



Peer Review on “The efficient transposition, implementation and enforcement of EU OSH legislation”

Copenhagen, Denmark, 19-20 June 2018

Peer Country Comments Paper - Austria

**We have come a long way in OSH -
but we must keep going**

DG Employment, Social Affairs and Inclusion

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1 Introduction

This paper has been prepared for the Peer Review on Efficient transposition, implementation and enforcement of EU OSH legislation. It provides a comparative assessment of the policy example of the Host Country (Denmark) and the situation in Austria. For information on the host country policy example, please refer to the Host Country Discussion Paper.

2 Peer country background

2.1 Milestones in Austria's historical background to OSH

Austria has a long Occupational Safety and Health (OSH) tradition. Already in the 19th century, rules and regulations were introduced that laid the foundation for all later OSH legislation. In 1883, the first Trade Inspectorate was installed as a supervisory authority. In November 1889, the first accident insurance for workers regulating the employers' liability for their workers was set up.

In 1973, the Employee Protection act¹ was released, which separated the Trade Regulations from the Occupational Safety Protection. In 1974, the Labour Inspectorate was based on a new act². A significant process in OSH was achieved when Austria joined the European Union in 1995. The membership and the negotiations (from 1992 onwards) to transpose EU directives accelerated the development of OSH regulations. These negotiations were mainly led by representatives of the Austrian Government (above all Federal Ministry of Labour and Social Affairs), the Federation of Trade Union and the Federation of Austrian Industries.

Since then, the legal basis for occupational safety and health has been provided by the Austrian Safety and Health at Work Act, which is applicable to all Austrian employees, except self-employed and other groups, as described later. This law was passed in 1994 and has been in effect as of January 1995. It is the direct transposition of the Directive 89/391/EEC on the introduction of measures to encourage the safety and health of workers. Other Directives of the European Union have been realized simultaneously with the Act (e.g. Directives 91/322; 83/477; 91/382...).

Taking account of recent developments, several amendments and revisions have followed since then; protecting workers working on Visual Display Units (VDU, 1998); regulations for companies with less than 51 employees (1999); implementing occupational psychology into the OSH services (2002); and assessing psychological risk factors at work in 2013. These changes were driven partly by the discussion of the of federal ministry and the social partners, but they also follow EU directives (e.g. VDUs).

Considering the increasing number of employees with severe health problems and long sick leave periods, the 'Labour and Health Act' was passed in 2011, followed by the 'Part-Time Reintegration Act' in 2017 to facilitate the return to work process.

Other legal provisions than the Austrian Safety and Health at Work Act (e.g. different Federal Employee Protection Acts³), apply to those employed in federal and provincial

1 Nummer 234. Bundesgesetz vom 30. Mai 1972 über den Schutz des Lebens, der Gesundheit und der Sittlichkeit der Arbeitnehmer (Arbeitnehmerschutzgesetz) [Number 234. Federal Law on Employee Protection May 30, 1972 about protection of life, health and ethically life of employees]

2 Nummer 143. Bundesgesetz vom 5. Feber 1974 über die Arbeitsinspektion; Arbeitsinspektionsgesetz 1974 – ArbIG 1974 [Number 143 Federal Law about the Labour Inspectorate, February 5, 1974]

3 Bundesbedienstenschutz-, Landesbedienstenschutz-, Gemeindebedienstenschutzgesetze, Heimarbeitsgesetz... [Federal, Federal State, Community Employee Protection Acts, Law for homeworking...]

government offices, local or municipal councils, agriculture, forestry and private households, and for homeworkers. All these provisions orientate strongly on the Austrian Safety and Health Act.

2.2 The Austrian workforce today

In 2017, Austria had a working population of around 4 300 000 people, of which 3 700 000 were registered as employees⁴, working in approximately 249 000 companies.⁵

In 2017, the labour force participation rate of workers aged from 15 to 64 years was 72.2 % (76.2 % for men and 68.2 % for women). The majority worked in the services and production industries.

In principle, the Austrian Safety and Health at Work Act applies to all employees in Austria. Self-employed workers, however, are exempt. They are covered through the accident insurance (in case of accidents) provided by the Workers' Compensation Board.

In 2017, 82 % of all Austrian companies were micro companies with 1 to 9 employees, 15 % had 10 to 49 employees, and around 3 % had between 50 and 249 employees. Less than 1 % were large enterprises.

Around 1 300 000 workers were employed in micro or small-sized companies. As small sized companies have fewer than 50 employees, they account for 97 % of all Austrian companies. This is relevant for the OSH inasmuch, as the Workers' Compensation Board provides OSH services free-of-charge⁶ for companies with fewer than 50 employees, through its prevention centres (known as 'AUVASicher Präventionszentren'). The services are free of charge consultations by Occupational Health and Safety Experts, such as; advising employees in safety and health; giving safety and health instructions to the employees; and supporting risk assessments.

