within Luxembourg’s SSE concept focusing on social objectives. Indeed, both the Ministry for SSE and ULESS use the term “social and solidarity economy enterprise” (*entreprise de l’économie sociale et solidaire*) to refer to socially oriented enterprises.

In conclusion, even though social enterprise remains a matter of discourse, the law has consolidated the term “social and solidarity economy” as its main point of reference. This distinction impacts both the sector’s regulation and stakeholder approaches.

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(13) See <https://www.uless.lu/fr/publications/rapport-d-activites-2017> (Last accessed on 7 November 2019).

(14) For example, see: <http://luxembourg.public.lu/fr/actualites/2018/02/01-sis/index.html>. (Last accessed on 7 November 2019).


# 2

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## CONCEPT, LEGAL EVOLUTION AND FISCAL FRAMEWORK

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Luxembourg has not as yet established the legal status of social enterprises. Despite this fact, in practice, it is difficult to avoid referring to the notion due to the country's history of not-for-profit associations (Association sans but lucratif, ASBLs), foundations, mutuals, cooperatives and, more recently, societal impact companies (Société d'impact societal, SISs). For example, although SISs are not formally associated with social enterprise, they are representative of social endeavour due to their legal form.



## 2.1. Defining social enterprise borders

### 2.1.1. The EU operational definition of social enterprise

This report draws on the organisational definition included in the Social Business Initiative (SBI) of 2011. According to the SBI, a social enterprise is an undertaking:

- > whose primary objective is to achieve social impact rather than generating profit for owners and shareholders;
- > which uses its surpluses mainly to achieve these social goals;
- > which is managed in an accountable, transparent and innovative way, in particular by involving workers, customers and stakeholders affected by its business activity.

This definition arranges social enterprise key features along three dimensions:

- > an entrepreneurial dimension,
- > a social dimension,
- > a dimension relative to governance structure.

Provided that the pursuit of explicit social aims is prioritised through economic activities, these three dimensions can combine in different ways; it is their balanced combination that matters most when identifying the boundaries of social enterprise.

Building upon this definition, the Commission identified a set of operational criteria during the previous stages of the Mapping Study (European Commission 2015, 2016) and refined them again for the purpose of the current phase of the study (see appendix 1 for further details).

### 2.1.2. Application of the EU operational definition of social enterprise in Luxembourg

Luxembourg's SSE enterprise legislation closely matches the EC's criteria of social enterprise. As already mentioned, the term "solidarity economy" first appeared in Luxembourg in the late 90s based on the French concept. The OPE network strongly promoted the term, which was readily adopted by social service ASBLs, albeit with another meaning (see comment above on the Shelter Centers' Arrangement). By the end of the 2000s, the term was expanded and became known as "social and solidarity economy".

Although "social enterprise" is not yet a legally defined term in Luxembourg, its concept has emerged in recent years and reference has even been made to "social business".

The EC's Social Business Initiative<sup>15</sup> has definitely helped popularise this development. Occasionally, the term is associated with an Anglo-Saxon approach, which emphasises the sound economic dimension of a given social enterprise. Although “social and solidarity economy” and “social economy” are still currently dominant terms in Luxembourg, the “social enterprise” concept is likely to establish itself in the medium term.

### **Definition by the ULESS**

The ULESS is Luxembourg's only facility that could be considered a social enterprise network. Its literature predominantly refers to SSE yet sometimes mentions social enterprise.<sup>16</sup> It does not consider an organisation's specific legal status as a precondition for membership. In its first developmental stage, the union distinguished both mandatory criteria that must be fully met and progress criteria that allow some variation in the extent to which they are fulfilled. Its three mandatory criteria are: (i) an engagement in economic activity; (ii) a social aim; and (iii) the autonomy of each enterprise's actions. The union's two progress criteria are: (i) democratic governance; and (ii) a sustainable development process.<sup>17</sup> In 2017 ULESS changed its definition in line with Luxembourg's 2016 legislative act's criteria, which also appears on its membership application form.<sup>18</sup>

### **Definition of the act of December 2016<sup>19</sup>**

Luxembourg's 2016 act was predominantly tabled as a means to provide a legal scheme, the SIS, for the SSE sector. According to the Ministry for SSE, the SIS can be regarded as Luxembourg's form of social enterprise<sup>20</sup> and yet it is officially regarded as only one SSE enterprise type among many. Indeed, rather than defining the SSE's enterprise types, two of the act's four chapters are explicitly devoted to the SSE itself, which is defined as a “mode of doing business” with reference to companies operating in the sector. The act refers to legal persons governed by private law who have four cumulative characteristics: continuous production, distribution or exchange of goods or services (article 1, line 2); support through their activity for fragile individuals or a contribution to the realisation of a goal (article 1, lines 3 and 4); autonomous management (article 1, line 5); and the reinvestment of at least half of profits in the company's activity (article 1, line 6) (see illustration 1) (Hiez 2017b).

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(15) See [https://ec.europa.eu/growth/sectors/social-economy/enterprises\\_en](https://ec.europa.eu/growth/sectors/social-economy/enterprises_en) (Last accessed on 7 November 2019).

(16) See <https://www.uless.lu/fr/activites/federer> (Last accessed on 7 November 2019).

(17) Available at: [http://www.cc.lu/uploads/tx\\_userccavis/4462PMR\\_MST\\_PL\\_SIS\\_30\\_10\\_2015.pdf](http://www.cc.lu/uploads/tx_userccavis/4462PMR_MST_PL_SIS_30_10_2015.pdf).

(18) See <https://www.uless.lu/fr/membres/devenir-membre> (Last accessed on 7 November 2019).

(19) See <http://legilux.public.lu/eli/etat/leg/loi/2016/12/12/n1/jo>.

(20) View expressed by the Department of Social and Solidarity Economy representative during this report's study process.

When applied to the Luxembourg context, the EU operational definition of social enterprise shows a high-level resemblance to the country's entrepreneurial/economic dimension, its social dimension and dimension relative to governance with certain key differences that are outlined below:

### Entrepreneurial/economic dimension

Luxembourg's act of December 2016 requires organisations to be engaged in a continuous activity of production, distribution or exchange of goods or services. This shows a high similarity with the entrepreneurial/economic dimension as defined by the EU (see appendix 1). However, Luxembourg's requirement does not involve any condition on sources of income or the type of business model used, whereas the EU operational definition requires that the social enterprise should be market-oriented to some degree (i.e., the "incidence of trading should be ideally above 25%") (see appendix 1, initial minimum requirements).

Moreover, the economic dimension, as defined by both Luxembourg and the EU, excludes associations that develop non-economic activities (e.g., activist organisations that only operate with volunteers and do not carry out economic operations). The kind of organisations that might fit the criteria is not perfectly clear. For example, an exchange or production operation may regularly occur within a local exchange system but only with the stated aim of escaping the traditional economic framework. These borderline cases are interesting because they question the economic model of reference for an SSE that sometimes presents itself as an alternative model but does not invalidate the general definition (Hiez 2017b).

### Social dimension

Luxembourg's definition of social dimension, which focuses more on the activity than on the way it is pursued, aligns perfectly with that defined by the EU.

### Governance dimension

A few important distinctions exist between Luxembourg's and the EU's definitions of a governance dimension. In particular, Luxembourg's interpretation of the EU's former clause regarding the participation of different stakeholders in governance (through specific ownership structures and governance models) differs. The country insists on autonomy of action, emphasising the capacity of organisations to remove their governing bodies, enabling full control and organisation of all activities. Even if this stipulation could be interpreted as a condition of democratic principles, it is far from equal to the EU operational definition of social enterprise. It does not emphasise the involvement or representation of different stakeholders affected by an enterprise within



its governance model. Nothing prevents a public limited liability company operating as a *Société anonyme* (SA), governed by the “one share, one vote” principle, from applying for SIS accreditation. ULESS’s definition of democratic governance is considered progress criteria rather than mandatory criteria and does not comply with the legal definition.

The EU operational definition’s criteria that determine whether an organisation is or is not autonomous—based on whether it is or is not controlled by public authorities or other for-profit/non-profits—are interpreted as part of the entrepreneurial/economic dimension rather than governance dimension in Luxembourg (see appendix 1). ULESS’s criterion regarding autonomy stipulates an enterprise’s independence from public authorities yet does not consider its financial autonomy; in other words, even organisations that are almost entirely dependent on state funding are still considered fully eligible union members, a characteristic which also reflects Luxembourg’s specific emphasis on the State. In addition, Luxembourg’s definition of “autonomous management” and its “profit distribution constraint” are regarded as two different aspects of the same condition, which increases the sense of importance for each.

In contrast, the EU’s second governance condition that defines a limitation on the distribution of profits and the existence of an asset lock is well matched by Luxembourg’s stipulation to reinvest at least half of profits in the company’s activity.

Indeed, though the above differences may affect the delimitation of Luxembourg’s social enterprise sector borders, the country’s essential approach remains in line with the EU operational definition of social enterprise.

The different legal forms of SSE enterprises in Luxembourg

Four organisation types are traditionally considered part of Luxembourg’s SSE:<sup>21</sup>

- > associations (operating as ASBLs),
- > cooperatives,
- > mutual societies,
- > foundations.

The SIS, Luxembourg’s newest social enterprise legal scheme created in 2016, is a form of accreditation that can be given to organisations fulfilling a number of specific conditions under the following legal forms: public limited liability companies operating as SAs; private limited liability companies operating as *Sociétés à responsabilité limitée* (SARLs); and cooperatives.

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(21) For instance, see the approach applied by STATEC in their recent study (Rückert and Sarracino 2014). Interestingly, the study includes certain standard companies that operate for-profit such as *Société Anonyme* (SA) and *Société à responsabilité limitée* (SARL).

Non-profit associations are regulated by the act of 21 April 1928. Article 1 defines them as organisations that do not undertake industrial or commercial business nor seek to provide their members with a material profit. In the absence of a substantial legal doctrine in Luxembourg, the Belgian doctrine is referenced, which can incur substantial debate about how the definition should be interpreted. Nevertheless, it is clear that associations are not allowed to undertake a predominantly economic activity nor provide any benefits to their members. As a result, the Luxembourg courts disqualify associations from public procurement. Nothing requires an association to target its activities to its members' benefit and, therefore, such connections are not practiced. However, the association's non-profit dimension and democratic governance (article 7) establish a natural link between this form and social enterprises.

As a social objective is an inherent characteristic of organisations categorised as ASBLs, a fundamental issue arises when attempting to account for associations that also display an entrepreneurial/economic dimension. Although *de facto*, some ASBLs engage in economic activities. However, they are not legally permitted to conduct commercial behaviour and are prohibited from participating in public procurement procedures. Therefore, commercially engaged ASBLs are effectively discounted from official figures, reducing the overall, approximate figure.

The state is the primarily source of revenue for many ASBLs. Financial support can take the form of subsidies for work integration contracts or simple cash transfers for goods and services delivered (e.g., social services). For instance, WIOs are eligible for government subsidies in support of employees that are subjected to a work integration contract. They can benefit from this funding, whatever their legal status, after a agreement has been signed with the Ministry of Labour and Employment (social initiative actions). In addition, for each 6.5 employees subject to work integration contracts, the salary of one full-time social worker can also be subsidised. In addition, some associations directly deliver social services that would have otherwise been provided by the State (e.g., social housing, orphanages and residential homes).

Organisations with association status account for a significant majority of all of Luxembourg's organisations that exhibit clear social objectives. For instance, in 2017, 30 out of 34 of the country's WIOs had signed an agreement with the state to function as ASBLs (MLE SSE 2018).

Cooperatives are regulated by the law of 10 August 1915 on commercial companies, which was lifted directly from Belgian law. Legally, they are defined as organisations whose shareholders and/or subscribed capital are variable, and whose shares are non-transferable to third parties (article 811-1). This definition is purely formal; no specific cooperative principle is integrated into Luxembourg law. Only a few default provisions such as equal voting rights may apply if no alternative provision has been stated

in the cooperative's by-laws (article 811-5 4°). The cooperative does not target its members' needs.

Certain conventional organisations register as cooperatives in Luxembourg to benefit from the fiscal convenience of this legal form; the term “false cooperatives” refers to those enterprises that are more motivated to avoid particular European company regulations than promote cooperative principles and values. The phenomenon's occurrence in Belgium has led to an additional regulation being established that requires organisations to prove their legitimate cooperative status in that country. As yet, no equivalent provision has been applied in Luxembourg.

In addition, no legal indication exists that identifies a cooperative as a legitimate social enterprise. Some cooperatives refer to International Cooperative Alliance (ICA) principles in their by-laws, but this is only optional. Each cooperative requires case by case analysis to assess its potential compliance with the EU operational definition of social enterprise.

The majority of Luxembourg's cooperatives have adopted market-based business models and rely on their commercial activity for most if not all of their resources. Although an entrepreneurial dimension is a rule rather than an exception for these cooperatives, their commercial activity creates an issue in relation to their compliance with social dimension and governance criteria.

This study identifies the following four cooperative types in Luxembourg, which include three market-based forms and one WIO:

*Cooperatives that operate like commercial companies and mainly serve their shareholders' interests.* Many cooperatives, especially those operating in finance or auditing and accounting, can hardly be considered social enterprises due to their limited social dimension, the absence of constraints on profit distribution and/or a lack of democratic governance. A significant number of other entities such as tax corporations or import/export cooperatives can also be safely excluded from a legitimate cooperative count. The fact that these entities could adopt cooperative status is due to Luxembourg's very flexible legislation, which does not impose any condition on profit distribution or democratic governance principles.

*Cooperatives that primarily serve mutual interest.* There are also many cooperatives that primarily serve mutual interest (i.e., the collective interest of their members) such as many agricultural cooperatives. Due to the lack of a clear social aim promoting the general interest, these cooperatives would probably not be regarded as social enterprises according to the EU operational definition nor Luxembourg tradition.

*Cooperatives that combine mutual interest and general interest.* Certain cooperatives have integrated a strong general interest orientation such as environmental protection alongside their mutual interest orientation.<sup>22</sup>

Finally, some *cooperatives operate in the work integration sector*, especially with disabled people. A cooperative of this order will often collaborate closely with another organisation operating as an association. In contrast to the other types of cooperatives detailed above, their business model often relies to a large extent on public funding, mostly through financially supported employment contracts. In 2017, 14 out of 18 organisations operating in the disabled people work integration sector that had signed an agreement with the MLESSE functioned as cooperatives.

Data from STATEC (Sarracino and Peroni 2015) suggest that the majority of cooperatives in Luxembourg operate in the agricultural or financial sectors and only six within social activity (see chapter 3.1.).

To date, mutuals, known as *sociétés de secours mutuel*, are regulated by the law of 7 July 1961 and their operation is determined by the Grand-Ducal Regulation of 31 July 1961. Their purpose is clearly listed, in keeping with standardly recognised activities that support health difficulties, unemployment, funeral costs, etc. Mutuals must apply for administrative approval. Although the law does not require mutuals to perform any specific governance needs, it prohibits the use of fees for anything other than their statutory purpose. A new law was enacted in 2019 that will enter into force in 2020.<sup>23</sup> Its main purpose is to refresh the law of 1961, but it restrains the legal objective of mutuals as well. In the meantime, the new law instates the principle of “one person, one vote” into the general meeting (article 6, line 5).

Luxembourg’s only types of mutual are health mutuals and provident societies. All except one are members of the National Federation of Luxembourg Mutuals (***Fédération nationale de la mutualité luxembourgeoise***, FNML).

According to the FNML,<sup>24</sup> mutual societies are non-profit groups of persons. Historically, they arose in different professional sectors. However, apart from the CMCM, today’s

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(22) Some stakeholders consulted for the purpose of this study have observed a recent emerging trend of ‘citizen cooperatives’, for example, in the energy, housing, agriculture and food industries. For some, these examples are amongst the most representative of what they would call social enterprises. Even though the majority of these initiatives have received considerable attention through media or social networks and have become important showcases, which, as a result, have contributed considerably to the social enterprise ecosystem’s evolution, their numbers remain limited.

(23) [Loi du 1<sup>er</sup> août 2019 concernant les mutuelles et modifiant la loi modifiée du 19 décembre 2002 concernant le register de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises] (Memorial A, no. 530, p. 2019).

(24) See <http://www.fnml.lu/show2017.asp?ID=9952&lang=FR> (Last accessed on 7 November 2019).

mutuals deliver financial support that complements the social security system; all mutuals principally provide symbolic support.

Mutuals fulfil the entrepreneurial/economic criterion because their membership fees and service subscriptions constitute the vast majority of their financial resources. Occasionally, they benefit from small governmental subsidies and tax exemptions, which can be considerable for larger organisations.

In terms of their social dimension, mutuals primarily serve the mutual interest of their members. They carry out welfare, solidarity and mutual aid action in the social sector aimed at safeguarding against the social risk consequences confronted by their members. Placed under the supervision of the Minister of Social Security, mutual societies collaborate with social security institutions to provide social protection.

Mutuals usually adopt a governance model based on their members' participation in each official governance body. The federation's principles include the non-profit principle, the "one member, one vote" principle and independence from public authorities.<sup>25</sup>

Foundations are regulated by the law on ASBLs (articles 27ff.), which, as an exception to the rule, was inspired by the French model. Only organisations that undertake philanthropic, social, religious, scientific, artistic, pedagogic, sports or touristic activities can qualify as foundations. They are not determined by any specific governance requirements but rather by their purpose; their essentially free service provision fits well with social enterprise characteristics.

Foundations must be registered with the Register of Business and Companies (GHK 2009).

They are mainly governed by their board of directors (Arendt and Medernach 2012). It is assumed that many have adopted strongly democratic modes of governance despite a lack of specific legal obligations.

