

SUPPORTING OCCUPATIONAL SAFETY AND HEALTH COMPLIANCE: THE ROLE OF PREVENTION SERVICES IN PORTUGAL

Introduction

In Portugal, employers have the legal obligation to respect and apply the Safety and Health at Work general principles (according to the Labour Code,¹ Law No 7/2009 of 12 February, Articles 281 to 284). This includes protecting workers' health and ensuring their safety in all aspects related to their work activity. The employer is responsible for informing workers about health and safety protection measures and providing appropriate training to prevent risks associated with work activities. However, the predominance of micro companies, family businesses and SMEs in Portugal poses a challenge to the application of the main legal regulations in force (namely, Law No 102/2009, from 10 September²), as the contracting of external occupational safety and health (OSH) services becomes the most common typology of prevention services in the country. This type of service has several limitations, including:

- the separation between safety and health services, leading to a lack of coordination between these areas;
- having multiple OSH service providers within the same company;
- variable service quality; and
- shortage of on-site occupational doctors and safety experts.

External prevention services often involve the provision of a '*one-off service*' and the selection of the companies providing OSH prevention services is frequently driven by cost considerations, primarily focusing on securing the cheapest option, often without consideration or knowledge regarding the quality, continuity and future impacts (including future costs) of such services (MTSSS, 2024).

This policy brief describes the role and functioning of external and internal (both private and public) prevention services in the Portuguese OSH system, the challenges that the actors within these services face in fulfilling their role, and initiatives and recommendations that may contribute to overcoming these limitations.

Background

The organisation of OSH prevention services in Portugal can be divided into four types, according to Law No 102/2009 from 10 September,² which defines the Legal Regime for the Promotion of Safety and Health at Work:

- **Internal Services:** Employers implement internal OSH services and cover only the workers for whom they are responsible. These services aim to guarantee the protection of workers and prevent occupational risks. An internal service must be adopted in companies with at least 400 employees or by a group of establishments separated by up to 50 km, and in establishments that carry out high-risk activities to which at least 30 workers are exposed.
- **External Services:** When employers lack the resources to prevent occupational risks and monitor workers' health, they may hire external services to provide OSH services. This is applicable when employers are not legally required to organise internal services. The state regulates the provision of external OSH services, subject to prior authorisation.
- **Common Services:** These services are established by several companies (that are not required to organise internal services) and exclusively cover their workers through a written agreement.

¹ More information is available at: <https://diariodarepublica.pt/dr/detalhe/lei/7-2009-602073>

² See: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2009-56365341-106425840>

Although this is a legal option, interviewees indicated that this type of service is not currently a common practice among companies in Portugal.

- Designated Employer/Employee(s): For companies or groups of establishments located within 50 km of the largest site, employing a maximum of nine workers and whose activities are not classified as high-risk, occupational health and safety activities can be performed directly by the employer or by one or more designated workers. In such cases, the designated workers must receive adequate training (50 hours long in total), be previously notified to the Portuguese Authority for Working Conditions (Autoridade para as Condições do Trabalho – ACT) and regularly remain on-site. As companies do not adopt this modality very often, a strong investment was made in promoting this training by two public organisations, both supervised by the Ministry of Labour, Solidarity, and Social Security (Ministério do Trabalho, Solidariedade e Segurança Social – MTSSS): ACT and the Institute of Employment and Professional Training (Instituto do Emprego e Formação Profissional – IEFP).

In short, the selection of the type of OSH services depends on two main factors. Firstly, the number of workers, as companies with a significant number of workers are obligated to organise internal OSH services. This involves creating a structure within the company to deal with occupational risk prevention issues and monitor workers' health. On the other hand, companies with fewer workers can consider other options, such as shared services or external services. Secondly, the activity carried out by the company also impacts this selection, as companies involved in high-risk activities (with at least 30 workers exposed), such as construction, the chemical industry or metallurgy, generally adopt internal services or shared services.

Challenges related to OSH prevention services in Portugal

The organisation of internal and external prevention services is distributed very unevenly in Portugal, with a strong **prevalence of external services**. As per data from the 2019 European Survey of Enterprises on New and Emerging Risks (ESENER 2019), Portugal is ranked second in terms of the use of external prevention services among the 33 countries surveyed (EU-OSHA, 2022). This is due to different causes. 'Compliance with legal obligations' and 'avoiding sanctions and fines by ACT' are the two main ones, accounting for around 97% and 96% of Portuguese organisations, respectively (EU-OSHA, 2022, p. 64).