Larger companies with over 50 employees must provide the OSH services or have experts themselves.

2.3 The concept of OSH

In Austria, the common understanding of Occupational Health is the protection of lives and health of employees at work. By making working conditions more worker-friendly and achieving high safety standards, all risks for work-related or occupational diseases and occupational accidents should be reduced.

In Austria, a distinction is made between "technical labour protection" and "worker protection". Technical labour protection regulates the protection of workers at work, looking at risks, agents, operating processes and so on.

It is based on the Austrian Safety and Health at Work Act and is comprised of theme-oriented activities. Regulating working hours, adhering to maximum driving times and protecting pregnant women and young persons are part of the overall country's worker-oriented occupational safety and health strategy for specific vulnerable groups.

Different laws regulate the protection of these groups, e.g. of youth at work or pregnant women.

The Health and Safety at Work Act applies to all those who work either based on an employment contract or a training relationship. It also covers agency workers.

⁴ STATISTIK AUSTRIA, Mikrozensus-Arbeitskräfteerhebung (Quartalsdurchschnitt). Erstellt am 20.3.2018. Bevölkerung in Privathaushalten ohne Präsenz- und Zivildienstler. - Erwerbstätige nach dem ILO-Konzept. [Statistics Austria, Austrian micro-census - labour force survey (quarterly data). Issued on 20.3.2018. Population in private households excluding those doing obligatory military and civil service - employment rate according to the ILO Concept]

⁵ <http://wko.at/statistik/bundesland/Arbeitgeber.pdf>

⁶ Currently there is a political debate about dissolving the AUVA

As already mentioned, other legal provisions (e.g. different Federal Employee Protection Acts), apply to those employed in federal and provincial government offices, local or municipal councils, agriculture, forestry and private households, and for homeworkers.

The Health and Safety at Work Act embodies the principles of worker protection. It lists the general obligations of employers, such as; the obligation to assess danger areas; the deployment of workers; the provision of information and instructions; the prevention of risks; and the design of safe and healthy working conditions.

As the official authority, the Labour Inspectorate is in charge of monitoring the employment conditions for the majority of Austrian employees (except employees of local authorities, agriculture, forestry, private households and institutions operated by religious communities). It regularly assesses technical and worker-oriented protection measures, like the employment of pregnant women or youth.

So-called "Employees Protection Commissions" (Bedienstetenschutzkommission) are installed at the federal ministries and local governments to monitor the protection of civil servants and people employed within the authorities. Nine Inspectorates for Agriculture and Forestry are responsible for employees in these industries, as well as for gardening, horticultural and market gardening companies, and tree nurseries.

A further nine Chemicals Inspectorates monitor adherence to the provisions of chemicals legislation. The Chemicals Inspectorates are not responsible for monitoring occupational safety and health regulations, but they cooperate with the Labour Inspectorate whenever necessary.

2.4 Main actors in OSH

The **Federal Ministry of Labour, Social Affairs, Health and Consumer Protection** holds the pivotal position. It is responsible for regulating all labour policy and working conditions. The Federal Ministry is also the focal point for national strategies within EU OSH campaigns and events. The former Federal Ministry of Health was responsible for public health, but also sickness and accident insurance. In 2017, it was merged with the Federal Ministry of Social Affairs.

The negotiating and development partners of the Ministries are always the Austrian Trade Union Federation (supported by the Austrian Chamber of Labour) and the Federation of Austrian Industries, sometimes together with the Austrian Chamber of Economic.

The **Labour Inspectorate** is Austria's largest authority that is responsible for monitoring employment conditions and implementing OSH in Austria. It is integrated in the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection. The Labour Inspectorate advises and controls. An **ombudsman office** has been installed at the Labour Inspectorate in 2017 for dealing with complaints and suggestions. National networking is co-ordinated by the Central Labour Inspectorate.

In the following passage you will find more of the main key stakeholders in OSH that are involved in the Austrian Occupational Safety and Health Strategy, such as:

- **Austrian Trade Union Federation** (Österreichischer Gewerkschaftsbund, ÖGB, an employees' association, important negotiating partner when developing new regulations or provisions)
- **Federation of Austrian Industries** (Industriellenvereinigung, IV, an employers' association, important negotiating partner when developing new regulations, provisions, represents the interest of big employers of the industry)
- **Austrian Economic Chambers** (Wirtschaftskammer Österreich, WKÖ, an employers' association, an advising partner when new regulations are developed, it represents the interest of employers, e.g. providing guidelines for employers for the implementation of OSH strategies)