Although no data are available on their engagement in stable and continuous economic activity, certain important Luxembourg foundations clearly engage in continuous activity (e.g., *Fondation Greenpeace*, *Fondation Caritas* and *Fondation Follereau*), carrying out productive activities and hiring employees.

Many others closely resemble financial institutions as they are only responsible for collecting funds (e.g., for a partner organisation that carries out projects). Even if they contribute important work to the SSE through fund collection, they cannot be defined as social enterprises if their major activity is the redistribution of financial flows and they are not directly involved in the production of goods or service provision.

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(25) See <http://www.fnml.lu/show.asp?ID=994&lang=FR> (Last accessed on 7 November 2019).

The SIS is a legal scheme partially inspired by the Belgian example that enables companies to conduct business within Luxembourg's SSE. It was ratified by law on 12 December 2016 to address restrictions that impede other legal forms, most notably the ASBL, from carrying out economic activities. Given the nuances of Luxembourg's social enterprise sector, the SIS appears to be one of the country's most accommodating legal statuses.

SIS accreditation requires ministerial approval based on several conditions, which according to the ULESS and MLESSE (2016):

- > emphasise and highlight the specific needs, specificities and requirements of entrepreneurship in the SSE;
- > reconcile both the social and societal vocation of entrepreneurship with requirements of economic sustainability, which enable self-financing and avoid exclusive dependence on public subsidies, donations or private legacies;
- > ensure equal treatment with other economic actors in the same competitive market;
- > encourage initiatives and the development of economic activities in the SSE sector;
- > bring greater visibility and transparency to the SSE sector.

Three different legal forms can request SIS accreditation: ***société anonyme*** (SA); ***société à responsabilité limitée*** (SARL), and ***société coopérative*** (SC). Although associations are not eligible, they can pursue part of their activities under the scheme if they establish a subsidiary company that can be accredited. However, some conditions have to be satisfied: their social goal needs to be clearly established (see illustration 1); and a minimum of two performance indicators have to be chosen that can effectively and reliably verify the achievement of said goal.

In addition, a limited profitability principle needs to be respected. The SIS's capital can only be composed of two classes of shares: 'impact shares', which do not give rights to the distribution of dividends nor share appreciation; and 'profit shares', which give entitlement to a portion of the dividends. At any given time, the SIS's capital must be composed of a minimum of 50% impact shares (up to a maximum 100%). In addition, dividends can only be distributed after verification that the social goal has been achieved by controlling performance indicators.

If a SIS's capital is composed of 100% impact shares, no dividend can be distributed to the shareholders. In return, the SIS benefits from tax exemptions and donations or gifts presented to the SIS are tax-deductible for the donor.

Two additional conditions stipulate that the company is managed autonomously and provides the maximum wage to its employees, which should not exceed six times

the legal minimum wage. Also, an extra-financial impact report needs to be drafted annually and the SIS's accounts must be reviewed by an external auditor.

The SIS can adopt mixed business models: SISs are allowed to carry out commercial activities and participate in public procurement tenders on the one hand and receive public funding from the State on the other.

The ULESS writes: “The SIS regime offers numerous advantages (a better legal safety, an optimal tax frame, an access to public procurement, etc.), assorted with strict constraints in terms of transparency and governance. Through an initial requirement of a ministerial approval and an annual supervision of activities, the new SIS regime aims not only to guarantee a good financial management of social and solidarity-based economy companies working under this new legal regime but also the primacy of the social or societal purposes on the distribution of potential benefits.”<sup>26</sup>

The SIS' emphasis on a social goal and social impact assessment appears to fit the EU operational definition of social enterprise. It is considered both suitable for SSE enterprises and social enterprises, most notably due to its limited profitability and obligation to invest at least half of its profits back into the enterprise (articles 3 and 7). The only potential gap in compliance regards governance, and yet, as that dimension is rather loosely defined by the EU, the SIS does not strongly deviate from this requirement. Although it is very difficult to assess whether or not organisations that are considered social enterprises in Luxembourg correspond exactly to those described by the European definition, the flexibility evident within both definitions suggests that they are compatible.

Interestingly, even though one of the law's goals was to create a legal framework for social enterprises to engage in economic activities, fulfilling the entrepreneurial/economic dimension, nothing **in theory** prevents a SIS from depending largely on state funding; the legal provisions which enumerate organisations likely to benefit from state funding (mainly associations) have been amended to also include SISs.

Grey area: conventional enterprises (commercial companies, excluding cooperatives).

During the research process for this report, a few enterprises were identified that operate as SARLs or SAs and can be regarded as social enterprises, at least in relation to social and entrepreneurial/economic dimension criteria. They operate in sectors such as sustainable production and consumption, fair fashion and microcredit. A few traditional WIOs also operate as SARLs, but they are a rare phenomenon. Despite all operating under the principle of “one share, one vote”, these companies are borderline in terms of governance-related criteria; they do not need to provide any assurance that

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(26) See <https://ules.lu/en/publications-en/les-societes-d-impact-societal-sis> (Last accessed on 7 November 2019).

their decision-making model is based on democratic principles nor that they include the participation of different stakeholders. In addition, even though their explicit social goal must be prioritised through economic activities in order to be defined as social enterprises, they do not necessarily respect the non-distribution constraint, which otherwise limits *de facto* profit creation and distribution.

Even though this type of social enterprise exists and can be considered part of the social enterprises ecosystem, it is difficult to count them due to the lack of statistical criteria that would distinguish them from other commercial companies. Therefore, it is difficult to measure their importance, and yet they do not appear to be particularly numerous nor economically strong. This particular social enterprise route seems to be more important among start-ups. A contrary example would be a WIO that operates as a private limited liability company such as Kollabor: although the company meets all social enterprise criteria, none of its management team considers it as such.

## Illustration 1. 2016 act concerning the creation of the Societal Impact Company (*Société d'Impact Sociétal, SIS*)

The SSE is defined as a means of undertaking social enterprise to which private legal persons adhere fulfilling the following quadruple criteria:

1. the continuous pursuance of a production, distribution or exchange of goods or services activity;
- 2a. either having the aim of bringing support to persons finding themselves in a fragile situation, either due to their economic or social situation, or their personal situation, especially related to their health or their needs of social or medico-social support. These persons can be employees, clients or customers, members, adherents or beneficiaries of the enterprise;
- 2b. or the aim of contributing to the preservation and development of social links, combating exclusion and discrimination, whether sanitary, social, cultural or economic, developing male-female parity, maintaining and reinforcing territorial cohesion, protecting the environment, developing cultural or creative activities, and instigating or continuing initial vocational training;
3. having an autonomous management structure (i.e., an organisation that is fully capable of choosing or revoking its governance organs and controlling/organising all activities);
4. applying the principle according to which at least half of realised profit is reinvested in the enterprise's maintenance and development.



Table 1. Criteria fulfilment of the EU operational definition of social enterprise per legal form

Dimensions	Criteria	ASBL	Cooperative	Mutual	Foundation	Commercial company (except cooperative)	SIS (SA, SARL, cooperative)
<b>Entrepreneurial/ economic dimension</b>	SEs are engaged in carrying out stable and continuous economic activities, and hence show typical characteristics that are shared by all enterprises	Yes (with limitations)	Yes	Yes	Possible	Yes	Yes
<b>Social dimension (social aim)</b>	The social dimension is defined by the aim and/or products delivered. Aim: SEs pursue the explicit social aim of serving the community or a specific group of people that share a specific need. Product: when not specifically aimed at facilitating social and work integration of disadvantaged people, SEs must deliver goods/services that have a social connotation.	Yes	Possible	Yes	Yes	Possible	Yes
<b>Inclusive governance-ownership dimension (social means)</b>	To identify needs and involve the stakeholders concerned in designing adequate solutions, SEs require specific ownership structures and governance models that are meant to enhance at various extents the participation of stakeholders affected by the enterprise.	Yes (with limitations)	Possible	Yes	Yes (with limitations)	Possible	Possible
<b>Inclusive governance-ownership dimension (social means)</b>	SEs explicitly limit the distribution of profits and have an asset lock. The non-profit distribution constraint is meant to ensure that the general-interest is safeguarded.	Yes	Possible	Yes	Yes	No	Yes

## 2.2. Legal evolution

SSE is proving to be of ongoing interest for the Grand Duchy's government. From early quarrels about its affiliation<sup>27</sup> to the creation of a ministry dedicated to SSE in 2009, its subsequent transformation into a MLESSE department in 2013 and the sector's first legal institutionalisation and consecration in 2016, Luxembourg's social enterprise path has already seen many twists and turns.

With solid roots that manifest themselves all over the world, Luxembourg's SSE is based on relatively early beginnings with a legal framework that can be traced back to 1891.<sup>28</sup> All of Luxembourg's legal forms, including non-profit associations, foundations, mutual societies and cooperatives, have variously been supported according to their popularity in society. However, over the passage of time, their legislation has become increasingly obsolete and no longer reflects the needs of today's society. Luxembourg's government is aware of the divergence between its legal SSE framework and the sector's reality. A few initiatives have been made, some of which have succeeded, such as the company law reform of 2016 that affects cooperatives (albeit fractionally and largely on a technical level), whereas others are still just proposals, including those prioritising non-profit associations (two proposals were tabled in 2009 and 2017-2018 but neither were passed) and the proposal for mutual societies that is still awaiting parliament's approval.

More recently, social enterprise has found a particularly suitable legal statute in the SIS scheme, which is primarily focused on the social and societal distribution of profits.<sup>29</sup> And yet the SIS relates directly to the SSE rather than social enterprise; one of its conditions for accreditation stipulates compliance with SSE principles. Luxembourg's SSE was officially introduced and defined within the country's legislative framework in 2016.<sup>30</sup> Although the act does not fully address the SSE concept, it does define it

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(27) Between the EGCA, a body distinguished by its philanthropy-oriented tradition, and the OPE, which was based on a trade union model.

(28) Act on Mutual Aid Societies [*Loi du 11 juillet 1891 concernant les sociétés de secours mutuels*] (Mémorial A, no. 41, p. 1891).

(29) It is important to note that the SIC is not a new type of company but rather a new, particular approach that a company's founders can choose to use. The SIC can take the form of a public limited liability company, a private limited liability company or a cooperative society. See "Societal impact companies have better legal and financial support", The Official Portal of the Grand Duchy of Luxembourg, February 2018. Available in English at: <http://luxembourg.public.lu/en/actualites/2018/02/01-sis/index.html> (Last accessed on 7 November 2019).

(30) Government Act Concerning the Creation of a Societal Impact Company, 12 December 2016 [*Loi du 12 décembre 2016 portant création de la société d'impact societal*] (Mémorial A, no. 255, p. 2015, art. 1).

through a set of cumulative criteria that need to be met by a legal person willing to benefit from SSE status.<sup>31</sup>

The sector's legal definition seems to have shifted from extension to comprehension, aimed at restoring the very essence of the SSE rather than naming a series of actors that should contribute to its final aim. Although the act's use of the term "means of undertaking" seems to indicate an enterprise, it does not list a series of companies with this status *ipso jure*. Despite the impression that this status could be more largely applied, its definition actually limits the access of certain legal forms, which are usually associated with social economy. According to SSE specialists, this new definition could be problematic not in relation to its actual criteria but to its cumulative application (Hiez 2017a). However, this orientation brings social enterprise and SSE closer together and reinforces the assimilation of both notions within the Luxembourg context.

Associations that do not perform economic activities present an example of the above issue. Indeed, by granting access to those that are genuine economic operators, the legislator has excluded those that are not. According to the explanatory report of the act's 2015 proposal concerning the SIS, the number of non-profit associations that exercise an economic activity has increased over time and is an indication of the growing number of social enterprises. The SSE's definition's additional aim within this context was to enable such entities to exist, the prior situation having left them in a difficult legal position; the association's very definition supposes that its endeavours are not economic but non-profit.<sup>32</sup>

Due to Luxembourg's legal proximity to the French tradition, a certain resemblance to its neighbour's definition of the SSE can be observed, at least formally. However, whereas French law has adopted the statutory approach as principle, defining SSE by the legal status of each enterprise, Luxembourg law deviates from that direction and provides substantial criteria.

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(31) Its title only refers to the creation of the SIS and changes that are to be made as a consequence in other acts.

(32) For further information on this matter: Government Act Proposal Concerning the Creation of a Societal Impact Company lodged on the 1 July 2015, (adopted as: see footnote no. 3), file no. 6831, pp. 4 et seq.

## 2.3. Fiscal framework

Luxembourg does not specifically regulate its SSE nor social enterprises for tax purposes *a fortiori*; therefore, it is necessary to consider the sector's diverse legal forms. The main types of enterprises regrouped under Luxembourg's SSE sector are: the cooperative, the ASBL, the public utility foundation, the mutual society and the SIS. Although all of these enterprises contribute to the SSE, their legal taxation regimes differ in numerous ways.<sup>33</sup>

ASBLs are liable for Value Added Tax (VAT) as soon as they undertake economic activity. Certain exceptions have been written into the VAT Act;<sup>34</sup> as a result, permanent and occasional activities are treated differently.<sup>35</sup> Nevertheless, within the definition of a taxpayer submitting VAT, the association should clearly register for the tax as soon as it begins operating a regular profit-making activity.<sup>36</sup> Meanwhile, associations are in principle exempt from paying direct taxation.<sup>37</sup> The act on income tax expressly states that non-profit associations not pursuing a commercial or industrial activity are beyond the scope of the act's application. However, associations that pursue such an activity are included in the list from article 159 pertaining to those subjected to corporate income tax.

The situation for public utility foundations is similar to that of ASBLs: in principle, the foundation is liable for taxation but exempt from paying income tax (article 161).<sup>38</sup>

Cooperatives are treated as conventional enterprises and are taxed as any other company: they pay fixed registration fees, property tax, corporate income tax and VAT.

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(33) In this text, indirect taxation (i.e., VAT) and direct taxation (corporate income tax, communal business tax and net wealth tax) are mostly covered. See: the modified Act of 12 February 1979 concerning value added tax [*LOI du 12 février 1979 concernant la taxe sur la valeur ajoutée*] (Mémorial A, no. 11, p. 1979); the modified Act of 4 December 1967 concerning income tax [*LOI du 4 décembre 1967 concernant l'impôt sur le revenu*] (Mémorial A, no. 79, p. 1967); the modified Act of 1 December 1936 concerning communal business tax [*Gewerbsteuergesetz Vom. 1 Dezember 1936*] (Mémorial A, no. 901, p. 1936); the modified Act of 16 October 1934 concerning net wealth tax [*Vermögenssteuergesetz*] (Mémorial A, no. 900, p. 1934); only French and German original languages available.

(34) Modified Act of 12 February 1979 concerning value added tax, *op.cit.*, arts. 44 – 1 t) et sec.

(35) It seems that in Luxembourg case-law these notions have not yet been treated. However, in Belgian law, in the case of a non-profit association, a profit activity is allowed, as long as it only has an ancillary character.

(36) If that activity does not fall under the scope of article 44 of the VAT Act (i.e., a sport or physical education activity, or one that is addressed only to its members).

(37) If they pursue a cultural, charitable or general interest objective and do not have an industrial or commercial activity. See: Modified Act of 4 December 1967 concerning income tax, *op. cit.*, arts. 159 and 161.

(38) Modified Act of 4 December 1967 concerning income tax, *op. cit.*, art. 161.

Their only distinction concerns the possibility of excluding the patronage refund that a cooperative distributes to its members from taxable revenue, up to 5% of which is considered as a distribution of profits.<sup>39</sup>

The SIS is generally a fully taxable company (like any other commercial company), unless its share capital is composed exclusively of impact shares. In this case, regardless of its legal form, the SIS is fully exempt from corporate income tax, municipal business tax and net wealth tax. Cash donations made to an SIS issued with 100% impact shares are deductible as special expenses (BSP 2016). Neither the VAT Act nor the SIS Act contain any specific provisions with regard to the treatment of SISs in relation to VAT. Therefore, a SIS may be subjected to paying the tax due to its activity.<sup>40</sup>

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(39) Modified Act of 4 December 1967 concerning income tax, *op.cit.*, art. 167.

(40) Furthermore, in the new proposal for an act regulating SISs, two types of State subsidies are recognised that could be automatically granted to them: the subsidy granted to companies working in the social, family and therapy fields; and the subsidy granted for the reintegration of workers who are difficult to reemploy. Although it does not yet include other subsidies, this is the reform's main objective.



# 3

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## MAPPING

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According with the EU definition of social enterprise, in Luxembourg there are between 916 and 932 social enterprises. Since their creation in 2016, 16 SIS with 100% impact shares have been created and according to the estimation performed on data provided by the National Business Register, in 2017 there were 916 social enterprises. They employed nearly 6% of Luxembourg's total wage earners and, since 2012, the number of their employees has grown by nearly 2% annually. However, the overall number of social enterprises has remained substantially unchanged since 2012.



### 3.1. Measuring social enterprises

This section maps the scale and characteristics of social enterprises in Luxembourg. As limited data are available, the amount of statistical analysis possible in relation to all EU operational definition criteria was restricted. However, the following paragraphs present relevant methodology used to extract key figures regarding Luxembourg's social enterprises. Occasionally, more extensive data exist which enable further detail of specific types of organisations that broadly fulfil the criteria (e.g., WIOs) to emerge.

In 2015 STATEC published the most complete study of social enterprises currently available, namely the Report on Social Enterprises in Luxembourg (*Rapport sur les entreprises sociales au Luxembourg*) (Sarracino and Peroni 2015).<sup>41</sup> At the time of writing, STATEC is conducting an update of this study and no other more recent reports are available.

