



The 2016 Law on Societal Impact Companies in Luxembourg

What?

In December 2016, Luxembourg adopted a law to regulate the creation of social enterprises under a new legal status: the Societal Impact Companies (Sociétés d'Impact Sociétal – SIS). The law defines the social and solidarity economy (SSE) as a “mode of doing business” performed by private legal persons that cumulatively meet the following four conditions: 1) distribution or exchange of goods or services; 2) supporting vulnerable groups or contributing to social and societal objectives through their activity; 3) autonomous management; 4) the reinvestment of at least half of profits in the company’s activity. Additionally, this law establishes that any legal entity (e.g. public limited company, limited liability company, cooperative company) complying with these SSE principles may opt for the SIS status.

One of the main characteristics of this law is its evaluation requirement. Article 15 stipulates that the law must be assessed within three years after its enforcement, by the Minister in charge of the SSE, in order to address inconsistencies, ensure coherence and respond to new developments. This evaluation requirement – one of the first of its kind – enables policymakers to recalibrate this legal framework according to its real-world performance and tailor its impact to meet the ever-evolving needs of SISs.

Why?

The evaluation of a legal framework after its implementation — also referred to as *ex post* evaluation — uses evidence to assess whether such framework achieved its desired objectives, and to better understand the mechanisms by which it produced the expected outcomes, and to identify unintended effects. This evaluation is crucial to revise a legal framework and ensure it remains effective, efficient and coherent over time.

In Luxembourg, this evidence-based assessment was first conducted through a variety of stakeholder and expert consultations, giving them an opportunity to provide feedback on the 2016 Law. Such process helped improve the legal framework according to SSE actors’ demands, inform other SSE related laws and foster collective learning.

It is commonly acknowledged that the 2016 Law has considerably changed the legal environment in which social enterprises can operate. It has contributed to facilitate their establishment, as well as to increase their visibility and credibility. Additionally, many stakeholders agree that, by defining the criteria for the SSE, the law has been an important milestone towards better recognition of the SSE and all its actors in Luxembourg.

Key Activities

In the first semester of 2017, the Luxembourg Ministry of Labour, Employment and Social and Solidarity Economy (MTEESS) launched a consultation process with other ministerial departments to determine the scope of legislative provisions that could be amended to ensure that social economy organisations that opt for the SIS status are not penalised. Additionally, the Social and Solidarity Economy Union of Luxembourg (Union Luxembourgeoise de l'Économie Sociale et Solidaire – ULESS) brought forward several proposals for legislative changes to the MTEESS in October 2017.

March 2018, the MTEESS initiated consultations with Ministries to precisely identify aid and contracting systems with non-profits and foundations in the SSE sector that would require an adaptation of the legislative provisions in force. As a result, the Law of August 31, 2018 on SIS, amending many legislative provisions applicable to SSE companies, was adopted. This new legislation aimed at extending explicit rights that previously advantaged only non-profit organisations and foundations, such as tax exemptions, to SISs. According to ULESS, the amendment resolved many of the residual uncertainties related to the transition of SSE enterprises incorporated primarily as non-profits or foundations to the SIS regime.

On 29 October 2019, the MTEESS together with the OECD held the workshop “Boosting Social Entrepreneurship Development in Luxembourg” that applied the Better Entrepreneurship Policy Tool methodology to gather feedback from the participants. The event gathered relevant national stakeholders from the Ministry, support structures, networks, finance providers and international experts to discuss the opportunities and challenges that needed to be addressed to strengthen the environment for social entrepreneurship in the country. The outcome of the report was a provision of a set of policy recommendations for the National Strategy leading to a concrete action plan.

In May 2020, the MTEESS started to conduct an analysis of the effects of the law since its enforcement. To do so, the MTEESS conducted several consultations during the year, including workshops, expert consultations, surveys to SISs, and a large-scale seminar with crucial SSE stakeholders. These consultations highlighted a need to reduce the administrative burden, in particular for small entities that lack resources, and to create incentives for more entrepreneurs to adopt the SIS accreditation. In order to address these issues and taking into account the unprecedented challenges SISs had to face during the COVID-19 pandemic, another amendment was adopted in summer 2021.

In short, engaging stakeholders in the ex-post evaluations was particularly useful to obtain inputs on how the legal framework was perceived on the ground and to gather feedback from those parties affected by it. The inputs allowed improving the law through amendments, which made the SIS accreditation more attractive to SSE entities.

Impact

The MTEESS involved a wide range of stakeholders during its consultation processes including the Luxembourg ministries, the ULESS, SISs, SSE experts and critical actors. Such processes allowed to gather significant insights on challenges faced by SISs and discuss potential legislative adjustments in order to tackle these challenges.

The ULESS considers that the amendment of the 2016 Law in 2018, following the first evaluation, truly advanced legal security for all SSE enterprises and established SISs as an important enabler of social economy development. Moreover, it contributed to increasing the number of SISs. In fact, as of July 2019, there are 31 registered SISs, 25 of which obtained their accreditation after the 2018 amendment.

While the law of 12 December 2016 could be considered as a first legislative recognition of the social and solidarity economy in Luxembourg, the law of 31 August 2018 consolidated the SSI as the go-to legal form for enterprises operating in the social economy.

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