- **Austrian Chamber of Labour** (Arbeiterkammer, an employees' association, and advising partner for new regulations, also providing research on OSH topics and producing trainings and guidelines for employees and employers, supporting the implementation process)
- **Social Security Institution for Farmers** (Sozialversicherungsanstalt der Bauern, representing the interests of agriculture workers, advising with new developments, important for enforcement and implementation)⁷
- **Insurance Institution for Austrian Railways and Mining** (Versicherungsanstalt für Eisenbahnen und Bergbau, in charge for railway and mining workers, advising new developments, important for enforcement and implementation)
- **Austrian Safety Experts' Organisation** (Verein österreichischer Sicherheitstechniker, VÖSI, advising partner on safety questions, disseminates OSH relevant information)
- **Austrian Society for Occupational Medicine** (Österreichische Gesellschaft für Arbeitsmedizin, advising partner on occupational health questions, disseminates OSH relevant information, conducts conferences...)
- **Austrian Medical Chamber** (Ärztelkammer Österreichs, advising in occupational health topics, represents also the interests of OSH physicians, important for regulations on education of occupational health professionals)

Currently, the **Austrian Workers' Compensation Board (AUVA)** is the largest statutory accident insurance provider. It participates in the development of new regulations and supports research, education and training. Thus, the AUVA is key in the implementation of OSH in small-sized companies. The AUVA offers support free of charge for small companies with up to 50 employees. The AUVA is financed mainly by the contributions paid by employers (1.3 % of the basis salary of each employee). Its legal duties are, first and foremost, the prevention of work accidents and occupational diseases. It provides insurance for around 5 000 000 people (3 300 000 employees and 1 400 000 pupils and students). Other tasks include; occupational health care; first aid for occupational accidents; post-traumatic treatment; rehabilitation; financial compensation; pension payments; and research. AUVA owns and runs 6 highly specialized accident hospitals and 4 rehabilitation centres over Austria. The future of the Workers' Compensation Board is uncertain as its dissolution is discussed, what this would mean for the OSH service for SME cannot be foreseen at the moment.

The **Austrian Advisory Board on Economic and Social Issues** (Beirat für Wirtschafts- und Sozialfragen⁸) of the social partners is a further think tank, it publishes studies and reports and advises the government.

2.5 The most important OSH-related legal measures driven by new challenges in the working world

Following changes in the working world that have brought new challenges for OSH, several provisions and acts have been successfully released in the last years, such as the Austrian Safety and Health at Work Act Reform Law 2002 (Arbeitnehmerschutz-Reformgesetz). This provides occupational psychological services as part of documented OSH service hours, considering the increasing psychic strains at work.

⁷ The Austrian government further intends to merge some of the social security institutions in 2018.

⁸ <http://www.sozialpartner.at>

In 2012, an amendment to the Austrian Safety and Health at Work Act was passed, which regulates the evaluation of psychological (psychosocial) strains at work (amendment to the Health and Safety at Work Act, Federal Law Gazette No. 118/2012⁹).

Taking into consideration the increasing number of employees with severe health problems and long sick leave periods, the Labour and Health Act¹⁰ was passed in 2011. It is implemented as a fit2work programme. The key objectives of fit2work business consulting are to reintegrate employees after longer periods of sick leave and to preserve their workability on a long-term basis. This is to be done by taking adaptive measures at organisational level and supporting the individual's efforts.

As of 1 July 2017, the Part-Time Reintegration Act (Wiedereingliederungsteilzeitgesetz)¹¹ was enforced in Austria. It provides for a gradual return to work after a long sick leave. Here, occupational physicians play an important role by judging if, and how, the individual's reintegration is possible.

2.6 Important OSH-related trends

Since 1995, work accidents have been reduced by more than 30 %. As a result, sick leave levels have also dropped accordingly. According to the Workers' Compensation Board (AUVA) and Insurance Institution for Austrian Railways and Mining, the number of occupational accidents has totalled around 87 000 per year in recent years.

Annually, around 170 000 victims of occupational accidents and diseases are treated by the AUVA. About 350 000 persons involved in accidents of all kinds are treated in the AUVA's trauma and rehabilitation centres every year. There are still around 73 000 cases per year where compensation is paid to victims of occupational accidents and diseases, or to their families.

Serious or fatal accidents at work must be reported to the responsible Labour Inspectorate immediately, unless the police have been notified. In the latter case, the Labour Inspectorate is informed by the police. Regardless of this, the responsible work accident insurance institution (e.g. the Austrian Workers' Compensation Board or VAEB) has to be notified too. This applies to fatal accidents and those in which the employee has been wholly or partly unable to work for more than three days. The notification must take place within five days of the accident. The number of lethal accidents has decreased gradually ('only' around 60 in 2016).