Estimates from the report and those included in the present mapping study are based on data from the National Business Register. However, the methodology applied to identify social enterprises in the STATEC study differs from that adopted in this mapping, which is based on the EU definition of social enterprise as discussed in section 2.1.2. Moreover, the STATEC report is based on data from 2000 to 2012, whereas the present study draws on data from 2012 to 2017. The truncation of data from one period to another was caused by a change in regulation: before 2012, every entity with an annual turnover of at least 10,000 EUR was obliged to submit its report to the competent authorities; after 2012, the threshold was raised to 25,000 EUR. Such a change may have affected the number of entities represented by the National Business Register: many social enterprises are small and micro entities that potentially operate beneath

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(41) The study draws on data from the National Business Register (*Répertoire des entreprises*) from 2000 to 2012, which includes all companies with an annual turnover above 10,000 EUR. The National Business Register has the advantage of providing an exhaustive list of companies that approximates a census of companies. One important limit though is that it might not include organisations with a smaller turnover, thus underestimating the number of small entities. Sarracino and Peroni (2015) identify social enterprises using a combined methodological approach. On the one hand, they apply the methodology used in the earlier study by Allegrezza and Molling (2006) where the analysis focused on organisations carrying out social work activities (and therefore situated in the branch 85.3 of the NACE Rev.1 classification system), irrespective of their legal form. On the other hand, they employ a methodology used by the French National Institute of Statistics (INSEE), which defines the sector of social economy solely by the legal form of organisations. All organisations considered social enterprises that match one of these two methodological approaches were selected and aggregated. The report is available in French at: <http://www.statistiques.public.lu/catalogue-publications/rapport-entreprises-sociales/2015/PDF-Rapport-2015.pdf> (Last accessed on 7 November 2019). A previous version (Rückert and Sarracino 2014) is available in English at: <http://www.statistiques.public.lu/catalogue-publications/economie-statistiques/2014/75-2014.pdf> (Last accessed on 7 November 2019).



this threshold. Unfortunately, it is not possible to reconcile data from before and after 2012.

All entities listed in the National Business Register have a VAT number and must pay tax on their turnover.<sup>42</sup> This condition ensures that all registered entities perform economic activity (i.e., provide goods or services for a fee) on a regular basis and are independent.<sup>43</sup> However, the share of income generated by market activities from their total turnover cannot be identified. Associations, cooperatives and foundations form this group.<sup>44</sup> The estimation automatically includes all associations and foundations, as they are considered to pursue a social aim, but only cooperatives engaged in the following fields of activity: education; health and social action; and community, social and personal services (see figure 1 below).<sup>45</sup> Based on this operationalisation, 916 active social enterprises were identified in Luxembourg in 2017, most of which were associations (see table 2).

As with any method that uses multidimensional concepts, this estimation exercise has its shortcomings. For example, whether or not each enterprise within these three different legal types complies with expected governance principles cannot be verified. With these methodological limits in mind, some key figures of social enterprises are presented in the following section.

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(42) "Turnover" is the English translation for the French *chiffre d'affaires*. It refers to the total amount of transactions between a company and third parties as part of the company's normal and current activity.

(43) According to the law, anyone who performs an economic activity independently and on a regular basis is subject to paying VAT. See: <http://www.aed.public.lu/tva/generalites/index.html>.

(44) All public institutions, public administrations and publicly funded or controlled entities, as well as hospitals, trade unions, religious and political organisations, have been excluded from the list.

(45) Interpretation of available figures has been facilitated by regrouping social enterprises according to their legal form as follows: cooperatives and mutuals include the legal forms *société coopérative*, *société de secours mutuels* and *associations d'assurances mutuelles*; associations include *associations sans but lucratif*, *groupement de droit privé*, *associations culturelle* and *associations sportive*; and foundations include *établissement d'utilité publique*. Social enterprises have also been regrouped into the following size categories: micro (less than 10 employees); small (more than 10 and less than 50 employees); medium (between 50 and 250 employees); and large (more than 250 employees).

**Table 2. Number and percentage of social enterprises by legal form (2017)**

Legal form	Number	Percent
Cooperatives	10	1.09
Associations	850	92.79
Foundations	56	6.11
<b>Total</b>	<b>916</b>	<b>100</b>

Source: National Business Register

The total number of SISs registered at the MLESSE in December 2019 was 16 (all with 100% impact shares); out of which 9 were private limited liability companies (SARLs), 2 public limited liability companies (SAs), and 5 cooperative societies.<sup>46</sup> Therefore, if SISs were to be included in the table above the range would expand to 932, notwithstanding the double-counting that may arise from the 10 cooperatives already in the table being also registered as SISs.

In 2014 the ULESS estimated that about 200-300 organisations potentially met their three mandatory criteria.<sup>47</sup> Most of those identified were associations that predominantly operated as WIOs. Today, the ULESS directly and indirectly represents 300 social enterprises that overall employ 20,000 members of staff.<sup>48</sup>

In 2017 the Government of Luxembourg had in place agreements with 34 WIOs (most of them operating in the form of ASBL) and 18 sheltered workshops (14 of them operating as cooperative societies, 3 as ASBL and 1 as public limited company) (MLESSE 2018).<sup>49</sup>

(46) See: [https://impotsdirects.public.lu/fr/az/l/libera\\_dons.html#releveSIS](https://impotsdirects.public.lu/fr/az/l/libera_dons.html#releveSIS).

(47) Interview conducted for the 2014 study.

(48) See <https://www.uless.lu/fr/>.

(49) Information provided in the Annual Report of the MLESSE referred to year 2017, p. 28. Available at: <https://gouvernement.lu/dam-assets/fr/publications/rapport-activite/minist-travail-emploi/2017-rapport-activite-mteess/rapport-activite-mteess-2017.pdf>.

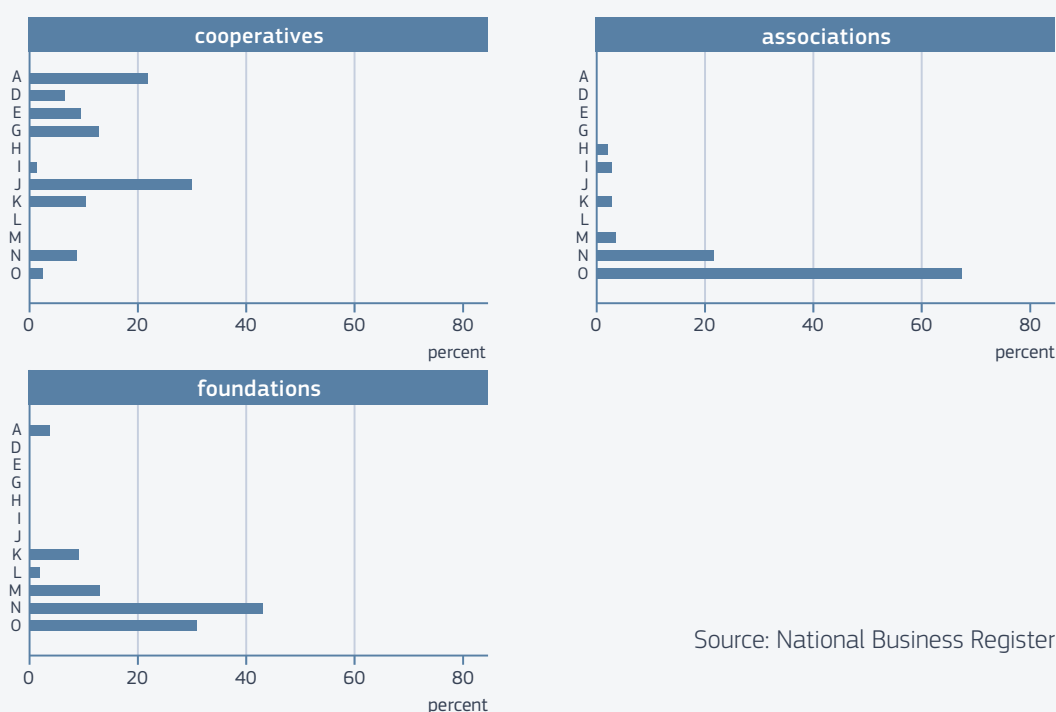
## 3.2. Social enterprise characteristics

### 3.2.1. Fields of activity

Luxembourg's social enterprises operate in various sectors. However, the majority that broadly meet the EU operational definition are concentrated in the personal care sector, which includes care for children and the elderly, and social care services. Most WIOs are meanwhile active in construction work, gardening, cleaning and catering.

Based on the operationalisation of the EU definition of social enterprise, available figures from the National Business Register show that out of 916 organisations in 2017, 64.6% were active in collective social and personal service activities (section O in figure 1) and 23.5% in health and social work (section N). Together, these two fields of economic activity represent 88% of all organisations. All other fields of economic activity account for a small share. Figure 1 shows the distribution of these regrouped legal forms across economic activities.

**Figure 1. Distribution of social enterprises across sectors of economic activity by legal form (2017, in %)<sup>50</sup>**



Source: National Business Register

(50) NACE rev.1.1. A (agriculture, hunting and fishing); D (manufacturing); E (electricity, gas and water suppliers); G (wholesale and retail trade, repair of motor vehicles); H (hotels and restaurants); I: (transport, storage and communication); J (financial intermediation); K (real estate, rental and business activities); M (education); N (health and social work); O (collective social and personal service activities).

The vast majority of social enterprises (92%) are either micro or small firms. Among these, the most frequent legal form is associations, followed by foundations (see table 3).

**Table 3. Number of social enterprises by size and legal form (2017)**

Type	Micro	Small	Medium	Large	Total
Cooperatives	3	2	3	2	10
Associations	654	137	43	16	850
Foundations	28	13	10	5	56
<b>Total</b>	<b>685</b>	<b>152</b>	<b>56</b>	<b>23</b>	<b>916</b>

Source: National Business Register

In terms of employees, 20.4% of Luxembourg's social enterprises engage staff on a part-time basis amounting to less than one full-time wage earner. If the number of enterprises that employ one full-time wage earner is added, almost 42% of social enterprises can be considered micro enterprises. In addition, 22.2% of social enterprises employ from one to five full-time wage earners and almost 27.5% employ from five to 50 employees.

**Table 4. Number of social enterprises by legal form and employees number (2017)**

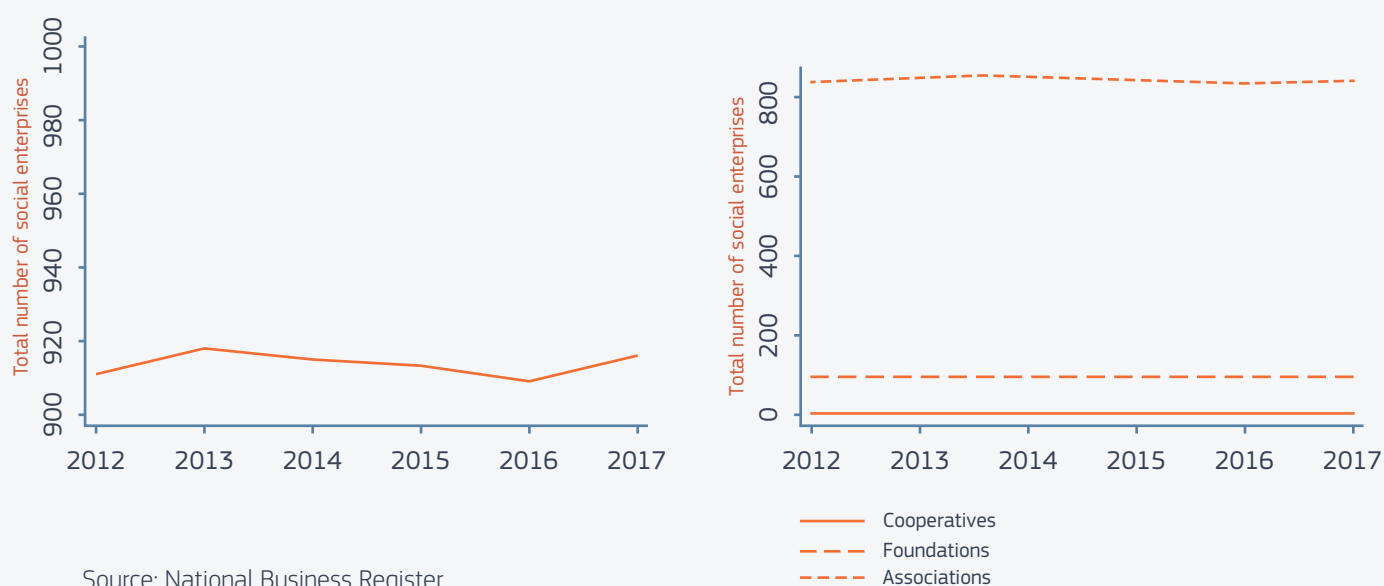
Employees number	Cooperatives	Associations	Foundations	Total
Less than 1	3	175	9	187
Equal to 1	0	193	2	195
1 and < 5	0	191	12	203
5 and < 10	0	95	5	100
10 and < 50	2	137	13	152
50 and < 100	2	30	1	33
100 and < 250	1	13	9	23
250 and < 500	2	9	3	14

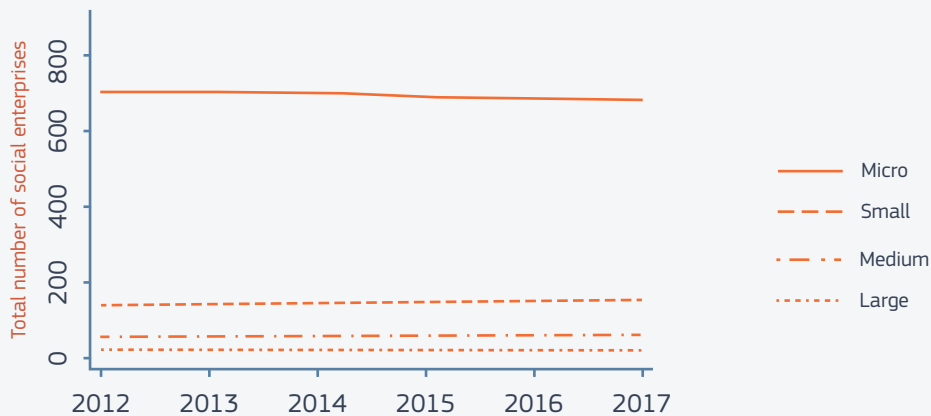
Employees number	Cooperatives	Associations	Foundations	Total
more than 500	0	7	2	9
<b>Total</b>	<b>10</b>	<b>850</b>	<b>56</b>	<b>916</b>

Source: National Business Register

The number of Luxembourg's active social enterprises remained near constant from 2012 to 2017: a negligible variation was observed from 911 enterprises in 2012 to 916 enterprises in 2017 (see left panel of figure 2). The rate does not change significantly across legal forms (see right panel of figure 2). The breakdown of the trend of social enterprises by size provides a substantially similar picture (see figure 3): the number of micro social enterprises decreased from 699 in 2012 to 685 in 2017, whereas small, medium and large enterprises slightly increased. Among these organisations, the most substantial increment occurred for small entities, which increased from 139 to 152 units.

**Figure 2. Total number of social enterprises (left) and number of social enterprises by legal form (right) (2012-2017)**



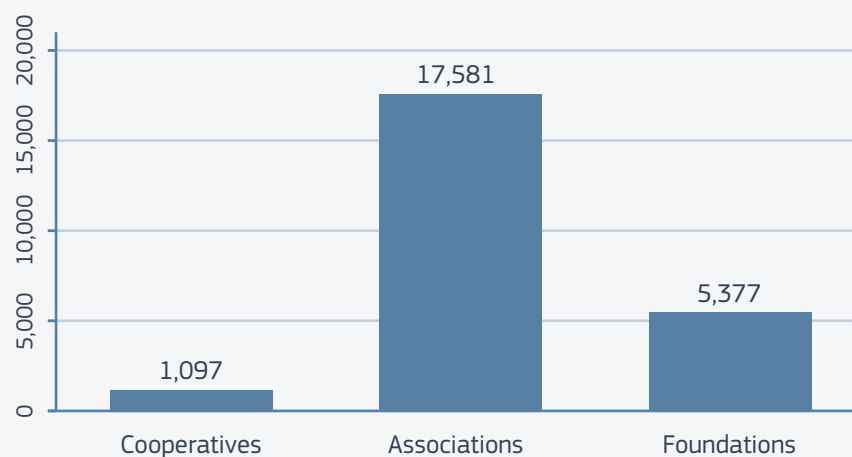
**Figure 3. Total number of social enterprises by size (2012-2017)**

Source: National Business Register

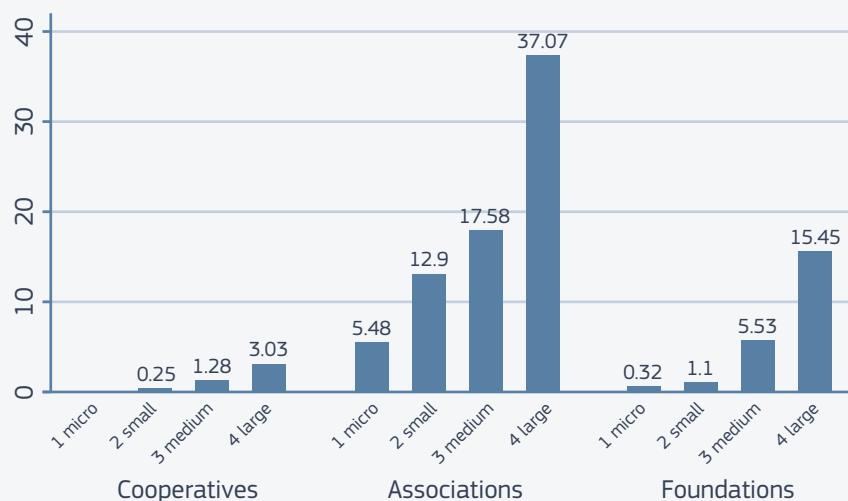
### 3.2.2. Labour characteristics

In 2017 social enterprises employed 24,055 full and part-time wage earners equivalent to about 6% of Luxembourg's total wage earners. The majority were employed in associations (73%), 22.4% in foundations and the remaining 4.6% in cooperatives (see figure 4).