Nevertheless, external services do not always indicate that the company has an integrated OSH approach, as these frequently involve the provision of a '*one-off service*' and a selection of the companies providing OSH prevention services based on the lowest price offered, due to the marketisation of prevention services. In such approaches, external services are not integrated into the company's daily operations, hindering the continuous and accurate assessment of risks. The *one-off service* model gives rise to discontinuity issues in implementing OSH prevention measures, as having separate service suppliers for OSH services can result in a fragmented approach, wherein OSH actions are not effectively coordinated. Frequently limited by the funding and timeframe of the requests, each company may concentrate on a particular aspect, such as risk assessment, medical examinations or training, without having an integrated overview of the company's working conditions. In addition, the control and assessment of the quality and appropriateness of the OSH actions are more limited when such services are outsourced.

When prevention services are external, **the separation between safety and health services** and the insufficient coordination between both areas within companies are reinforced. In Portugal, it is still possible for a worker — due to a lack of legal obligation — not to have had contact with an occupational doctor throughout their professional career, contributing to the under-reporting of occupational diseases and other work-related health problems.

The content of the current courses available for **OSH training**³ (e.g. lack of solid and supervised practical in-field training, insufficient number of hours) poses another challenge. This results in a large variability of professional profiles in the area, leading to challenges in finding candidates sufficiently prepared to meet the job demands and characteristics.

³ See: <https://diariodarepublica.pt/dr/detalhe/lei/42-2012-174778>

Besides these challenges, there is an issue regarding worker participation and the involvement of employee representatives in the country. While their contribution is critical for ensuring OSH compliance, findings from ESENER 2019 indicate that various forms of employee representation are not common in Portugal. Only 19% of the Portuguese companies participating in ESENER reported holding regular discussions in staff or team meetings about OSH issues, compared to an average of 35% among the EU-27. Portugal also has a low presence of 'health and safety representatives' (reported by 24% of surveyed companies, compared to an average of 56% in the EU-27), 'works councils' (4%, compared to 24% in the EU-27), and 'health and safety committees' (13%, compared to 22% in the EU-27) (EU-OSHA, 2022).

Current practices and initiatives

Interface between external and internal occupational safety and health services

While companies may establish their own internal OSH services, it is common for them to seek external preventive services when specialised skills or equipment are necessary — particularly regarding preventive safety services, such as risk assessments. In addition, it has also been a common practice in the country for companies to seek health and safety services separately, with service companies often also specialising in either safety or health services. This creates further difficulties in the articulation between those two areas of intervention and results in the possibility of workers remaining unprotected.

To tackle these limitations, some safety experts developed a series of initiatives to facilitate interaction between key stakeholders in OSH prevention, including occupational doctors, nurses, occupational therapists and other relevant professionals. Among these strategies, a few have been highlighted: holding daily or weekly meetings with multi-professional OSH teams to discuss workers' specific cases; carrying out preventive visits and technical 'in-field' assessments (i.e. at the workplace) with the participation of an occupational doctor; engaging in active listening and dialogue with workers to identify and address their concerns regarding their working conditions; and using a digital platform to integrate workers' and companies' safety and health information.

The National Association of Workers with Work-Related Disabilities and Injuries

In Portugal, private insurance entities are responsible for handling occupational accidents, including medical treatments and determining resulting disabilities (i.e. temporary or permanent, and their degree). In the absence of a public institution that intervenes automatically in cases of occupational accidents to oversee the entire process, the injured party may choose to proactively seek clarification regarding their rights and seek advice from entities such as ACT and the Public Prosecutor's Office or, alternatively, consult with a legal counsel. However, this initiative is influenced by factors such as workers' economic and educational resources (Machado et al., 2018). In short, unlike most EU Member States, Portugal has a private responsibility system, which leads to the introduction, in these cases, of an entity [the insurance company] 'foreign to the work reality and social policies' (Rodrigues, 2018, p. 4, free translation).

To respond to workers' concrete needs when interacting with different institutions (e.g. Labour Court, Social Security Institute), the NGO National Association of Workers with Work-Related Disabilities and Injuries (Associação Nacional dos Deficientes Sinistrados no Trabalho – ANDST) supports the provision of legal, social and psychological action, as well as support for the social and professional reintegration of workers who are victims of occupational accidents or diseases. Seeking to serve as a guardian entity for workers' rights, the association also addresses the unequal relationship between the workers and the institutions with which they can claim the safeguarding of their rights. The association has received public support from the National Institute for Rehabilitation (Instituto Nacional de Reabilitação – INR, I.P.) and the Social Security Institute (Instituto da Segurança Social) since 2004.

Currently, the ANDST has 20,000 members, of whom 4,000 receive direct support. In 2023, they held 2,673 individual support sessions with workers regarding occupational accidents and 426 regarding professional diseases, at a national level (ANDST, 2024). A proposal to transition from the existing private liability system for workplace accidents to a social responsibility model integrated within social

security, which would provide better protection for workers (Lacomblez & Leitão, 2018; Rodrigues, 2018), still requires a multi-level discussion (e.g. public bodies, social partners, insurance companies) and a political decision.