⁹ ASchG-Novelle (BGBl. I Nr. 118/2012) vom 1.1.2013 [Amendment of 1.1.2013, Federal Law Gazette I No. 118/2012]

¹⁰ Bundesgesetz, mit dem ein Informations-, Beratungs- und Unterstützungsangebot zu Arbeit und Gesundheit geschaffen wird (Arbeit- und -Gesundheit-Gesetz – AGG), BGBl. I Nr. 111/2010 (Art. 114 des Budgetbegleitgesetzes 2011), in der Fassung der Bundesgesetze BGBl. I Nr. 3/2013 (Art. 4 des Sozialrechts-Änderungsgesetzes 2012), BGBl. I Nr. 138/2013 (Art. 13 des Arbeitsrechts-Änderungsgesetzes 2013), der Verordnung BGBl. II Nr. 59/2014 und des Bundesgesetzes BGBl. I Nr. 30/2017 (Art. 4 des Wiedereingliederungsteilzeitgesetzes) [Federal Law which foresees information, counselling and support services in all matters of work and health (Work and Health Law), Federal Law Gazette I No. 111/2010 (§114 of the Budget Accompanying Act 2011) as amended in 2013, Federal Law Gazette No. 3/2013 (§4 of the Social Reform Act 2012), Federal Law Gazette I No. 138/2013 (§13 of the Workers' Rights Reform Act 2013), of the provision, Federal Law Gazette II No. 59/2014 and the Federal Law, Federal Law Gazette I No. 30/2017 (§4 of the Part-Time Reintegration Act)]

¹¹ Bundesgesetz, mit dem das Allgemeine Sozialversicherungsgesetz, das Beamten Kranken- und Unfallversicherungsgesetz, das Arbeitslosenversicherungsgesetz 1977, das Arbeit- und -Gesundheit-Gesetz, das Arbeitsvertragsrechts-Anpassungsgesetz, das Arbeitszeitgesetz, das Betriebliche Mitarbeiter- und Selbständigenvorsorgegesetz, das Lohn- und Sozialdumping-Bekämpfungsgesetz und das Einkommensteuergesetz 1988 geändert werden (Wiedereingliederungsteilzeitgesetz) [Federal Law which amended the General Social Insurance Law, the Civil Servants' Health and Accident Law, the Unemployed Security Act of 1977, the Work and Health Law, the Law on the Modification of Work Contracts, the Working Time Law, the Social Insurance Law for Employed and Self-Employed, the Law on the Prevention of Wage and Social Dumping and the Income Tax Law of 1988 (Part-Time Reintegration Act)]

There are 53 occupational diseases listed and legally recognised as such. In 2016, 1 155 employees were diagnosed with occupational diseases. These numbers have remained quite stable over recent years¹². The number of work-related diseases is estimated to be much higher than that of the officially recognised occupational diseases.

Sick leaves (not due to accidents) have remained quite stable over recent years (in days out of work), but the pattern and reasons have changed. Due to the aging working population, the number of long-term sick leaves are increasing. By new legal regulations, through support programs and with the help of OSH experts, the return to work rate should increase. Injuries, accidents and toxication are decreasingly given as reasons for sick leave, whereas psychiatric and mental diseases are constantly increasing. Latter challenge OSH services as well as rehabilitation organisations tremendously and have led 2013 to an amendment on the assessment of psychological risks at workplaces. For this reason, preventive programs on psychological health and specific risk assessment at work are on the march.

The continuously high rates of musculoskeletal disorders prompted several projects in this area. The protection against or prevention of noise exposure is still the main reason for consultations by the AUVA and likewise institutions.

Costs related to sick leave are calculated with 1 % (direct costs) of the GDP and further 1,6% of the GDP for indirect costs (Sick Leave Report 2017/ Fehlzeitenreport 2017).

The most important trends in relation to OSH are discussed in the National Occupational Safety and Health Strategy 2013 – 2020, which is organised as continuous improvement process and takes following topics in account:

- the improvement of workplace evaluation and risk awareness
- the prevention of work accidents
- the prevention of work-related health risks and occupational diseases, especially mental stress and strains of the musculoskeletal system
- prevention of risks caused by carcinogenic agents
- adapting work and working conditions to the age of all workers, also of ageing workers
- initial and further training as well as information in the field of occupational safety and health.

Trends such as; flexible working hours; new forms of communication and information technology (work 4.0); teleworking; and a demographic change, are reflected in the OSH Strategy.

The second European Survey of Enterprises on New and Emerging Risks (ESENER-2), Managing Safety and Health at Work¹³ investigated whether workplace risk assessments were carried out regularly in the establishments. According to ESENER-2 (and compared to ESENER-1), Austria has witnessed a reduction in the number of establishments that report carrying out regular risk assessment.