Large associations, foundations and cooperatives employed 37%, 22.4% and 4.5% of total wage earners, respectively. In other words, large social enterprises engaged almost 55.5% of total wage earners in the Luxembourg social enterprise sector, whereas a further 38.6% were employed in small and medium size associations (see figure 5).

**Figure 4. Number of wage earners by legal form (2017)**

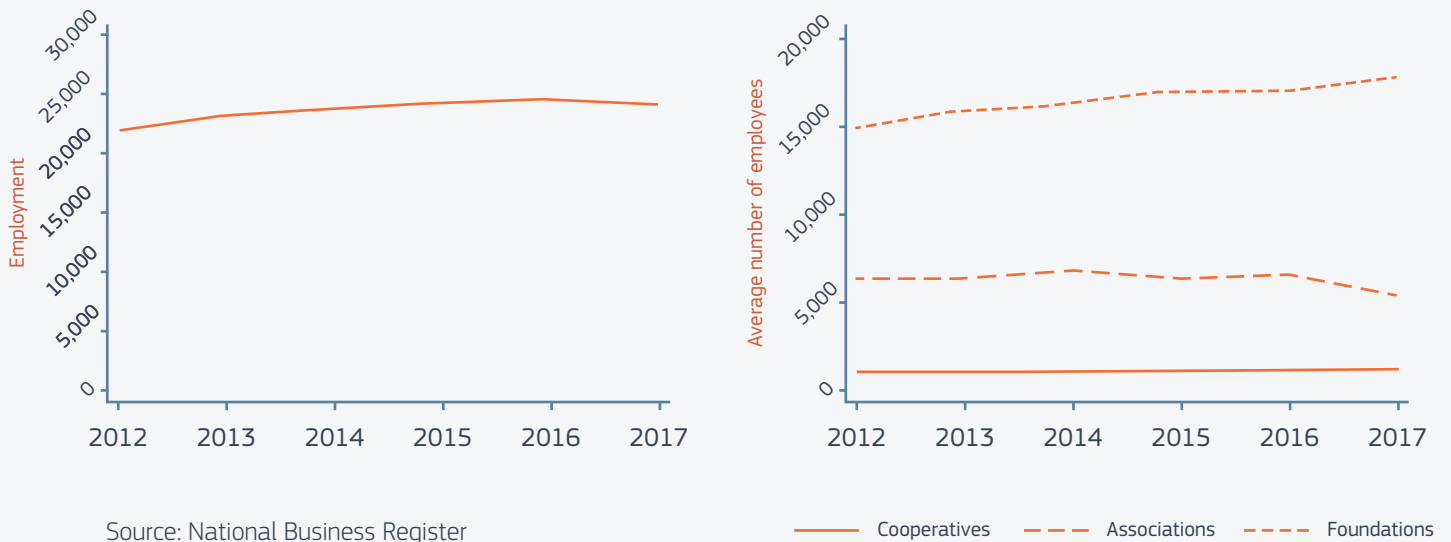
Source: *Répertoire des entreprises Luxembourgeoises*

**Figure 5. Employment by size of firm and legal form (2017, in %)**

Source: National Business Register

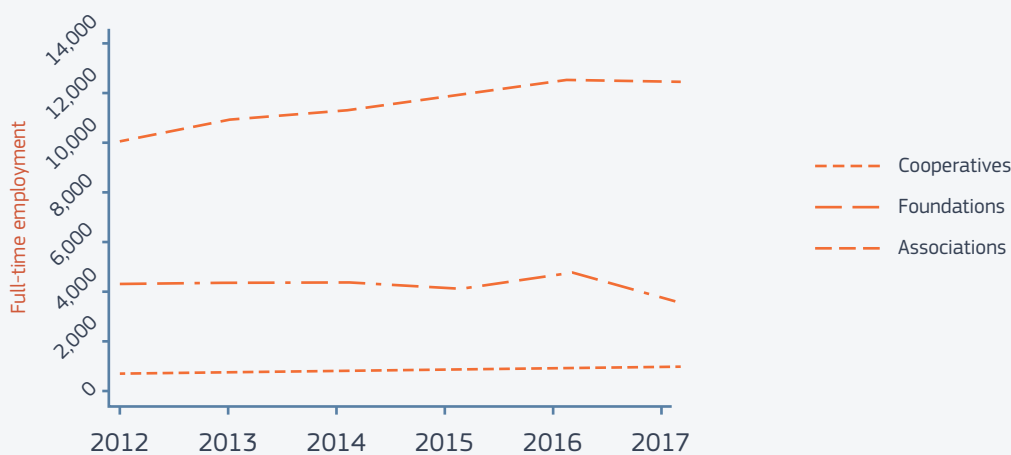
From 2012 to 2017, the number of wage earners employed in social enterprises increased from 21,869 to 24,055 with an annual growth rate of 2% (see left panel of figure 6). The largest increase in overall employment numbers was seen in associations (from 14,677 to 17,581 units) with an annual growth rate of 3.95%, whereas the fastest employment growth rate was observed in cooperatives, measuring +5.10% per annum (see right panel of figure 6). Indeed, the number of wage earners employed in cooperatives went from 874 units in 2012 to 1,097 in 2017. On the contrary, the number of wage earners employed in foundations decreased by nearly 3% per annum, from 6,318 to 5,377 units.

**Figure 6. Number of employees by year (left) and social enterprise legal form (right), (2012-2017)**



The changes represented above mirror the evolution of full-time employment contracts (see figure 7). Full-time social enterprise contracts rose from 15,211 to 17,062 units, an average increase of 2.4% per annum. Among these, the fastest growth rate was recorded among cooperatives: +5.3% (i.e., from 764 units in 2012 to 965 units five years later). Full-time association employment contracts grew by 4.6% annually, whereas those for foundations declined at a rate of -3.3%. The number of part-time contracts remained basically unchanged over time and across legal forms, except for associations. The number of wage earners employed with part-time contracts went from 4,100 to 5,058 units among associations, from 110 to 132 units among cooperatives and decreased from 2,010 to 1,782 units among foundations.

**Figure 7. Number of full-time contracts by social enterprise legal form (2012-2017)**





In 2017 women constituted the majority of social enterprise workers. As shown in table 5, 68.81% of wage earners in associations and 75.04% in foundations were women. Additionally, nearly one in four wage earners in social enterprises was a woman with a part-time contract (i.e., 5,977 women out of 24,055 wage earners). About 29.5% of women employed in foundations (i.e., 1,588 out of 5,377 workers) had a part-time contract. Despite the prevalence of female workers in social enterprises, their share over time decreased by almost 1.6% annually: from 70.4% in 2012 to 69.18% in 2017.

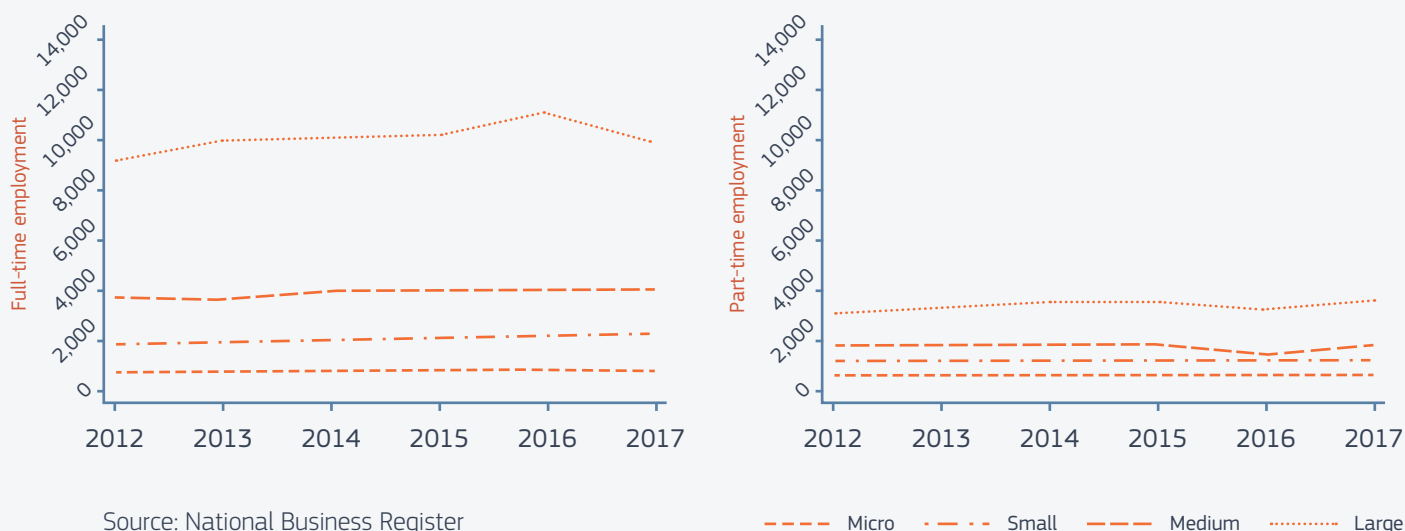
**Table 5. Share of wage earners by legal form and type of contract (2017)**

Legal form	Employment (N)	Female workers share (%)	Part-time (N)	Part-time share (%)	Part-time female workers (N)	Female workers, part-time share (%)
Cooperatives	1,097	46.30	132	12.03	85	7.74
Associations	17,581	68.81	5,063	28.79	4,304	24.48
Foundations	5,377	75.04	1,782	33.14	1,588	29.53

Source: National Business Register

In conclusion, available figures indicate that social enterprises are a small yet notable sector of Luxembourg's economy; their number has moderately yet steadily increased over time. Although social enterprises are mainly micro and small entities, the majority of workers are employed in large social enterprises. The number of wage earners employed in social enterprises and full-time employment contracts has increased since 2012. More women than men have been employed by social enterprises, but their share has shown some signs of decline over time.

**Figure 8. Full-time (left) and part-time (right) employment contracts by size of social enterprise (2012-2017)<sup>51</sup>**



In terms of voluntary work, Blond-Hanten *et al.* (2010)<sup>52</sup> assert that the proportion of associations that relied on volunteers oscillated around 79% as of 2009. Overall, the study shows that more than half of associations operated with volunteers only (56%), a quarter with volunteers and employees (23%), 8% only with employees and 13% without employees or volunteers.

In a recent study conducted by CIRIEC (Monzon and Chaves 2016) on behalf of the European Economic and Social Committee, its authors noted that 35% of Luxembourg's adult population in 2011 were engaged in some kind of voluntary activity, accounting for about 107,000 people (Bénévolat 2011). 30% volunteered in associations delivering work that was equivalent to 9,537 full-time contracts (GHK 2009).

(51) Micro-enterprises (less than 10 employees); small enterprises (10-50 employees); medium enterprises (50-250 employees); and large enterprises (more than 250 employees).

This study specifically targeted associations and was conducted in 2010 by the Luxembourg Research Centre on Population, Poverty and Socio-economic Policies (CEPS). It is probably the most complete study on the associative sector in Luxembourg. The authors administered a questionnaire to all 8,491 associations registered with an address in the National Business Register in 2009. They received a response rate of 14% (907 answers), which might induce a non-response bias. They declared that according to their estimation, between 1,000 and 5,300 associations were active in 2009. The range is wide, but the estimate is fragile: the minimum figure comes from the respondents and the maximum from the entire number of registered associations, from which the authors deleted double registrations and dissolutions, according to some specific assumptions.

(52) The range is wide, but the estimate is fragile: the minimum figure comes from the respondents and the maximum from the entire number of registered associations, from which the authors deleted double registrations and dissolutions, according to some specific assumptions.

### 3.2.3. Governance models

The ULESS originally established a criterion regarding the “one person, one vote” principle. However, it was considered a progress criterion rather than a compulsory measure and was removed from the union’s definition of social enterprise in 2017. Only ASBLs and mutuals are legally committed to the “one person, one vote” principle.

**Table 6. Key features of social enterprises by legal form**

Main dimension	ASBL	Cooperative	Mutual	Foundation	Commercial companies (except cooperatives)	SIS (Cooperatives, SA or SARL)
<b>Business model</b>	High dependence on state funding	Mainly market-oriented	Funded by membership fees	In accordance with its constitutive and constitution	Market-oriented	Mixed
<b>Fields of activity</b>	Various, although often related to social services and health (residential homes, orphanages, housing). Majority of WIOs are ASBLs	Majority in agriculture and financial sector Majority of WIOs for disabled people are cooperatives	Health sector and provident societies	No reference to reinvestment of profits	Establishments working towards philanthropic, social, religious, scientific, artistic, educational and sports goals	Majority in social services and work integration
<b>Legal form</b>	Law 21 April 1928	Law 10 August 1915	Law 7 July 1961	Law 21 April 1928	Law 10 August 1915	Law 12 December 2016



# 4


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## ECOSYSTEM

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The Luxembourg social enterprise ecosystem may appear alternatively small or more than satisfactory, but its major feature is surely the important support it receives from public bodies. This is particularly true of funding as a distinction is not always clearly made between subsidies and the payment of delivered services. Despite growing concern for decreasing state support, many enterprises still benefit from significant public funding. The Ministry of Labour, Employment and Social and Solidarity Economy (MLESSE), in collaboration with local municipalities, has played an important role in boosting the SSE and social enterprises.

Research and training is not very developed in Luxembourg, largely due to the country's small size, its relatively young social enterprise-related sector and the fresh nature of any scholarly debate on the issue. Public procurement is a good illustration of sectorial ambiguities: although the national law does provide certain opportunities for responding to social clauses based on its application of European legislation, even when adopted, they do not profit social enterprises; to date, no social enterprise has responded to public procurement calls.



## 4.1. Key actors

Table 7 below presents a non-exhaustive list of key SSE ecosystem actors in Luxembourg.

**Table 7. Key SSE ecosystem actors in Luxembourg**

Type of institution/Organisation	Actor
<b>Policymakers</b>	<ul style="list-style-type: none"> <li>&gt; Ministry of Labour, Employment and Social and Solidarity Economy</li> <li>&gt; Local authorities</li> </ul>
<b>Networks</b>	<ul style="list-style-type: none"> <li>&gt; ULESS</li> <li>&gt; COPAS</li> <li>&gt; FEDAS</li> <li>&gt; FNML</li> <li>&gt; Sozial Affair</li> </ul>
<b>Research institutes and observatories</b>	<ul style="list-style-type: none"> <li>&gt; University of Luxembourg</li> <li>&gt; Office of Statistics in Luxembourg (STATEC)</li> </ul>
<b>Support organisations</b>	<ul style="list-style-type: none"> <li>&gt; Nyuko (Impuls programme)</li> <li>&gt; 6zero1</li> <li>&gt; CELL (REconomy project)</li> </ul>
<b>Finance providers</b>	<ul style="list-style-type: none"> <li>&gt; The State</li> <li>&gt; Etika/Banque et Caisse d'Epargne de l'Etat</li> <li>&gt; Traditional financial intermediaries (i.e., banks such as Raiffeisen, BGL-BNP Parisbas, etc.)</li> <li>&gt; Microlux</li> <li>&gt; Foundations</li> </ul>

## 4.2. Policy schemes and support measures for social enterprises

### 4.2.1. Support measures addressed to all enterprises that fulfil specific criteria (that may also benefit social enterprises)

Support for new businesses has recently enjoyed increased attention in Luxembourg. Some programmes specifically address social enterprises, but most are open to all start-up enterprises that fulfil certain criteria. Indeed, core policy measures that support start-ups are designed for sectors in which social enterprises are not significantly represented (e.g., fintech); the very recently established House of Startups in Luxembourg city is one such example. Nevertheless, a range of programmes and incubators exist to foster overall entrepreneurial spirit, give advice on business creation and help business development. For example, the House of Entrepreneurship was initiated by the Chamber of Commerce and the Ministry of Economy in October 2016 to serve as a national point of contact for entrepreneurship, providing information and guidance, and connecting new or future entrepreneurs.<sup>53</sup>

In addition, the recently introduced *Société à responsabilité limitée simplifiée* (SARL-S), a simplified form of the existing SARL that can be adopted through a more straightforward procedure, is an additional policy measure that was established in January 2017.<sup>54</sup> As attested during stakeholder interviews, this new legal form favours start-up social enterprises and is considered better adapted than the SIS form to new small enterprises. In addition, the SARL-S is indicative of decentralised governance, since the form can be individual and not collective; indeed, it requires only a single shareholder—the entrepreneur.

Another support measure worthy of note is the recent political effort to make financial support from the National Society for Credit and Investment (***Société Nationale de Crédit et d'Investissement***, SNCI) available to SISs. The SNCI is a public law banking institution that specialises in the medium and long-term financing of Luxembourg-based companies. In November 2017 the MLESSE signed a memorandum of understanding with the SNCI to allow SISs to access all of its products.<sup>55</sup>

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(53) See <http://www.houseofentrepreneurship.lu/> (Last accessed on 7 November 2019).

(54) See <http://www.fiduciaire-lpg.lu/fr/publications/droit-des-societes/la-societe-a-responsabilite-limitee-simplifiee-sarls> (Last accessed on 7 November 2019).

(55) See <https://www.infogreen.lu/signature-d-un-memorandum-of-understanding-entre-l-etat-et-la-snci-au-sujet-du.html> (Last accessed on 7 November 2019).