Designated employer/employee training

In 2022, the external services represented 92.2% of the total services, 7.1% were internal services and 0.4% adopted the designated employer/employee modality (Office for Strategy and Planning (Gabinete de Estratégia e Planeamento – GEP, 2023) of the MTSSS). ACT made a strong investment since the first trimester of 2023 to promote training for designated employers and employees, as companies do not adopt this modality very often training — related to the companies' lack of knowledge of this model and apprehension regarding the failure to comply with legal OSH requirements — and especially as it may positively impact OSH compliance among micro companies. In addition to compliance, these awareness-raising actions may also increase know-how within these companies, allowing workers to demand more from the company as they become more knowledgeable about OSH. From an economic point of view, this could also, for these companies, be a way to ensure that they meet legal requirements with fewer resources involved.

This training programme involved two public organisations, both supervised by the MTSSS:

- i) ACT, responsible for raising awareness and publicising the training actions among companies; and
- ii) the IEFP, responsible for providing training actions, respecting the requirements established by ACT.

The state's role in publicising this form of OSH service organisation and providing free training of nominated workers and employers is innovative in managing OSH in micro-enterprises. After the training, participants can request ACT's authorisation to perform OSH functions in this modality. By 2022, there were a total of 605 companies using the designated employer or employee model. The number of authorisation requests submitted to ACT to carry out OSH activities using the designated employers/employees model has evolved from 29 in 2019 to 48 in 2024. Although the numbers are still low, this effort by ACT and the IEFP resulted in an increase in the number of authorisation requests submitted to ACT to carry out OSH activities using the designated employers/employees model. Nevertheless, there are challenges that should be addressed. For instance, it is important to understand the reasons behind these numbers. Those reasons may stem from challenges related to cultural barriers, with companies unwilling to take on responsibility, preferring to outsource and have the reassurance of compliance. Another possibility is the low level of literacy in OSH matters, which may leave employers feeling insufficiently confident to assume these responsibilities internally and believing that the services offered by providers are more likely to ensure legal compliance.

This initiative reflects a preventive and pedagogical approach, namely because it: increases knowledge and promotes dialogue about OSH inside small-sized companies; raises awareness and promotes skill development of both workers and employers in the domain of OSH; and allows these companies to adopt this modality of organising OSH services, which is still scarce in Portugal, according to ACT data.⁴

One of the challenges of this practice regards the evaluation of the impact of the actions carried out, and to what extent they were consequential for micro-enterprises. That is, to what extent they contribute to effectively improving OSH practices. Another challenge regards the necessity to increase the number of employers taking part in this training, taking into account that so far it has been carried out mainly with employees, while ensuring that this initiative is not only used as a way of reducing investment in hiring external OSH services without effectively improving OSH.

Policy pointers

Based on the perspective of the interviewed OSH actors and previously identified policy gaps, a list of policy pointers has been suggested to be implemented:

⁴ The number of requests for this modality that ACT received increased from 18 in 2022 to 37 in 2023, and 48 by 16 September 2024.

- Reassess the existing framework of private liability for workplace accident repairs and debate the possibility of moving towards a social responsibility model that offers workers more protection.
- Propose the mandatory requirement for OSH service providers to follow a 'standard contract' (imposing minimum contractual terms, or explicitly outlining which services are not covered) to be established by the MTSSS. In this contract, it must be clearly indicated which clauses of Article 73º.-B of Law 102/2009 (Main activities of occupational health and safety services) are included in the service provided. The hiring of external services on a *one-off service* basis, in which only part of the employer's obligations is outsourced (for example, contracting only risk assessments, but not the monitoring of the implementation of measures), is one of the key factors contributing to the low quality of the services provided. Sometimes, the employer is unaware of which clauses remain uncovered.
- Ensure the evaluation of the quality of OSH services, and not just the monitoring of conditions that allow companies to adopt a particular modality of OSH services.
- Establish a systematic process for renewing the certification and/or monitoring of OSH service providers. The capacity of authorised external services and the quality of their performance are assessed through audits (by ACT). If essential requirements for the operation of the external service are found to be lacking, or if the main activities of the occupational health and safety service are not carried out, the authorisation may be suspended, reduced or revoked. Nevertheless, once certified, such service providers are not subject to any mandatory time-bound obligation for certification renewal.
- Develop OSH indicators, beyond the number of work accidents and occupational diseases, that involve the interoperability of workers' safety and health data (e.g. include the type and frequency of measures applied after a work accident or occupational disease — return-to-work plans with job adaptation or professional retraining — in the Social Annual Report companies provide to ACT), and ensure their regular updating within a defined timeframe. Regulate OSH training by establishing more stringent criteria from a technical-scientific standpoint, with the requirement of continuous training, considering the evolution of work situations (i.e. new forms of work), occupational risks and their impact on health.
- Creation of a professional regulatory body for safety experts to foster OSH good practices and regulate the profession. Specifically, this body could improve OSH practices through the development of a code of ethics and professional deontology, while also serving as a regulating entity and acting as a means of protecting these professionals.

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