¹²

https://www.arbeitsinspektion.gv.at/inspektorat/Kontakt_Service/Taetigkeitsberichte_Unfallberichte/Taetigkeitsberichte

¹³ EU-OSHA's second Europe-wide establishment survey aims to help workplaces deal more effectively with health and safety and to promote the health and well-being of employees. It provides cross-nationally comparable information relevant for the design and implementation of new policies in this field. Second European Survey of Enterprises on New and Emerging Risks (ESENER-2) Overview Report: Managing Safety and Health at Work European Risk Observatory
Authors: Xabier Irastorza, Malgorzata Milczarek, William Cockburn, European Agency for Safety and Health at Work (EU-OSHA), Luxembourg: Publications Office of the European Union, 2016

Another topic that the report addressed was what drives the countries to manage OSH and psychological/psychosocial risks at workplaces. The major reasons for addressing health and safety in companies were: fulfilling the legal obligations, meeting the expectations of employees or their representatives, maintaining the organisation's reputation, maintaining or increasing productivity, and avoiding fines by the Labour Inspectorate (last place in Austria).

3 Transposition and implementation of the EU OSH legislation in the peer country

3.1 The Austrian 'Health and Safety Act' with EU membership

When Austria joined the European Union in 1995, the Health and Safety at Work Act was passed. It still is considered as the cornerstone in the Austrian history of occupational health. The negotiations concerning how the EU Directive 89/391/EEC could be transposed in Austrian Law had already started several years before. The process was mainly led by the government (Federal Ministry of Labour and Social Affairs), Austrian Trade Union Federation and the Federation of Austrian Industries.

The content of the 1995 Act, as result of intensive negotiations, was more-or-less an equal transposition of the EU Directive 89/391 and several other directives such as; 91/322 EC Treaty; 83/477 EC Treaty; 86/188 EC Treaty; or 89/655 EC Treaty. The basic principle in the applied transposition was: "If Austrian law is stricter, it is to be maintained. If EU law is stricter, the Austrian Law has to be adopted".

However, in comparison to Denmark. the transposition process was not only an adaptive process of National Law to comply with the Directive, but rather creating a completely new law with the Health and Safety at Work Act based on several EU directives (as previously mentioned). In the meantime, many further regulations on OSH have been incorporated from EU directives (over 20 over the years) in the Health and Safety at Work Act.

In comparison to the former Health and Safety Act of 1972, the scope of the Health and Safety Act of 1995 is more widely set, and it has brought about several improvements, especially for employees of SM

Es. Prior to 1995, occupational health services had been mandatory for companies with over 250 employees only.

Here is a summary of the key points of the 1995 Health and Safety at Work Act:

- every employee or worker has the right to occupational safety and health services;
- employers are obliged to carry out risk and workplace assessments, to develop action plans, to evaluate and document all risks, and measures taken;
- every employee or worker has to be instructed about the risks that exist in a company and how he can protect himself;
- it is obligatory to nominate a safety representative, if a company has more than 10 employees;
- documentation of all occupational accidents is mandatory;
- concentration values of dangerous agents have to be measured at regular intervals and exposure limits established;
- all screens and monitors must be set up and designed ergonomically;

- free occupational safety and health services are provided by the AUVA for small-sized companies with up to 50 employees. Since 1999 the AUVA has supplied these services at ('AUVA sicher') Prevention Centres.

Along with the new Health and Safety at Work Act also several other laws had to be adopted to fit, such as the General Social Insurance Act (Allgemeines Sozialversicherungsgesetz), Employment Contract Adaptation Act (Arbeitsvertragsrechts-Anpassungsgesetz AVRAG) or the Law governing the Employment System (Arbeitsverfassungsgesetz ArbVG).

3.2 Implementation of OSH

The Austrian Occupational Safety and Health Strategy (Austrian OSH Strategy) involves all national and regional actors in health and safety at work and provides the overall frame develop new goals, to check targets, to adapt targets and to discuss implementation.

The National Occupational Safety and Health Strategy is organized as continuous improvement process. The clearly defined structures of the Occupational Safety and Health Strategy 2013 - 2020 for the established bodies as well as consensual objectives, form the basis for the implementation of jointly-developed prevention measures for safety and the protection of health in the workplace. Jointly developed means involving – as far as possible – all national and regional stakeholders in occupational safety and health in accordance with their competences and the resources which they can voluntarily provide. It also means integrating them in an optimal way into strategy, goal-setting, planning and the realisation of projects.

The basis for action of the Austrian Occupational Safety and Health Strategy 2013 - 2020 is the currently valid legislation on occupational safety and health as well the consensual setting of goals by the relevant actors, such as ministries, statutory work accident insurance institutions, the social partners and other interest groups.