#### 4.2.2. Support measures addressed to social economy/non-profit organisations (that may also benefit social enterprises)

Many support measures address non-profit organisations which, therefore, may also benefit social enterprises; they are so various that not all can be exhaustively presented here. They are either governed by regulations specific to fields of activity (e.g., health, education, culture, etc.) or target specific legal forms.

Overall, Luxembourg offers very generous public funding for non-profit organisations. Among the various ministries that finance SSE actors, the Ministry of Family, the Ministry of Health, the Ministry of Social Security, the Ministry of Labour, Employment and Social and Solidarity Economy, the Ministry for Equal Chances, the Ministry of Agriculture and the Ministry of Sustainable Development and Infrastructure are of particular note.<sup>56</sup>

Some public funds are available to all organisations from the non-profit sector regardless of their legal form, whereas others are only available to specific legal forms. For example, in the social housing sector, the government finances up to 75% of the construction or acquisition costs of rented housing by associations or foundations (also by religious communities or municipalities) that fulfil certain conditions related to the housing's beneficiaries and fixed rental fees.<sup>57</sup>

Some measures are available for work integration that are relevant to all kinds of enterprises that fulfil certain criteria, others are specifically for public and private organisations or only available to non-profit organisations that have concluded an agreement with the government. These measures include subsidised employment contracts for the unemployed and disadvantaged or disabled people, and the provision of funding for supervisors. These measures account for a very important share of both the total resources for WIOs traditionally seen as social enterprises and financial support for the general non-profit sector, including many ASBLs.

Nevertheless, some stakeholders insisted during their interviews that little governmental help exists for social enterprises that operate as cooperatives or private companies when compared with general companies that work in sectors other than the social sector, especially when starting up.

Certain social enterprise types benefit from fiscal advantages (as described in section 2.3.).

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(56) View expressed by the Department of SSE representative during this report's study process.

(57) See [https://logement.public.lu/fr/promoteurs/aides\\_etatiques/logements\\_location.html](https://logement.public.lu/fr/promoteurs/aides_etatiques/logements_location.html) (Last accessed on 7 November 2019).



### 4.2.3. Support measures specifically addressed to social enterprises

#### Department of Social and Solidarity Economy

In 2009 a separate post was established for the Minister of Solidarity Economy who is also the head of the Department of SSE. The department progressively contributes to shaping Luxembourg's social enterprise ecosystem, providing very important sectorial support. In November 2011 an Action Plan for the Development of Solidarity Economy was elaborated by the ministry. The plan's priorities and important political support are realised through ULESS, which strongly supports the SSE sector and, therefore, social enterprises.

In 2017 the ministry and ULESS initiated 6zero1, an incubator project especially dedicated to SISs, who are also the organisation's major shareholders (see appendix 3). Other organisations that support new companies such as Nyuko's IMPULSE programme dedicated to social entrepreneurs are predominantly financed by the MLESSE.

In June 2018 the MLESSE convened a public event dedicated to exchange on the future of Luxembourg's SSE.<sup>58</sup> The event brought together more than one hundred participants,<sup>59</sup> most of which are active within the SSE sector. The ministry organised a participatory workshop to imagine the SSE's future, from which it drew up plans for a new, five-year SSE political strategy (2019-2023).<sup>60</sup>

As previously mentioned, the government was also highly involved in creating the SIS scheme in 2016 (see section 2.1.2.), which incorporates 100% impact shares and benefits from important tax breaks.

In addition, the MLESSE aims to ensure that all public funding currently available to associations will also become available to SISs.<sup>61</sup> In the first half of 2017, the ministry launched a vast consultation process with all other ministerial departments to determine the scope of legislative provisions that could be amended to ensure that SISs are not penalised when compared with other legal forms. Since then some legal texts have been modified at a ministerial level to include the SIS. Several laws were amended on 31 August 2018 to extend explicit rights to SISs that previously advantaged ASBLs.

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(58) *D' Zukunft vun der Sozial- a Solidarwirtschaft zu Lëtzebuerg*, which took place on 26 June 2018 in Echternach.

(59) Author's estimation.

(60) View expressed by the Department of SSE representative during this report's study process.

(61) Some public funds are already available for SISs. Others are restricted to specific legal forms. For example, several legislative provisions currently advocate that the State exclusively concludes some agreements with associations or foundations (ULESS 2018).

### Other policy measures

The following policy measures are indicative rather than exhaustive.

The SSE Cluster of the Greater Region is a recent project based on a common aspiration to create exchange between SSE actors in the “Greater Region”, which includes parts of Germany, France, Belgium and all of Luxembourg. The MLESSE and French Department of Meurthe and Moselle initiated this project in 2018. Its goal is to contribute to the SSE’s development by favouring collaboration between SSE stakeholders, companies and public authorities. Although social enterprises are not its entire focus, they are one of its four thematics and five objectives.

Social enterprises also benefit from strong political support at a local level. The MLESSE and other interviewed stakeholders outlined important municipal involvement such as providing finance or premises for social enterprises. Municipalities also have a significant historical role in supporting local WIOs.

#### 4.2.4. The role played by EU funds

No data are currently available on the role played by EU funds in financing social enterprises in Luxembourg.

The European Social Fund (ESF) is the most significant European fund that supports Luxembourg’s social enterprise ecosystem. The operational programme 2014-2020 is based on the following priority axes: (i) supporting sustainable professional integration; (ii) strengthening social inclusion; and (iii) promoting the acquisition of new skills. A key aspect of the funding is devoted to programmes that improve access to employment for socially excluded groups.

According to the MLESSE (2018), this new programme particularly targets young people under the age of 30, including those with an immigrant background, people who are far removed from entering the labour market (that aims to strengthen their social inclusion) and jobseekers and employees over 45 years of age. WIOs, associations, training centres, public employment services and professional chambers are amongst ESF recipients.<sup>62</sup>

Between 2007 and 2013, the ESF’s total financial envelope allocated to Luxembourg was approximately 25 EUR million (European Commission 2013). The 2014-2020 programme’s envelope is approximately 20 EUR million.<sup>63</sup>

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(62) See <http://www.fonds-europeens.public.lu/fr/publications/l/liste-projet-FSE-ICE-2014-2020/index.html> (Last accessed on 7 November 2019).

(63) See <http://www.fonds-europeens.public.lu/fr/programmes/ice-2014-2020/ice-volet-fse/index.html> (Last accessed on 7 November 2019).

The European Regional Development Fund (ERDF) has a similar envelope (19.5 EUR million) but its priority axes do not target SSE activities. Its priorities are two-fold: (i) strengthening research, technological development and innovation; and (ii) supporting the transition to a low-emission economy across all sectors.<sup>64</sup> Far fewer social enterprises are recipients of ERDF funding when compared with those of the ESF.

During stakeholders interviews, the importance of both the ESF and ERDF, especially in the early developmental stages of social enterprises, was raised by one organisation in particular. Other funds such as LEADER, INTERREG and ERASMUS were also mentioned during interviews. For example, INTERREG North-West Europe financially supports the SSE Cluster of the Greater Region. However, most organisations interviewed do not rely on European Funds for their business model; they use it as a cash injection for new projects.

### 4.3. Public procurement framework

The EU's two public procurement directives from 2014<sup>65</sup> were transcribed to Luxembourg law in 2018.<sup>66</sup> They collectively express the political will to make public procurement a key determinant in future social enterprise development. Two new legislative aspects in particular must be considered in relation to social enterprises: (i) nuances of the lower price principle; and (ii) the possibility of reserving procurement to specific enterprises.

Article 42 of the Public Procurement Act<sup>67</sup> improves the inclusion of social and environmental considerations and enables the horizontal social clause,<sup>68</sup> according to which all economic operators are obliged to respect social, environmental and labour laws. It expressly refers to legislative and current norms that promote sustainable development policies. But it does not include any further possibility for the contracting authority to impose additional conditions of this nature. Article 42's general principles

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(64) See <http://www.fonds-europeens.public.lu/fr/programmes/ice-2014-2020/ice-volet-feder/index.html> (Last accessed on 7 November 2019).

(65) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (1), OJ L, no. 94, 28 March 2014, pp. 65-243; and Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (1), OJ L, no. 94, 28 March 2014, pp. 243-375.

(66) Act of 8 April 2018 concerning public procurement (Mémorial A, no. 243, p. 2018).

(67) Ibid.

(68) The social and environmental clauses are contractual provisions which, in the context of public procurement as envisaged by the European Union, ensure that a minimum of rules of the social, environmental and labor laws are respected.

of public procurement<sup>69</sup> and the qualitative selection of economic actors<sup>70</sup> are spread throughout the act.

Article 35 deserves particular attention for its reference to the need of contracting authorities to take account of not only the lowest cost but also the degree to which economic actors comply with applicable social, environmental and labour law provisions.<sup>71</sup> During the legislative process, the directive's aim related more to a cost criterion determining the most economically advantageous offer. However, in practice, when national provisions establish the remuneration of services or impose fixed prices for certain supplies, the contracting authority can take other factors into account, balancing quality and cost. In this way, environmental, social and labour considerations may be assessed. The directive presents examples that highlight whether or not books are printed on recyclable paper or whether or not public procurement benefits disadvantaged people or members of vulnerable groups.<sup>72</sup> It would seem that in relation to public procurement, contracting authorities can impose further social, environmental and labour conditions in addition to those already granted by legal provisions.

The second set of rules regards the possibility to reserve some public procurement for particular enterprises. Article 15-1 of the Public Procurement Act provides that: "The adjudicating powers may reserve the right to participate to public procurement procedures to sheltered workshops, to economic operators whose main purpose is the social and professional integration of disabled or disadvantaged persons, or to envisage the execution of such procedures in the context of protected employment programmes, on the condition that at least 30% of the employees of these workshops, economic operators or programmes are people with disabilities or disadvantaged workers".<sup>73</sup> There are two possible beneficiaries of such a mechanism: sheltered workshops and economic operators whose main objective is the social and professional inclusion of

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(69) Act of 8 April 2018, *op.cit.*, art. 28.

(70) Act of the 8<sup>th</sup> of April 2018, *op.cit.*, art. 29 (on the exclusion from public procurement in case of non-respect of these obligations) and art. 30 (on selection criteria).

(71) Its criteria are those described by the present law. It has very often been the case that selection and attribution criteria, as described by the law, were used interchangeably. The initiative of the 2014/24/EU directive to operate a clear and strict separation of these has been strongly criticised and the European Court of Justice of the European Union has admitted in its case-law the use of attribution as a selection criterion. See: Perrot, G, ed. (2018) *Marchés publics et concessions: droit luxembourgeois et européen*, Legitech, pp. 138-142; ECJ, 29 March 2015, Ambisig, aff. C-601/13, ELI:EU:C:2015:204, pts. 31-34.

(72) Recital 93 of the 2014/24/EU Directive, *op.cit.*

(73) *Les pouvoirs adjudicateurs peuvent réserver le droit de participer aux procédures de passation de marchés publics à des ateliers protégés et à des opérateurs économiques dont l'objet principal est l'intégration sociale et professionnelle de personnes handicapées ou défavorisées, ou prévoir l'exécution de ces marchés dans le contexte de programmes d'emplois protégés, à condition qu'au moins 30 pour cent du personnel de ces ateliers, opérateurs économiques ou programmes soient des travailleurs handicapés ou défavorisés.* Act of 8 April 2018, *op. cit.*, art. 15.1.

disabled or marginalised people. Within this context, those enterprises that have been targeted could readily be social enterprises even if no other condition has been set that is specifically dedicated to them; however, in one public procurement situation, the contract was attributed to a commercial enterprise as no social enterprise could fulfil its conditions.

An administrative court ruling of April 2008 excludes ASBLs from participating in Luxembourg's public procurement process;<sup>74</sup> as a result, though associations and social enterprises do not perfectly correspond, this legal restriction is problematic for social enterprise development.

The ruling to some extent also reflects the concerns of some private companies that consider social enterprises (e.g., WIOs) have received an unfair advantage due to considerable levels of state subsidies directly dependent on the number of people employed under integration contracts. Indeed, before this ruling, public authorities commonly used public procurement contracts to support social enterprises.

Since the ruling, however, associations can no longer participate in public procurement. Their exclusion from public contract bidding is seen as a legal barrier hindering the sector's development, which partially inspired the SIS's formation in 2016 to overcome the wider legal incapacity of ASBLs to pursue economic activity. In fact, a SIS can legally participate in public procurement and simultaneously benefit from state funding at certain stages of its development for the social services it delivers.

In addition, the ULESS has recently and variously campaigned in favour of the implementation of social and environmental clauses in public procurement offers. Given the very recent legislative changes to public procurement effected in 2018, it is too early to consider how this reform will impact the sector. Social enterprise stakeholders interviewed for this study had not yet seized the opportunity to participate in public procurement. In addition, as explained during the ULESS representative's interview, ASBLs have not yet carried out the necessary legal changes to be able to apply for SIS accreditation. In this respect, even if a public authority includes social or environmental clauses in its public procurement offer, associations are still not yet able to bid for these contracts.<sup>75</sup> Perhaps the significant public funding ASBLs receive reflects the majority response from those association representatives interviewed for this study who do not feel the need to enter into this process.

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(74) *Cour Administrative (numéros du rôle: 24416C et 24427C), Appels formés respectivement par (i) l'association sans but lucratif OPE, Schiffflange et (ii) l'Etat de Grand Duché de Luxembourg contre un jugement du tribunal administratif du 16 avril 2008.*

(75) Interview with ULESS representative.

## 4.4. Networks and mutual support mechanisms

Currently, the ULESS is the only network for SSE organisations that has a national characteristic and the ambition to become the sector's official voice. No specific network exists for social enterprises; the ULESS undoubtedly covers them even though it explicitly avoids mentioning organisations that favour the SSE. When the ULESS was created in 2013, it included about 20 member organisations. Today, its number of members has risen to 70, and in 2016 the ULESS claimed that it represented, whether directly or indirectly, 300 social economy enterprises.<sup>76</sup>

Few sectoral federations exist. COPAS, for example, represents providers of assistance and care services for the elderly, sick, mentally ill or disabled, and FEDAS Luxembourg is a federation of associations, primarily from the social care sector.

In addition, although WIOs do not have a national federation, organisations from different parts of the country collaborate in an informal way through networking and working groups. Luxembourg does not have a federation of cooperatives.

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(76) See <https://uless.lu/en/> (Last accessed on 7 November 2019).

Table 8. Networks and mutual support mechanisms

Name of organisation	Year of establishment	Overview	Objectives	Type of support delivered
<b>ULESS</b>	2013	Recently established <i>Union luxembourgeoise de l'économie sociale et solidaire</i> (ULESS) is the largest network representation of SSE organisations in the country. It currently has about 70 members. Its operation is co-financed by the State.	Representation of the Social and Solidarity Economy sector's interests and the promotion of its principles and values.	<ul style="list-style-type: none"> <li>&gt; Represents the interest of its members during discussion with the national government, European institutions and other actors;</li> <li>&gt; Public awareness campaigns.</li> </ul>
<b>FEDAS Luxembourg</b>	1977	Created over 40 years ago, FEDAS Luxembourg is a fully independent network representing associations, primarily from the social care sector. It is not a social enterprise network <i>per se</i> , but many of its members (155 in 2018) could be defined as social enterprises.	Raising awareness of the specific contribution of the social sector and its contribution to society, particularly the sector's important economic contribution, and its people-centred ethos and democratic based governance approach.	<ul style="list-style-type: none"> <li>&gt; Promotes the non-profit sector;</li> <li>&gt; Acts as a principal network of organisations with a social scope within Luxembourg, namely non-profit service providers, social economy actors and marginalised social groups;</li> <li>&gt; Defends the interests of its members, defends the SSE and provides advocacy for vulnerable populations.</li> </ul>
<b>COPAS</b>	1977	COPAS is a group of 53 members that in total employs about 11,000 workers and manages almost all care facilities, integrated centres for the elderly, psycho-geriatric day care centres, structures and services for people with disabilities, active institutions in the field of extra-hospital psychiatry, support and home care networks, and some supervised housing.	Professional representation of the common legal, social and economic interests of its members (providers of assistance and care service to the elderly, sick, mentally ill or disabled).	<ul style="list-style-type: none"> <li>&gt; Represents and negotiates with public authorities;</li> <li>&gt; Provides an exchange platform to enable its members to progress (in terms of services provided and the responsible management of their resources).</li> </ul>
<b>Fédération Nationale de la Mutualité Luxembourgeoise</b>	1924	The National Federation of mutual aid societies regroups all mutuals of Luxembourg and their members.	Federate the mutual sector	<ul style="list-style-type: none"> <li>&gt; Spreads information and documentation;</li> <li>&gt; Coordinates, guides and advises the member mutual;</li> <li>&gt; Defends the interest of mutuals;</li> <li>&gt; Organises congresses and meetings;</li> <li>&gt; Created the CMCM (see appendix 3).</li> </ul>
<b>Sozial Affair</b>	2007	Sozial Affair is a mutual support mechanism that was created by seven associations from the social and health sector to promote the integration of vulnerable groups of people into the labour market that was created. It is no longer active, but one stakeholder mentioned when interviewed that it might be reactivated in future.	To reduce the risk of long-term unemployment and social exclusion	<ul style="list-style-type: none"> <li>&gt; Created the label 'Social Affair' in order to promote products and services provided by organisations meeting the criteria stipulated in the Social Chart of the association;</li> <li>&gt; Develops common marketing strategies.</li> </ul>

## 4.5. Research, education and skills development

### Research and education

SSE-related research and training are underdeveloped due to Luxembourg's small size and the sector's relatively new status.