The Occupational Safety and Health Advisory Board (ASB) plays a pivotal role in the Strategy. It is the body which makes fundamental decisions and is defining the strategy contents based on the proposals of the Evaluation Team, while considering the Joint Resolution of the partner organisations.

The ASB has been commissioned to advise the Minister of Social Affairs on basic issues of safety and health protection at work and draw up the national Occupational Safety and Health Strategy 2013 – 2020

(https://www.arbeitsinspektion.gv.at/inspektorat/Information_in_English/National_OSH_Strategy).

The social partners are also integrated into the ASB. One of the more recent provisions (2013) of the Health and Safety at Work Act. considers the increasing psychological risks at work. The latest act is a deregulation law¹⁴ enforced in 2017 easing e.g. regulations for documenting near misses or toughening non-smoking policies in the workplace. The content of provisions had been discussed before in the bodies of the National Strategy.

Implementation support for the companies

Employers are responsible for implementing the regulations of the Health and Safety at Work Act at a company level. They have to meet the highest and most recent technical and ergonomic standards – as stipulated by law. They are also obliged to take preventive measures. Companies over 51 employees usually buy support from private consultants

¹⁴ (ArbeitnehmerInnenschutz-Deregulierungsgesetz, Bundesgesetzblatt I Nr. 126/2017) Workers' Protection Deregulation Law, Federal Law Gazette I No. 126/2017

as Occupational Physicians, Safety Experts, Psychologists and other experts. Large companies increase to include OSH professionals in their fix staff.

All these experts have received special training.¹⁵

Companies with fewer than 51 employees are supported free of charge by OSH services of AUVA.

Additionally, social partners and several social insurance institutions support the implementation process by providing guidelines, trainings etcetera.

The implementation of OSH on the company is also indirectly supported by programmes like fit2work- business consulting. Every company that participates in the fit2work programme (in 2018 overall over 1 500) is checked if they have fulfilled their legal obligations, before they can participate in the program. Legal compliance is spot-checked by the Labour Inspectorate and other mentioned authorities. About 75 % of the companies have done the basic workplace risk assessments, 61% have established activities on basis of the risk assessments¹⁶, the compliance with psychological risk assessments is assumed even to be lower.

4 Enforcement of EU OSH legislation in Austria

Companies are obliged to comply with the Health and Safety at Work Act, its amendments, and other laws applied. They are forced to do so by law and are controlled by the inspection authorities.

Austrian legislation emphasises more on compliance by provisions and penalties.

To give two examples:

1. If the risk assessment is not done, at first the company is granted some time to catch up. Then, if the compliance is still not achieved, the company is fined by the Labour Inspectorate.
2. If an occupational accident happens or occupational diseases occur, the company must prove how they meet OSH standards. In the long term, the Workers' Compensation Board may regress their expenses for treatment of affected employees.

These proceedings seem to be comparable with the situation in Denmark, where priorities lie on sticks and sermons, rather than carrots as described in the host country paper. In Austria, like Denmark, Federal Trade Unions want more control, whereas the Chamber of Economic wishes more self-regulation and less pressure by law.

¹⁵ **Occupational health education in Austria:**

Occupational Physicians: OSH doctors can have different educational backgrounds: firstly by appointment by the former Federal Ministry of Health or secondly through a diploma of the Austrian Chamber of Medicine (ÖÄK-Diplom), which can be acquired at three organisations mainly. About 2 500 MDs are certified to work as occupational physicians, of which 110 doctors are specialised in occupational health (Facharzt). Not all occupational physicians work at Occupational Health Centres, most of them have direct contracts with the companies.

¹¹ continued **Safety Experts:** The open data set in Austria does not show a list of safety experts (<https://www.data.gv.at/katalog/dataset/14c1d152-9772-4535-88e0-c44198b7854e>). But there are far more safety experts than occupational physicians supporting companies and employees. Many of them were trained through the AUVA or other authorised institutions.

Occupational Psychologists

Many companies receive counselling and support from occupational psychologists, specialised on the assessment of psychosocial risks at workplace. However, presently occupational psychologists are not ranked and embedded in the Health and Safety at Work Act equally to other occupational safety and health experts.

¹⁶ Evaluation of the EU Occupational Safety and Health Directives, Country Summary Report for Austria

4.1 Control of enforcement

The **Labour Inspectorate** (LI) and similar authorities are in charge for monitoring the enforcement of the OSH standard, of compliance with the Health and Safety Act and its numerous amendments.

Owing to its limited resources (around 300 inspectors, an administrative staff of 100 and a budget of EUR 33 000 000), only a restricted number of companies can be inspected¹⁷. It is not possible to conduct yearly inspections of each workplace on compliance. As a result, inspections prioritize. Top inspection priority is given to a workplace when the information of an imminent danger exists, or an employee complains an unsafe or unhealthy workplace condition.

The Labour Inspectorate also used to make priority rankings for checking, so focus areas were defined every year. Companies from these areas were then selected for inspection according to a traffic light labelling system. This system had similarities to the Danish Risk Based Inspection.

A new priority system is in development. Already in the last 5 years the Labour Inspectorate has changed its policy from fining to advising, which has had a positive impact. The Institute for Social and Economic Sciences (Institut für Sozial- und Wirtschaftswissenschaften¹⁸) interviewed 560 employees' representatives and over 1 300 safety representatives about the Labour Inspection in 2017. Far more than 80 % rated the cooperation positively. Nearly 80 % were convinced that the safety and health awareness in the companies has risen through the work of the inspections.

In April 2018 the present Minister of Social Affairs also issued a new 'target values' decree (Zielwerte-Erlass des Sozialministeriums¹⁹), which urges the Inspectorates to emphasis safety and health rather than issue penalties. In future, the effect of the LI's work shall be evaluated by the number of improvement and correction measures achieved (indicator 'improvement per intervention').

5 Interlinkages between transposition, implementation and enforcement

To summarise, in Austria, OSH of all employees is regulated by the Health and Safety at Work Act, further amendments and provisions, all of which are obligatory to employers. This transposition is a political process which culminates in laws, provisions and amendments. Before passing laws, debates including especially the social partners are run. The implementation standards and the enforcement on the company level are controlled and prosecuted by supervisory authorities. Its development and application are supported by the various social insurances, social partners and private organisations (like OSH Centres).

The process of transposed legislation to implementation on the company level, the compliance to the legislation and the outcome of – hopefully good OSH levels and improved health and safety is often very long and not a straightforward process.

The overall information gained e.g. via control is reflected regularly by the Inspectorate, for example in working groups of the 'Occupational Safety and Health Strategy'. In

¹⁷ In 2016 the LIs visited around 46 000 workplaces, 13 000 companies on constructions sites and 1 300 non-resident workplaces and performed 69 000 inspections. They accounted for about 32 000 consultations for projects in companies, 59 000 medical assessments and several other activities like negotiations. They further checked around 377 000 working days of drivers.¹⁷

¹⁸

https://ooe.arbeiterkammer.at/service/presse/presseaussendungen/Arbeitsinspektorate_sind_unverzichtbar.html

¹⁹ <https://diepresse.com/home/wirtschaft/economist/5410955/HartingerKlein-fuehrt-neue-Zielwerte-fuer-Arbeitsinspektoren-ein>

further consequences this can lead to changes in regulations or providing and dissemination of relevant information or training possibilities.

To give one case example: After the amendment for the assessment of psychological risks at work, there were passionate debates in the companies how to proceed. The external OSH experts recommended very different instruments and the prices for assessments varied a lot too. So, the Workers' Compensation Board developed risk assessment tools (group modules and questionnaires) and trainings, which were provided for free to companies. These tools were designed for small and medium sized companies, but especially the group process modules were and are very often utilized in large companies too.

The Labour Inspectorate supported with advising and providing guidelines.

Results have been achieved in the number of organisations performing assessments as part of a continuous improvement process to reduce psychosocial strains in work.

Nevertheless, the most frequent reasons for applying for disability pensions are still psychiatric and mental disorders often in relation with high strains at the workplace.

The relative newly by law installed reintegration programs for long sick leaves should support a higher return to work rate for the future.

So sometimes, it's a very long way from transposition to success on the floor level.

Beside forcing and controlling qualified information via campaigns, conferences or trainings are supplied and supported by the regulating bodies, Social Insurances and the Social Partners.

At the moment the Labour Inspectorate manages and supports several awareness campaigns (the most recent campaign being 'Healthy Workplaces - Manage Dangerous Substances 2018 - 2019').

The National Safety and Health Strategy 2013-2020 integrates the most important national and regional stakeholders, conducted by the Central Labour Inspectorates. It is organised as a continuous improvement process and allows the reflection on new themes raised by the changes in work or by feedback from the companies and employees (represented by chambers or Unions).

The role of the social partners for transposition, implementation and enforcement

The social partners play a crucial role in defining working conditions, regulating wages, finding agreements on collective minimum wages but also developing new OSH strategies. The organisations participating in this social dialogue are the mentioned Austrian Trade Union Federation (employees' association), the Austrian Economic Chambers (employers' association), the Federation of Austrian Industries (employers' association) and the Austrian Chamber of Labour (employees' association).

The social dialogue is taking place when developing legal regulations, after the transposition in the implementation process.