Some researchers are currently working on social sector-related social science projects but not specifically on social enterprises. Others are following a sustainable development direction with some reference to social enterprises but are not very extensive. The only research specifically dedicated to the SSE is within law, on cooperative law, with a special focus on the SIS.

No specific teaching courses or programmes currently exist in traditional academic circles. The only curriculum dedicated to social enterprise is a certificate on social enterprise and sustainable development, consisting of a weekly, three-hour session, mainly targeted at professionals.

After some academic struggle, a chair was funded in 2014 by the country's second municipality, Esch/Alzette, initially on solidarity economy and later on social development. One professor was appointed, who specialises in urbanism; however, after six months, he resigned.

### Skills development

Little training appears to be offered in Luxembourg that specifically addresses social enterprises. Different training opportunities to develop technical skills are offered in specific fields but cannot be exhaustively presented here. Ongoing employee education programmes are often organised internally by organisations. Awareness raising and other training sessions related to the SIS are carried out by the ULESS and 6zero1.

Some skills development programmes exist for new entrepreneurial businesses:

Nyuko, an organisation that provides support for new social entrepreneurs, offers a two-year programme called IMPULS for the initial stage of projects. The programme includes different training and skills development activities for entrepreneurs. 6zero1 offers a range of skills development activities (business planning, accounting, project management, soft skills, etc.) as part of its incubator programme for the SIS. The Agency for Development of Employment (*Agence pour le Développement de l'Emploi*, ADEM) and the Chamber of Trade (*Chambre des Métiers*) organise the Fit4entrepreneurship training programme that targets jobseekers registered with ADEM and provides information on



business creation.<sup>77</sup> This programme is not designed for social entrepreneurs, but they can access it. The Centre for Ecological Learning Luxembourg (CELL), an ASBL based in Esch, offers more informal, co-developed, peer-to-peer training to future entrepreneurs in the sector of citizen and ecology-based transition through its project REconomy.<sup>78</sup>

## 4.6. Financing

No comprehensive study exists that examines the aggregate demand for social enterprise financial support in Luxembourg. In addition, the sample of organisations consulted for this study is not sufficient to draw conclusions on the entire sector's demand for financial support and so only some tendencies can be observed.

### Importance of financial subsidies

Interviews with selected social enterprises show that in many cases the demand for financial support is met to a considerable degree by state funding. In the case of some ASBLs, for example, stakeholders mentioned that state funding often amounts to 80-90% of their total revenue. Similarly, as asserted by Calmes, Hartman-Hirsch and Pals (1997), public funding has played a particularly central role in WIO development: between 1995 and 2000 alone, WIOs received around 105 EUR million as additional co-financing for certain EU projects concerning social and labour exclusion. State funding may consist of various forms, depending on the project, the enterprise and the ministry or municipality concerned, including: subsidies for innovative projects; the provision of premises; and contracts to support study. Ultimately, the type of public funding is not so important: business relationships are very personal in Luxembourg and, to quote one stakeholder, “financing is not a real problem, because, if the project is a good one, it will always find funding”. Certain key stakeholders emphasised the state's absolutely essential role in funding, with some arguing that its support may even be too generous, leading to “over-dependence”.

Interestingly, some stakeholders consider that the most sustainable social enterprises are those that do not rely on public funding. When state funding is a key source of income, payment delays can sometimes occur that create a demand for cash flow loans (see illustration 2); delays vary considerably according to which ministry provides the funds. Also, some stakeholder reported that the government is beginning to reduce public funding and encourage SSE organisations to strengthen their entrepreneurial dimension.

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(77) See <http://www.fit4entrepreneurship.lu/> (Last accessed on 7 November 2019).

(78) See <http://www.reconomy.lu/> (Last accessed on 7 November 2019).

A distinction can be drawn between those organisations that rely on a business model based on subsidies—the majority of social enterprises in Luxembourg—and those that are at least to some extent market-based. For the former, stricter financial distribution could be considered, which takes account of the funding's nature (i.e., whether it is linked to a service or not), but no figures currently exist to support this development. It would appear that the country's largest enterprises—most notably WIOs and care sector organisations—rely on contractual relationships, whereas smaller organisations mainly benefit from grants. For those more market-oriented, reaching financial equilibrium has often been a major concern, as revealed during stakeholder interviews. It was stressed that some social enterprises are less competitive than conventional companies because of their social aim, making it hard to reach financial equilibrium within a market-based business model. In addition, some stakeholders mentioned the difficulties of facing highly competitive pressure from actors within the mainstream economy. According to those interviewed, the commercial sector uses aggressive lobbying activities that seek to change the legal framework in ways that would disadvantage social enterprises whilst seizing economic opportunities from the positive social economy trend by infiltrating the market without integrating the same ethical values as social enterprises.

More specifically, stakeholders emphasised the lack of financial support for SISs and other social enterprises in their start-up phase as a key issue. Only one financial investment channel exists, but it is not specifically tailored for social enterprises. The subsidy, which finances up to 30% of the investment costs of very small or small to medium-sized commercial companies,<sup>79</sup> can be increased by 10% for businesses in their start-up phase. As considerable delays can be incurred before payment is received, small businesses sometimes struggle. Indeed, one condition for accessing funding requires that investment is pre-financed and the business's financial goal must be viable, at least in theory, which can take several years to achieve.

Under certain conditions, unemployed people can benefit from financial help when creating a company through the capitalised payment of six months unemployment benefits. Stakeholders emphasised that this financial aid provides important support to companies that rarely return a profit in their start-up phase, which may even need to be reinforced. In 2017 a total of around 221,000 EUR was paid to 22 unemployed entrepreneurs in Luxembourg (MLESSE 2018).

Moreover, certain stakeholders mentioned the importance of one particular foundation, the *Oeuvre Nationale de Secours Grande-Duchesse Charlotte*,<sup>80</sup> which provides financial support to social enterprises. In 2017 the foundation funded 130 projects

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(79) Associations are not eligible.

(80) See <https://www.oeuvre.lu/> (Last accessed on 7 November 2019).

with an envelope of 20 EUR million coming from National Lottery revenues.<sup>81</sup> Many recipients were social enterprises.

Some long-term established, sizeable social sector organisations are particularly noteworthy because, over time, they have accumulated key property, often in the form of real estate, which generates independent income.

## Access to loans

No data regarding social enterprise access to credit exist.

A few conventional banks provide finance to SSE organisations; however, the scale of their investment cannot be calculated. However, no figures are available regarding the amount of commercial bank funding. Associations rarely access financial investment from banks. All banks that provide finance to social enterprises or other companies in Luxembourg are considered mainstream businesses, the only slight nuance regards Raiffeisen, the well-known cooperative bank.

State involvement in social finance also provides some interesting examples, yet in a less direct way. Etika, for example, in partnership with the state-owned bank **Banque et Caisse d'Epargne de l'Etat** (BCEE), has provided loans for about 200 projects since 1997, most of which can be regarded as social enterprises.

Recently, Microlux,<sup>82</sup> a new organisation created by BGL-BNP Paribas, Ada, Adie and the European Investment Fund, has begun providing microcredits for entrepreneurs that are excluded from the traditional banking system. The size of their loans vary and can be up to 25,000 EUR. Although in the beginning the project targeted social enterprises, the vast majority of demand for microcredit comes from small commercial enterprises that do not necessarily include a social aim. According to a Microlux representative, the lack of social enterprise demand for microcredit may have several reasons, among which the very low number of social enterprises created annually in Luxembourg is considered a factor alongside sufficient other funding opportunities (philanthropic foundations, public funding, investors and crowdfunding).

During their interviews, social enterprise representatives did not stress the importance of loans in their business model or problems accessing them.

A representative from Nyuko expressed that entrepreneurs are not interested in taking a loan in the start-up phase because they are not yet profitable. They build their financing models on receiving support from foundations, state funding or European funds (e.g., the ESF and INTERREG).

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(81) See <https://www.oeuvre.lu/oeuvre-rapport-annuel-2017-oeuvre-fichier-web/> (Last accessed on 7 November 2019).

(82) See <https://www.microlux.lu/fr/a-propos/fondateurs/> (Last accessed on 7 November 2019).

A representative from BGL-BNP Paribas spoke about an internal study about social enterprise demand for finance. The survey included 70 social enterprises. Amongst them, almost one third were ASBLs, one third SARLs and 20% cooperatives. The sizes of companies varied and most were young organisations. The study concluded that the need for finance was equally concentrated in two areas: demand for donations/subsidies and demand for investment; only a minority, around 5% of interviewees, expressed a demand for loans in their financial strategy.

One stakeholder also mentioned the need to develop new forms of financing such as crowdfunding platforms or impact funds. Another highlighted the importance of attracting external ethical investors who combine social enterprise investment from the same professional sector with mentoring the organisation during its start-up phase.

## Illustration 2. Etika – Alternative financing

Etika, an initiative of several socially oriented associations and the publicly owned BCEE, came into being in 1997. Its establishment was based on the assumption that a sufficient number of socially aware individuals would be willing to open a savings account that offered less attractive interest rates to classic savings accounts and yet guaranteed deposited cash would be used to grant concessional loans to socially responsible projects in Luxembourg.

Currently, around 1,128 savers hold the alternative account with a total of over 54 EUR million worth of savings. Since Etika was initiated, approximately 200 projects have been financed through funds accumulated in alternative accounts as of June 2018 (Etika 2018). Recipients work in energy efficiency (29%), the distribution of organic products (20%), social work (17%), ecological housing (16%), organic agriculture (11%), renewable energy (6%) and the culture and revitalisation of rural areas (1%).

Organisations need to fulfil an ethical criterion (a social or environmental goal), which is analysed by the Etikas Credit Committee, to access a loan. In addition, a parallel BCEE committee focuses on aspects related to the business viability of submitted proposals. Another criterion, which is not mandatory but often taken into account, is the organisation's potential to create jobs. The agreement of both committees is required to deploy financing.

Most organisations that benefit from Etika loans can largely be defined as social enterprises. As their ethical criteria is strictly interpreted and a loan is not easily won, Etika's funding functions as an ethical label; according to a representative from Etika, being granted one of their loans is used as a marketing tool by some organisations. In

addition, Etika promotes financed projects in its newsletter, on their website, through photography competitions and different events.

Etika offers three main products: loans for investment, loans for cash flow and lines of credit. The first accounts for approximately 80% of its deployed capital.<sup>83</sup> The loan's repayment period may vary from one up to 20 years. Loans for cash flow can be used for example in the case of delayed government subsidy payments.

Etika also promotes socially responsible investing, raises awareness and provides education on finance.

[http://www.etika.lu/spip.php?page=index&id\\_rubrique=28](http://www.etika.lu/spip.php?page=index&id_rubrique=28)

## SIS and external investors

No data are available about private investment in Luxembourg's social enterprises. The only known fact is that some social enterprises are funded by large firms, notably major banks, whose investment nevertheless appears to be very casual.

The SIS scheme's introduction was expected to release the entrepreneurial potential of many SSE organisations, triggering both investment demand and supply that is not available to many socially driven organisations such as associations. Indeed, the financial sector anticipated a new market that was potentially profitable and could promote a highly positive image. Although it may be too early to draw conclusions as the scheme is still relatively new, SISs appear uninterested in attracting external investors with profit shares; the actual demand for external investment by social enterprises is not as high as expected. All of the SISs created so far are composed of 100% impact shares (see part 2.1.2.); they have not attracted private, external investment. Fiscal advantages related to the SIS scheme may partly explain this tendency; only SISs with 100% impact shares benefit from tax exemptions. Stakeholder interviews revealed that this advantage can be financially very important, especially for larger organisation, and appears to be one of the main motivations for adopting the SIS scheme.

## 4.7. Luxembourg boosting the European ecosystem

Luxembourg's interest in the SSE has been prompted by new developments on a European level from 2000 onwards. In particular, the European Commission's decision to develop social enterprise directly impacted Luxembourg at the beginning of the 2010s. The

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(83) Interview with an Etika representative.

country became a model subject, developing positive discourse that counterbalanced critics of the sector's economic focus and tax benefits. Although Luxembourg's position might partly look like instrumentalisation, the country has a solid SSE sector full of real potential as a result.

When Luxembourg held the Presidency of the European Union, its SIS scheme law was in progress. SSE became one of the pillars of the Presidency under the dynamic direction of the minister in charge. Several events were organised, including the prominent conference *Boosting Social Enterprises in Europe*, which was held in December 2015.<sup>84</sup> At the end of the conference, governmental representatives from France, Italy, Luxembourg, the Slovak Republic, Slovenia and Spain signed the declaration entitled *A Roadmap Towards a More Comprehensive Ecosystem for Social Economy Enterprises*.<sup>85</sup> The document calls for increased European support for social economy enterprises alongside an adequate financial ecosystem that recognises the mistrust caused by the financial crisis. It outlines the need for regular meetings between high-level political representatives in charge of social economy. Known as the Luxembourg Declaration, the recommendations are now representative of certain Member States calling for stronger EU political support, notably by the Commission.

A monitoring committee was formed for the declaration. It is composed of the declaration's signees and those Member States interested in joining this social enterprise measure. The committee's presidency is held for a two-year period by one Member State, currently Slovenia. The last meeting took place in Luxembourg in October 2018,<sup>86</sup> which included Portugal as a new member.

Strong comparisons can be drawn between the EC's social enterprise criteria and Luxembourg's SSE sector. However, the country's approach distinctly focuses on the social aspect of organisations within its sector. It considers that social enterprise, as expressed within the Anglo-Saxon tradition, is overtly market oriented and does not adequately emphasise a legitimate social dimension. Awareness of this aspect helps to explain Luxembourg's position within related European debates.

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(84) More information available at: <http://www.eu2015lu.eu/en/actualites/articles-actualite/2015/12/03-conf-economie-sociale-experts/index.html> (Last accessed on 7 November 2019).

(85) Available at: <http://www.eu2015lu.eu/en/actualites/communiqués/2015/12/04-declaration-luxembourg/> (Last accessed on 7 November 2019).

(86) More information and details of present representatives are available at: <https://medium.com/tolar-hashnet/tadej-slapnik-chaired-monitoring-committee-of-the-luxembourg-declaration-on-eu-social-economy-3282f88e74ce> (Last accessed on 7 November 2019).


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## PERSPECTIVES

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There is common agreement that the country's legal status criterion does not define social enterprise. As a result, the legal and conceptual consequences for social enterprise are not explicit. When made, any distinction between social enterprises and SSE enterprises highlights the market orientation of the former, leading to specific funding constrains. However, this differentiation has no concrete meaning, since social enterprise is not a defined legal concept in Luxembourg. Significant recent attention has also been raised by the new SIS, which is attractive to some for its emphasis on social impact and tax concessions but considered restrictive to others for its administrative complexity and tax neutrality for enterprises that require investors.



## 5.1. Overview of the social enterprise debate at the national level

**Over the past 20 years, the situation of enterprises that claim to be different from conventional commercial enterprises has changed a lot in Luxembourg.**

Previously, only philanthropic organisations and WIOs were considered legitimate enterprises within the sector. During the 2000s, after staunch debate within institutional and political circles, a common will emerged to gather diverse enterprises together, which led to the creation of a new ministry and the ULESS. Since 2010, partly due to the Commission's wording on social enterprise and the Grande Duchesse's interest in social business, special attention has been given to the potential connections between socially orientated enterprises and the market. The Department of Social and Solidarity Economy's integration into the Ministry of Economy and the SIS act's first draft are indications of this development. However, in an even more recent twist, this orientation has changed and the sector has assumed social enterprise as a synonym for SSE. The country's position is reflected in its relationship with other Member States, notably consolidated through the Luxembourg Declaration (see section 4.7.), which appears to challenge the EC's preference for social enterprise over a SSE..

**Discrepancies exist between the usual statutory approach (boundaries defined by the legal status of enterprises) and recent Luxembourg legislative SSE developments.** Interviews conducted for this study confirm that most stakeholders do not define the SSE by its legal status. The 2016 law stipulates that public limited liability companies, private limited liability companies and cooperative companies are eligible for SIS status. Meanwhile, the SSE's legal definition determines that only certain associations, cooperatives, foundations and mutuals, as well as companies that comply with set legal requirements should be included.

The extent of this debate is not transparent to those interviewed, who are clearly unaware of its implications. However, its echo is perceptible, most notably through the continuously fluctuating use of the terms "social enterprise" and "social and solidarity enterprise". Very few paid direct attention to the distinction or were even able to describe the difference between the two criteria; whenever a distinction was proposed, it was always connected to profitability. Instead, on the whole, **discussion emphasised the distinction between enterprises that can or cannot be considered social and solidarity enterprises due to the legal criterion of their economic activity.** During a seminar for this study, for example, a discussion arose about the case of an association that provides drug addicts with syringes—the organisation cannot currently be considered an SSE enterprise because its activity does not include a point of sale to clients.



The EC's three core dimensions (entrepreneurial/economic, social dimensions combined with independence and democratic governance) were upheld as fundamental definitional criteria but a less rigorous approach than that presented in the operational definition was favoured. The same importance was not attached to all three criteria; in fact, **no discussion focused on the social dimension.**

**A distinction is sometimes proposed between Luxembourg social enterprises and SSE enterprises, based on their entrepreneurial dimension.** The former would be characterised by a market-oriented activity (the major source of their turnover), whereas the latter predominantly rely on public funding. In other words, the main criterion that distinguishes these enterprises from one another concerns their business models; the potential difficulties that social enterprises might face vary considerably from those of SSE enterprises due to their distinct resources.

**As social enterprises have no legal nor institutional existence in Luxembourg, it can be assumed that no special tax breaks or other legal rule specifically apply to them;** although a special tax concession applies to social enterprises that are 100% impact capital SISs, they are not the country's sole social enterprise form and so the category overall does not benefit from taxation allowances. However, Luxembourg does legally define SSE enterprises; therefore, whether or not an enterprise can apply for ULESS membership becomes a practical question based upon its classification.

The most common public opinion in Luxembourg would likely define the following core SSE actors: (i) work integration organisations (*organismes gestionnaires d'initiatives sociale or Initiatives sociales pour l'emploi*), (ii) work integration organisations for disabled people (*Ateliers protégés*) and (iii) organisations providing social services and social/health care.

**The function of social enterprises was not raised as an issue, probably because it does not echo the Luxembourg context where the welfare state remains very present.** During the study's seminar, the relationship between social enterprises and the State was discussed by most participants as a reciprocal relationship. Nevertheless, during the ULESS organised event in June 2018 (see below), the SSE's growth was also observed as a sign of societal unrest.

## 5.2. Constraining factors and opportunities

The ***Discussion Day on Social and Solidarity Economy***, a large conference held in Echternach on 26 June 2018 organised by the ULESS, provides some reflection for this report. The event gathered more than 100 participants, three quarters directly from the SSE and the remaining quarter from other interested parties. Among the attendees, 90% considered that the SSE is a sector in development that still lacks recognition and 95% thought that the sector will continue to grow. Interestingly, 90% proposed that a circular economy could be a valuable opportunity for the SSE. Two thirds of participants considered that this development could be achieved through partnerships with private enterprises, whereas the remaining third would privilege partnerships with other SSE enterprises or public bodies.

**Luxembourg's 2016 act remains the most major, recent backdrop to the sector's evolution**, which was first dedicated to the creation of the SIS scheme and has since defined the SSE and structured official sectorial representatives. The ministry in charge of the SSE is also mentioned in the act as Luxembourg was mid-election process when the act was put forward; this legal provision was considered a necessary security for the sector in case the current government coalition was defeated.

Over the past three years, the law has drawn attention to the sector and facilitated both its recognition and development. Although no concrete measures have been put in place to stimulate Luxembourg's SSE sector, **the act's official establishment has produced certain knock-on effects, most notably the amendment of several regulations on funding offered by specific ministries to ensure they benefit the SIS scheme**, which in turn obliges them to consider social enterprises as such. A future project to totally renew the statistic accountability of the SSE is another direct outcome of the act.

According to the MLESSE, **a significant growth in awareness has recently been observed and many actors that might not have been regarded as social enterprises a few years ago today recognise themselves as part of the sector.**<sup>87</sup> However, various stakeholders were dissatisfied with what they consider to be a prevailing lack of social enterprise recognition and visibility largely from private companies and, to a lesser extent, from civil society in general. They also stated that different initiatives remained too fragmented and that more partnership is required between SSE organisations and support structures.

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(87) View expressed by the Department of Social and Solidarity Economy representative during this report's study process.

## Stakeholder's views on SIS

**Since 2017 14 enterprises have been accredited SIS status.** Even though it is too soon to measure their sectorial impact, some interesting trends and opinions are already emerging.

**Organisations operating under a commercial legal form (e.g., cooperatives), especially those of a considerable size, can benefit significantly from gaining SIS accreditation tax exemptions.**<sup>88</sup> Public funding is another potential advantage that traditional cooperatives cannot otherwise access.

Meanwhile, **SIS accreditation raises some important questions for associations.** First, an ASBL cannot directly become a SIS but needs to create a commercial company as its subsidiary that can be accredited. This issue raises questions about share ownership and how to manage or transfer property (that can be important assets for large ASBLs) to a commercial structure. Second, very large organisations within Luxembourg's social sector have often adopted extremely complex legal structures, which make it complicated for them to change their legal form. Third, the fiscal incentive is lower for ASBLs and some prefer to ensure that they can maintain their access to all public subsidies before changing their status. Even if some WIOs are currently considering adopting the SIS scheme, the large majority still operate under their association status. As a consequence, public procurement lacks eligible candidates. The MLESSE plans to open an information desk that will advise ASBLs on how they might change their legal form.

**A potential restriction to small businesses or start-ups regards the cost of an SIS's annual audit,**<sup>89</sup> which represents a significant burden for those with low or no fiscal returns. New businesses and recent market-oriented social enterprises in sectors such as social innovation tend to find this more difficult, whereas existing social enterprises rely on state funding and cooperatives already comply with this obligation.

**The administrative complexity for launching a SIS was also identified as a deterrent to small companies.**

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(88) SISs benefit from the same advantages as ASBLs, whereas cooperatives are treated much like any other commercial company. See section 2.3.

(89) According to interviewees, the cost can amount to at least a few thousand EUR annually.

### 5.3. Trends and future challenges

**Luxembourg's recent, major trend has been its ongoing development of the SSE and social enterprises.** The director of STATEC suggested that this second social enterprise study should conclude with the growth of people working in the sector, which has increased from 8% in the first study to 14% today (Discussion Day on Social and Solidarity Economy, 26 June 2018, see above).<sup>90</sup>

**The SSE's second, main evolutionary trend is the development of two new kinds of social enterprises: general interest-oriented enterprises, and social innovation and market-oriented enterprises.** Although no figures are available, some examples can be given, including energy cooperatives, collective housing cooperatives, alternative groceries or shops and recycling businesses. The number of concerned enterprises in practice are very few due to the country's size and it is therefore impossible to draw quantitative conclusions; indeed, it is even difficult to make a prognostic on the future, but emphasis is being placed on the significance of Luxembourg's SSE.

A representative from the incubator social enterprise programme at Nyuko, an organisation that provides support for social entrepreneurs who would like to set up a new business,<sup>91</sup> confirmed that the majority of project managers plan to create their new company either as a SARL or cooperative.

Meanwhile, some of the sector's most recent challenges include: developments in the profile of unemployed people, who are increasingly fragile and far removed from accessing the labour market; an increase in social needs due to an ageing population; and increased access to technology that manifests as the need to be more professional. Also, **the recent wave of immigration has been noted, which has created social requirements, leading to a new trend in social enterprise creation.**

**The sector's ministry has also perceived a recent increase in bottom-up initiatives driven by young people interested in creating projects or businesses that seek a positive societal impact rather than profit maximisation.**<sup>92</sup> This recent trend is materialising as an alternative vision of economic and social development. Part of these new projects are based on market-oriented business models that are strongly embedded in local communities, sometimes federating community members within a cooperative model. Others propose sustainable and ethical production schemes or technological solutions to societal or environmental challenges. These initiatives

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(90) These figures are only provisional due to the new methodology being used to obtain statistics for the conference's study; indeed, it is no longer clear whether or not this ongoing second study will be published.

(91) See <https://nyuko.lu/> (Last accessed on 7 November 2019).

(92) Ibid.

are evolving in the social enterprise ecosystem alongside more traditional actors, encouraged by a rise in public awareness, recently initiated support structures (see section 4), strong civil society network support and important media coverage.

A more moderate view of recent dynamics also exists, however. **Those less enthusiastic frequently mentioned a general lack of entrepreneurial spirit in Luxembourg society**, reinforced by a dynamic labour market and relatively high wages, which limit the number of grass-roots initiatives. Apart from certain symbolic examples that have received significant media coverage, the general Luxembourg social enterprise dynamic is considered rather low by some.

Overall advantages related to the new SIS scheme include potential access to public procurement contracts, more transparency, a clearer framework, improved recognition and a better image for social enterprises, which counter the scheme's official accreditation process, its requirement of an annual audit by an external auditor and its impact evaluation report. **The SIS scheme is considered a good opportunity to push forward a more participative governance model.** Also, the definition of social performance indicators is seen as an opportunity to engage all the more in projects with social value and a means to guarantee an organisation's social goal over time.

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# APPENDICES

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## Appendix 1. The EU operational definition of social enterprise

The following table represents an attempt to operationalise the definition of “social enterprises” based on the Social Business Initiative (SBI) promoted by the European Commission.<sup>93</sup>

Main dimension	General definition	Relevant Indicators ( <i>not exhaustive list</i> ) (yes/no or range from low up to very high)	Initial minimum requirements (yes or no)	Examples/boundary cases comments
<b>Entrepreneurial/ economic dimension</b>	Social enterprises (SEs) are engaged in the carrying out of stable and continuous economic activities, and hence show the <b>typical characteristics that are shared by all enterprises</b> .	<ul style="list-style-type: none"> <li>&gt; Whether the organisation is or is not incorporated (it is included in specific registers).</li> <li>&gt; Whether the organisation is or is not autonomous (it is or is not controlled by public authorities or other for-profit/non-profits) and the degree of such autonomy (total or partial).</li> <li>&gt; Whether members/owners contribute with risk capital (how much) and whether the enterprise relies on paid workers.</li> <li>&gt; Whether there is an established procedure in case of SE bankruptcy.</li> <li>&gt; Incidence of income generated by private demand, public contracting and grants (incidence over total sources of income).</li> <li>&gt; Whether and to what extent SEs contribute to delivering new products and/or services that are not delivered by any other provider.</li> <li>&gt; Whether and to what extent SEs contribute to developing new processes for producing or delivering products and/or services.</li> </ul>	SEs must be market-oriented (incidence of trading should be ideally above 25%).	<ul style="list-style-type: none"> <li>&gt; We suggest that attention is paid to the development dynamic of SEs (i.e., SEs at an embryonic stage of development may rely only on volunteers and mainly on grants).</li> </ul>

(93) In accordance with Articles 48, 81 and 82 of the Treaty, as interpreted by the Court of Justice of the European Communities, “**an enterprise should be considered to be any entity, regardless of its legal form, engaged in economic activities, including in particular entities engaged in a craft activity and other activities on an individual or family basis, partnerships or associations regularly engaged in economic activities.**”

Main dimension	General definition	Relevant Indicators ( <i>not exhaustive list</i> ) (yes/no or range from low up to very high)	Initial minimum requirements (yes or no)	Examples/boundary cases comments
<b>Social dimension (social aim)</b>	<p>The social dimension is defined by the aim and/or products delivered.</p> <p>Aim: SEs pursue the explicit social aim of serving the community or a specific group of people that shares a specific need. "Social" shall be intended in a broad sense so as to include the provision of cultural, health, educational and environmental services. By promoting the general-interest, SEs overcome the traditional owner-orientation that typically distinguishes traditional cooperatives.</p> <p>Product: when not specifically aimed at facilitating social and work integration of disadvantaged people, SEs must deliver goods/services that have a social connotation.</p>	<ul style="list-style-type: none"> <li>&gt; Whether the explicit social aim is defined at statutory/legal level or voluntarily by the SE's members.</li> <li>&gt; Whether the product/activity carried out by the SE is aimed at promoting the substantial recognition of rights enshrined in the national legislation/ constitutions.</li> <li>&gt; Whether SE's action has induced changes in legislation.</li> <li>&gt; Whether the product delivered—while not contributing to fulfilling fundamental rights—contributes to improving societal wellbeing.</li> </ul>	<p>Primacy of social aim must be clearly established by national legislations, by the statutes of SEs or other relevant documents.</p>	<ul style="list-style-type: none"> <li>&gt; The goods/services to be supplied may include social and community services, services for the poor, environmental services up to public utilities depending on the specific needs emerging at the local level.</li> <li>&gt; In EU-15 countries (especially in Italy, France and the UK) SEs have been traditionally engaged in the provision of welfare services; in new Member States, SEs have proved to play a key role in the provision of a much wider set of general-interest services (e.g., from educational services to the supply of water).</li> <li>&gt; What is conceived to be of a meritorial/general-interest nature depends on contextual specificities. Each national expert should provide a definition of what "public benefit" means in her/his country.</li> </ul>



Main dimension	General definition	Relevant Indicators ( <i>not exhaustive list</i> ) (yes/no or range from low up to very high)	Initial minimum requirements (yes or no)	Examples/boundary cases comments
<b>Inclusive governance-ownership dimension (social means)</b>	<p>To identify needs and involve the stakeholders concerned in designing adequate solutions, SEs require specific ownership structures and governance models that are meant to enhance to various extents the participation of stakeholders affected by the enterprise. SEs explicitly limit the distribution of profits and have an asset lock. The non-profit distribution constraint is meant to ensure that the general-interest is safeguarded. The non-profit distribution constraint can be operationalized in different ways.</p>	<ul style="list-style-type: none"> <li>&gt; Whether SEs are open to the participation and/or involvement of new stakeholders.</li> <li>&gt; Whether SEs are required by law or do adopt (in practice) decision-making processes that allow for a well-balanced representation of the various interests at play (if yes, through formal membership or informal channels that give voice to users and workers in special committees).</li> <li>&gt; Whether a multi-stakeholder ownership structure is imposed by law (e.g., France).</li> <li>&gt; Whether SEs are required to adopt social accounting procedures by law or they do it in practice without being obliged to.</li> <li>&gt; Degree of social embeddedness (awareness of the local population of the key societal role played by the SE versus isolation of the SE).</li> <li>&gt; Whether the non-profit distribution constraint is applied to owners or to stakeholders other than owners (workers and users): whether it is short-term (profits cannot/are not distributed or they are capped) or long-term (asset lock); or both short and long-term.</li> <li>&gt; Whether the cap is regulated externally (by law or defined by a regulator) or it is defined by the SE by-laws.</li> <li>&gt; Whether limitations to workers' and/or managers' remunerations are also imposed (avoid indirect distribution of profits).</li> </ul>	<p>SEs must ensure that the interests of relevant stakeholders are duly represented in the decision-making processes implemented.</p>	<ul style="list-style-type: none"> <li>&gt; Ownership rights and control power can be assigned to one single category of stakeholders (users, workers or donors) or to more than one category at a time—hence giving ground to a multi-stakeholder ownership asset.</li> <li>&gt; SE can be the result of collective dynamics or be created by a charismatic leader (in principle a sole owner is admitted by some national legislations provided that the participation of stakeholders is enhanced through inclusive governance) or public agency.</li> <li>&gt; Different combinations concerning limitations to profit distribution envisaged (e.g., most successful solution: capped dividends supported by total asset lock such as Italian social coops, CIC, SCICs).</li> </ul>

## Appendix 2. Exploratory case studies

The following four case studies serve as illustrations of Luxembourg's social enterprises and are mainly based on interviews with representatives.

### Exploratory case 1

#### 6zero1

6zero1 is the first and, so far, only incubator in Luxembourg dedicated to assisting social enterprises that intend to apply for SIS accreditation. The ULESS, MLESSE and *Fondation du Grand-Duc et de la Grande-Duchesse* created 6zero1 in 2006. It was the first enterprise to receive SIS accreditation. Therefore, 6zero1 is both a young social enterprise and highly symbolic for the ULESS and the minister in charge of Luxembourg's SSE.

6zero1 is a SA-SIS, which means that, at least theoretically, its governance model is based on the "one share, one vote" principle, with the ministry being its main shareholder. The voice of its recipients is taken into account through a satisfaction questionnaire at the end of each accompaniment session; in other words, stakeholder participation is not put aside but integrated through corporate social responsibility mechanisms rather than membership.

In terms of the non-profit constraint, 100% of 6zero1's shares are impact shares (see section 2.1.2.) and cannot give rise to dividend payments nor share appreciation. Thus, investors do not expect financial returns but SSE development through an appropriate, accompanying result for young social entrepreneurs.

SIS accreditation also limits the maximum wage for employees to six times the legal minimum wage of Luxembourg. This restriction shows how social enterprises are willing to promote new forms of undertaking that may operate differently from traditional SSE enterprises.

Recipients of 6zero1's assistance are social entrepreneurs that seek to launch a social enterprise under the SA, SARL or cooperative legal forms with SIS accreditation. 6zero1 supports social entrepreneurs when launching their activity and provides them with a professional workspace, training and coaching.

Since 2017 three assistance phases have taken place with a total of 27 recipients from different backgrounds. Some are professionals from the social sector who wanted to create a sustainable economic activity but lacked entrepreneurial know-how. Others have a professional entrepreneurial background but less social vision that needed to be reinforced.

6zero1 employs one full-time worker on a permanent contract and has no members and no volunteers. It hopes to hire a second employee next year.

The enterprise's business model is aimed towards financial self-sufficiency, but it has not yet reached full financial equilibrium. Initially, the project received one donation of around 120,000 EUR from the foundation *Oeuvre Nationale de Secours Grande-Duchesse Charlotte* to create the company and support its initial investment. The enterprise also began with an initial capital investment of 201,000 EUR, which is partly being used to finance its activity. Most of its current income comes from the services it sell to recipients (costing 400 EUR per person per month). In addition, it receives some income from renting work space to entrepreneurs that are not part of the incubator project, providing training services to external actors and is the receipt of a small fund from the SNCI amounting to 20,000 EUR a year. 6zero1 expects to achieve financial equilibrium in 2019.

As the company's capital is composed of 100% impact shares, it enjoys tax exemption from all commercial tax (apart from payroll taxes and VAT). In addition, any donations it receives are tax-deductible for the donor.

From its very beginning to the present day, 6zero1 has not faced great difficulties. On the contrary, it has benefited from generally positive expectations and even been a keystone in the ministry and ULESS's strategy and communication for SIS development. Moreover, it has received support from the Foundation Grande-Duchesse, confirming a common opinion in Luxembourg that a good idea will always find funding. Nevertheless, all of its starting support cannot guarantee 6zero1's long-term success despite investments having been given with no obligation for their repayment.

6zero1's representative stated that the main barrier it faces is achieving financial stability. Investors do not wish to continue funding the SIS scheme; although the purpose is not to make significant profits, policymakers do expect SISs to be financially self-sustainable.

Due to the country's small size, it is not easy to find a sufficient number of participants for the project. Additionally, a favourable employment market means people are not very keen to risk creating new enterprises. Neither does the potential interest in social enterprises necessarily compensate for this reluctance.