Representatives of the social Partners are participating in the Occupational Safety and Health Strategy, where findings and new topics relevant for a high OSH standard are discussed.

The dialogue among the social partners also takes place at company or enterprise level. According to the Health and Safety at Work Act, it is mandatory to inform and involve the employees' representatives. In companies with more than 10 employees, where there is no employees' representative, a safety representative must be appointed on all issues related to occupational safety and health.

Companies with over 100 employees (or 250 employees where no manual work is involved) have to establish an internal structure, the so-called Work Environment

Organisation (Arbeitsschutzausschuss, ASA²⁰), a committee for occupational health and safety for mutual information and counselling of the employer, which also includes the employer and the employees' representative.

Large companies often develop cooperative agreements for establishing sustainable OSH strategies.

There are many synergies and overlapping but of course also sometimes grey areas between the different stakeholders.

6 Assessment of success factors and transferability of the host country example

The described Danish Orchestration Model, which should lead to more synergies of policies, programmes and intervention between the different stakeholders, is a challenging and promising concept. The Labour Inspection is seen as the 'conductor'.

The Austrian Occupational Safety and Health Strategy conducted by the Labour Inspection goes in a similar direction but seems not so powerful as the Danish Model described.

The Workers' Compensation Board also plays until now a pivotal role in OSH. It shares its information with companies, experts, etcetera.

Transparency and sharing can be expected by the members of the Advisory Board and Social Partners.

In the private sector, there is a high grade of competition between OSH centres and occupational health and safety experts in Austria, which makes it difficult to share experiences, instruments and facilities, as the private sector lives from selling its services to companies, who are obliged to buy the services. So here orchestration seems difficult for Austria.

²⁰ §88 ASchG, § of the Austrian Health and Safety at Work Act

7 Questions about the host country

- How does the systematic surveys to monitor the status of the OSH at company level work?
- How has the government strategy improved the work environment and how are the effects evaluated?
- How is the risk-based inspection is organised?
- How was the evaluation of materials that have been produced by the specific councils done?

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Annex 1 Summary table

The main points covered by the paper are summarised below.

Peer country background

- Historical background of Austrian OSH, transposition of the EU Directive 89/391 into the Austrian Safety and Health Act 1995, in-cooperation of other EU directives to Austrian law and amendments to the Act
- The Austrian workforce, working population, employment situation
- The concept of OSH in Austria: distinction between technical labour protection and worker protection, obligations for employers, monitoring authorities like the Labour Inspectorate
- The main actors in OSH like the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection, Labour Inspectorate, Trade Union, Federation of Austrian Industries, Workers' Compensation Board...
- OSH- related legal measures such as the amendment on the assessment of psychological strain at work, Labour and Health Act, Part-Time Reintegration Act
- OSH related trends like the development of occupational accident, diseases, work related diseases

Transposition and implementation of the EU OSH legislation in the peer country

- The Austrian Health and Safety Act and its main content in comparison to the OSH Law before 1995,
- Implementation of OSH and its main stakeholders, the Austrian Occupational Safety and Health Strategy 2013-2020
- implementation support for companies, external OSH expertise and service free of charge by the Workers' Compensation Board

Enforcement of EU OSH legislation in the peer country

- Obligation for companies
- Monitoring by Labour Inspectorates, spot checks on basis priority rankings, policy changes from fining to advising

Interlinkages between transposition, implementation and enforcement

- The political process of regulations by law, control and prosecution of the implementation by supervisory authorities, the players in National Safety and Health Strategy 2013-2020
- The role of the Social Partners and its representative on a political level and on the company level

Assessment of success factors and transferability

- The Danish Orchestration Model in comparison to the National Safety and Health Strategy and the conduction of the Labour Inspectorate
- Transparency in sharing information

Questions

- How does the systematic surveys to monitor the status of the OSH at company level work?
- How has the government strategy improved the work environment and how are the effects evaluated?
- How is the risk-based inspection is organised?
- How was the evaluation of materials that have been produced by the specific councils done?

Annex 2 Example of relevant practice

Name of the practice:	Amendment on psychological/psychosocial risks at work
Year of implementation:	2013 without transition period
Coordinating authority:	Labour Inspectorate
Objectives:	To assess psychological/psychosocial risks and to establish activities on basis of the risk assessment
Main activities:	Pass the amendments to the Austrian Safety and Health Act 1995 following long negotiations Develop instruments free of charge for companies, provide information and support by the Workers Compensation Board, Labour Inspectorate, Social Partners
Results so far:	After strong resistance of the companies to comply, increasing acceptation mainly due to transparent information how to achieve and due to the provided support. Also, the advantages for companies to assess were highlighted and are helping that companies understand and accept.