6zero1 has overcome these hurdles by developed a networking strategy. As Luxembourg has no specific social enterprise networks, 6zero1 has developed mainstream enterprise partners, including external private actors involved in the SIS's teaching and coaching programme for recipients, one communication partner (Infogreen), institutional partners (the Chamber of Commerce and ADEM) and other actors working as support structures to start-ups. As 6zero1's needs are not first and foremost financial, it tries to create

a stimulating ecosystem to attract candidates and provide them with professional, relatively inexpensive services.

6zero1's second strategy for creating financial balance has been to generate new resources, notably the rental of workspace. It focuses on cooperative workspace to avoid deviating from its social goal but cannot rely on this for its major income.

Overall, 6zero1 fulfils its activity through strong public support. Although not all of those who have attended a training session have gone on to create a social enterprise, the SIS has managed to find a means of developing its social enterprise by stimulating interest in creating others.

## Exploratory case 2

### Complementary Medicine Mutual (*Caisse Médico-Complémentaire Mutualiste, CMCM*)

Luxembourg's mutual societies have existed for more than 100 years and are based on principles such as solidarity, non-profit making, inclusion, democracy, independence and autonomy. Originally, they were commonly accommodated in specific professional sectors and existed long before social security was created. As a result, they represent an important contribution to the development of Luxembourg's social system.

The country's federation for mutuals, the FNML, was initiated in 1924. In 1956 the federation created the CMCM to offer complementary healthcare services. It is Luxembourg's only health mutual. Even though Luxembourg's social services are very good and enable people to be treated medically without additional insurance, the CMCM's healthcare services have become increasingly important when compared with those offered by other mutuals. The traditional services offered by mutuals have become less and less significant (e.g., burial services) due to social service provision, private insurance and an erosion of the societal basis that encourages mutuals.

Today, 48 mutuals exist in the country, all of which except one are members of the FNML. Members of these federated mutuals are offered CMCM membership to benefit from the affiliated mutual's healthcare services. Since 2017, those who are not members of any mutual can also become direct members of the CMCM by paying an extra charge that is distributed throughout the FNML to federated mutuals.

All federated mutuals can send delegates to *le congrès*, the CMCM's assembly. If a member would like to become a CMCM board member, his/her candidature needs to be agreed and submitted by the member's mutual. Assembly delegates elect CMCM board members.

CMCM recipients are members who pay a subscription and in return receive various healthcare services. The mutual has 270,000 members, representing almost half of Luxembourg's population. 47 CMCM employees have a permanent employment contract and 2 others are employed under fixed-term contracts. 60%-65% of its employees are women. No volunteers contribute to the mutual's operation.

In the 80s and 90s, CMCM members accounted for two third of Luxembourg's population. Since the 90s, the number of members has decreased, partly due to competition from private insurance companies and a general societal trend towards greater individualism.

In 2016 the number of members began increasing again. Better communication about the mutual's services and its principles and values that are distinct from private insurance companies is a key factor in this positive trend. In addition, the mutual has built relationships with two of Luxembourg's three major insurance companies that do not offer complementary healthcare services and, as a result, are not its direct competitors.

The CMCM's business model is market-oriented. Almost 100% of its resources come from subscriptions to specific services. The mutual receives almost no subsidies but benefits from important tax exemptions. According to the law, it cannot generate profit. Also, every fund, which is equivalent to a type of service for members, must be managed separately, so that there is no possibility of transferring surplus cash flow from one fund to another. However, the mutual's statutory reserves can be invested in property.

Due to its reserves and good financial situation, the CMCM does not have any financial requirements. Although it has never applied for a bank loan, the mutual has recently intensified its relationships with the Raiffeisen bank, which is considered a close ally because of its cooperative legal form.

According to its representative, the mutual's main challenge is presented by the aggressive competition and lobbying activity of commercial insurance companies. Meanwhile, its main strength is its ability to attract 50% of Luxembourg's population as members. The Ministry of Social Security and mutuals federated with the FNML are its key partners.

The CMCM operates under the Minister of Social Security's supervision and participates with social security institutions to provide social protection. If the mutual decides to offer a new service, it has to be written into its bylaws after gaining ministerial approval. Rather than perceiving this condition as a restriction, the CMCM considers it a safety measure—if the process is somehow complicated, ministerial approval provides assurance.

Relationships between the CMCM and public bodies are well illustrated by the ongoing story of mutual law reform. Overall, the reform is not very favourable for mutuals

(e.g., it restricts potential objectives) and the CMCM is very cautious of the process; it anticipates that new constraints being lobbied for by private insurance companies might be enacted. However, when taxation was tabled as an issue at debates, the mutual warned that any amendments to its exemptions would cross a line that it would struggle to survive and the idea was dropped.

The CMCM's success appears to be based on several aspects: a profound societal need mixed with high awareness of its services, better ongoing communication about its provision; and a perfectly assumed economic strategy. The mutual has recently commissioned several expert reports on its membership and consequently launched some highly successful new services.

In conclusion, the CMCM is a rather large social enterprise for the country's size that is extremely well established within the national landscape. It is a union member of the ULESS that combines economic success (after a decade of reduced membership) with a focus on social change. Its challenges are similar to those of any other enterprise other than its partnership with the ministry that affects certain additional constraints. However, its regulation ensures the mutual's compliance with social enterprise criteria and provides a solid basis for the enterprise to maintain and develop its membership and business.

### Exploratory case 3

#### Cooperation SC

Cooperation SC is a work integration cooperative for disabled and disadvantaged people operational within northwest Luxembourg, an area of particularly low economic activity. It is an original enterprise due to its artistic emphasis, attention to governance and sustainable development from the outset.

The enterprise began life as an ASBL initiated in 1990 by a group of artists that had already organised activities for people with disabilities. From humble beginnings in a small garden in Wiltz, the group's activities soon expanded very quickly. In 1992 the group created Cooperation SC as a cooperative in order to enable the project's economic dimension; moreover, at that time, the Ministry of Family required more and more partners to adopt the cooperative legal form. Cooperation SC progressively grew in accordance with the social needs of its recipients and society in general. European funds (ERDF and ESF) have played an important role in financing the launch of its activities and remain strong support for new developments.

Today, the cooperative's activities include: *Eis Kichen*, a restaurant and catering service that sources and uses as many local, organic products as possible; Ben and Dave's

cookies, organic biscuits produced in the restaurant and sold in various retail outlets;<sup>94</sup> CONEX, a European project that promotes the inclusion of disabled people in their first job market opportunity;<sup>95</sup> DONO, an upcycling project utilising used construction site tarpaulin to make confectionary packaging and other objects;<sup>96</sup> an agricultural project in partnership with an organic farmer; and the provision of maintenance and landscaping services. Cooperation SC also benefits from its partnership with the municipality when organising its two major cultural events: the Wiltz Festival and Lanterns' Night.

The main recipients of its various activities are disabled and disadvantaged workers employed through subsidised employment contracts. In total, Cooperations SC employs about 70 recipients, out of which 60 employees are people with disabilities employed under a permanent contract. The other 10 employees are people otherwise removed from labour market opportunities (e.g., refugees). In addition, Cooperations SC employs 18 supervisors and consultants. 11 volunteers are engaged in the cooperative's governing board and contribute significantly to its activities: for some volunteers, their contribution amounts to about 25% of an equivalent full-time position.

Since its creation, Cooperation SC has progressively grown by adding new activities to its provision that meet different societal needs. Activities are based on a strong set of values such as solidarity and resource sharing. It aims to remain a company of moderate size and, therefore, control the growth of its activities. For example, the cooperative insists that each activity should never involve more than 12 recipients; it prefers creating new activities rather than increasing the size of existing provision.

Cooperations SC is an SIS with 100% impact shares that belongs to Cooperation's ASBL, the municipality of Wiltz, founding members and its governing board members. As a result, investors in the cooperative are not motivated by profit. They are subscribed shares to allow the cooperative to comply with its legal obligations and achieve its aim. All shareholders are, in one way or another, partners of the enterprise and dedicated to its success.

Cooperations SC has always paid strong attention to its governance despite not being required to do so as a cooperative. The enterprise currently holds unofficial, regular meetings comparable to corporate social responsibility and plans to further legitimise this aspect of its operation through structural and organisational changes. For the time being, the social enterprise's employees do not hold any shares, but this model might change in future. In fact, Cooperations SC recently transformed its governance model to create a less hierarchal and more democratic governance process (e.g., it created functional commissions that integrate both employees and board members). The

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(94) <https://www.facebook.com/BDCookies> (Last accessed on 7 November 2019).

(95) See <http://www.fonds-europeens.public.lu/fr/projets-cofinances/fse/2014-2020/1054/index.html> (Last accessed on 7 November 2019).

(96) See <https://hello-dono.lu/> (Last accessed on 7 November 2019).

cooperative also organises a biannual, internal seminar and plans to reform its modes of operation and decision-making.

The business model adopted by Cooperations SC is a mixed business model that incorporates both state funding and market activity. 80% of its financial resources comes from public funding, most of which is received for subsidised employment contracts, and 20% comes from the sale of services and products created in its different workshops. The following presentation made by Cooperations SC itself perfectly illustrates Luxembourg's prejudice towards public funding: if support used to employ disabled people is a form of compensation open to any enterprise and not exclusive to social enterprises, once financial resources from the marketplace are added to the offering, then authentic public subsidies would not be more than a third or maybe a quarter of the entire budget required; this may not change the importance of public support but could change the image of social enterprise itself.

Historically, this social enterprise based its business model on receiving European funds (ESF, LEADER, ERDF, ERASMUS, GRUNDTVIG and LEONARDO DA VINCI). National and local funding were required to support the cooperative's initial structural balance and European Funds were relied upon to develop new activities that have since managed to be stabilised into the enterprise's regular activities. So far, the cooperative has never taken a bank loan but is planning to do so for an upcoming project, which reflects both an increase in the range of enterprises able to get a loan and this cooperative's greater independence from European public funding. As the company's capital is composed of 100% impact shares, it is exempt from paying corporate income tax, communal business tax and net wealth tax. In addition, its donations are tax-deductible for the donor.

One of the company's main difficulties has been achieving financial stability. Another initial difficulty was combining artistic, social and economic dimensions in one organisation. The cooperative's key partners are the MLESSE, the municipality of Wiltz and the Ministry of Family.

In conclusion, Cooperations SC is a good example of a social enterprise connected to public bodies that operates nationally yet largely locally with a strong artistic and social identity in comparison to the more occupationally focused activities of similar enterprises. Cooperation SC is an economic success and is therefore considered a good social enterprise partner in Luxembourg. Nevertheless, it remains somewhat fragile, albeit not financially, due to the inherent tension it faces between its various and somehow contradictory purposes.



## Exploratory case 4

### Transition Minett - MESA- Kilominett'O - TMEnercoop - Cell

In December 2011 a group of citizens created Transition Minett, an ASBL located in an area of southern Luxembourg known for its historic steel industry and immigration trends, first of Italian and then Portuguese workers.<sup>97</sup> The association aims to create a more resilient system addressing large challenges such as climate change on a local level. It contributes to energy transition based on community engagement and works on diverse societal issues (e.g., food production, local economy, citizen engagement, inner transition and ecology).

The group started its activities with a food project that brought consumers together to purchase products directly from a local farmer. Initially, the project lacked sufficient members and so the group decided to find a public space where they could organise food distribution and thus become more visible to attract more members and potentially interested citizens. Ultimately, Transition Minett signed an agreement with a local municipality that provided premises in Esch city centre. The building has since become known as the Transition House (*Maison de la transition*, MESA).

As activities organised for the MESA developed extremely quickly, Transition Minett initiated a cooperative called Kilominett'O, which is responsible for MESA's newly created economic activities. Today, the cooperative manages a small grocery store selling predominantly local and organic food, a bar and a restaurant providing exclusively organic and vegetarian food. It also organises catering beyond the MESA.

Transition Minett has also created another cooperative TMEnercoop, which is a citizen-based cooperative that produces electricity using photovoltaic panels installed on the roofs of public buildings.

Transition Minett is also engaged in many other activities, including: the organisation of MESA events, conferences, discussions and workshops; the maintenance of a community garden; and encouraging citizen participation in Esch.

Luxembourg's centre for ecological learning, CELL, which was created in 2011, is also closely linked to the Transition Minett movement. The ASBL provides an experimental space for thinking about, researching, disseminating and practicing post-carbon lifestyles and regenerative culture.<sup>98</sup> The association co-ordinates and supports local transition movement initiatives in Luxembourg (among them Transition Minett, but also transition groups based in other cities or regions) and numerous local and national action groups. Whereas CELL is mostly engaged on a national level, Transition Minett carries out projects locally.

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(97) See <https://www.transition-minett.lu/index.html> (Last accessed on 7 November 2019).

(98) See <https://cell.lu/our-mission/> (Last accessed on 7 November 2019).

This network of organisations is a community-based movement strongly embedded within a local context and predominantly based on the commitment and participation of volunteers (without necessarily requiring membership). In this regard, the movement refuses to speak about 'recipients' of its activities, because it considers that all participants/members are themselves drivers of the movement. According to Transition Minett, the network distances itself from the concept of a caregiver-care receiver relationship that is otherwise predominant in the work integration or social care sector.

Increasing local demand for the movement's activities requires a shifting, scalable mechanism. Currently, Transition Minett has about 10 active members and TMEnercoop has 160 cooperative shareholders that are also members and investors (the board is composed of seven people). Kilominett'O has a governing board of 10 cooperative shareholders (six individuals and four associations). In terms of employees, Kilominett'O has one member of staff, Transition Minett also employs one person on a part-time contract, TMEnercoop has no employees and CELL employs 10 people.

When considered as an entire network, Transition Minett reflects a mixed business model that relies on public funding and market activity. Transition Minett itself and CELL gain almost all of their financial resources from public funding and foundations, Kilominett'O relies 100% on its market activity and TMEnercoop calls on shareholders contributions, loans and market activity (the sale of energy).

Transition Minett's nebula operation makes it difficult to identify its overall economic strategy: each cell is independent from the others with different people involved even if some are present in most projects. All of its projects are complementary, unified by a common goal but with very different ways of achieving their said aim, both economically and organisationally. Although it may be tempting not to consider Transition Minett as an enterprise and reserve that qualification for the projects it has initiated, such an assumption would be false since an economic flow exists between all of its structures, as with a company group.

In conclusion, Transition Minett represents an original social enterprise or network of social enterprises. Even though it has initiated several economic projects, Transition Minett's main goal is social. As a result, its main barrier is not economic; instead, it struggles to mobilise volunteers/members due to a prevailing lack of local awareness. Meanwhile, each of the network's various individual enterprises experience different situations. Although none rely directly on public funding, they are not fully market oriented either. Each initiative relies on the support of an active group of citizens that is often difficult to significantly enlarge. Economically, these enterprises are not predisposed to comply with traditional methods and yet this does not mean that they do not succeed. Rather it places them somewhat aside from mainstream activity, despite very good reputations and indirect public support, with a relatively small economic basis.

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## Appendix 4. List of stakeholders engaged at national level

The set of 21 Country Reports updated in 2018 and 2019 included a “stakeholders engagement strategy” to ensure that key input from national stakeholders was incorporated. Four categories of stakeholders were set up: academic (ACA), policymaker (POL), practitioner (PRAC) and supporter (SUP). The stakeholders’ engagement strategy followed a structured approach consisting of a questionnaire, one or two stakeholders’ meeting (depending on the country) and one core follow-up group. Such structure enabled a sustained, diverse and committed participation of stakeholders throughout the mapping update process. The full names, organisations and positions of key stakeholders who accepted to have their names published are included in the table below.

Full name	Organisation	Role	Stakeholder category
<b>Pelagia Baxevani</b>	Nyuko	Project Manager	SUP
<b>Carlos Breda</b>	CIGL Esch	Coordinator	PRAC
<b>Jean-Christophe Burkel</b>	ULESS	Director	SUP
<b>Myriam Cecchetti</b>	Eis Epicerie Zolwer	Cooperator-volunteer	PRAC
<b>Christophe Kremer</b>	Coopérations SC SIS	Director	PRAC
<b>Rebecca Maroko</b>	OUNI	Chairperson	PRAC
<b>Nadine Muller</b>	Ministère du travail, de l'emploi et de l'economie sociale et solidaire	Head of the Social and Solidarity Economy Department	POL
<b>Jerome Ney</b>	Eis Epicerie Zolwer	Manager	PRAC
<b>Samuel Paulus</b>	Microlux	Manager	SUP, PRAC
<b>Sophie Pixius</b>	TERRA	Aministrator-facilitator	PRAC
<b>Ekkehart Schmidt-Fink</b>	Etika	Public relations officer	SUP, PRAC
<b>Norry Schneider</b>	MESA/Transition Minett/ CELL/Kilominett'O/ TMEnercoop	Coordinator-administrator	PRAC
<b>Karine Paris</b>	MESA/Transition Minett/ CELL/Kilominett'O/ TMEnercoop	Project leader and administrator	PRAC
<b>Christophe Stein</b>	House of Entrepreneurship	Advisor	SUP

Full name	Organisation	Role	Stakeholder category
Frédéric Théate	Ecotransfaire (Cluster ESS sur la Grande Région)	Project lead	SUP
Gontran Poirot	6zéro1	Director	SUP, PRAC
Romain Reding	CONVIS SC	Research and technology engineer	PRAC
Francesco Sarracino	STATEC	Researcher	POL, ACA
Fabio Secci	Caisse Médico-Complémentaire Mutualiste (CMCM)	Director	PRAC
Nicolas Van de Walle	CIGL Esch	Coordinator	PRAC
Catherine Wurth	BGL BNP Parisbas	CSR project leader	SUP



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