

Portugal – Decree-Law no. 328/93 (September 25th)

Aspect of social security: Permanent disability; Temporary long-term disability/sickness; Old-age; Pregnancy; Child care

Target group: Entrepreneurs and assisting spouses

Original name practice: Decreto-Lei nº 328/93, de 25 de Setembro

Responsible organisation:

Secretary of State for Social Security (Government department)

Praça de Londres, 2 - 17º

1049-056 Lisboa

Portugal

Phone: +351 21 84 41 700

Website: www.mtss.gov.pt

Name of the organisation implementing the practice:

Social Security Institute (Government agency)

Rua Rosa Araújo, 43

1250-194 Lisboa

Portugal

Phone: +351 21 31 02 000

Website: www.seg-social.pt

A - Background

In Portugal there is a social security system for the self-employed. This system has a compulsory insurance part for the benefits in case of maternity, occupational disease, invalidity, old age and survivors. The self-employed who earn equal to or less than six times the highest minimum salary are not compulsory insured. Besides, there is a voluntary insurance for sickness and self-employed are entitled to child care benefits like all residents. In case of employment injuries, self-employed are required to be insured with private insurance companies. The spouse has been included under the system of the self-employed since 1993. Since self-employed have to pay both the share of the employer and employee, their contribution is higher. The contribution of the assisting spouses is calculated in the same way as the self-employed.

There is also a compulsory social insurance system for employees of the private sector¹. This public system is funded by contributions paid by the employee and employer and transfers from the state budget. The system for employees is different from the system for self-employed regarding sickness, maternity and unemployment. There is no insurance system against unemployment for self-employed. With regard to sickness, the insurance period in order to qualify for sickness benefits is shorter for self-employed compared to employees, as is the period over which benefits are paid. With reference to maternity, self-employed are not entitled to paternity leave and the optional leave that follows paternity leave whereas employees are entitled.

Besides the employee, the self-employed and the public servants systems there are 2 other public systems:

¹ This compulsory social insurance system applies only to the private sector. There is in Portugal a specific system for employees of the central, regional and local governments, the Civil Servants' Pension Fund (Caixa Geral de Aposentações). Though employees of some government owned companies and institutes, incorporated under private commercial law, are covered by the compulsory social insurance system, not the civil servant's.

- 1) Voluntary Social Insurance. This insurance covers volunteer workers, researchers benefiting from scholarships as well as workers employed by foreign ship-owners
- 2) Non-contributory system. This system covers economically or socially disadvantaged people. This system includes the "Social Integration Income". This is a temporary monthly benefit of a variable amount which is awarded together with an integration programme.

B - General description of measures or activity

The Decree-Law no. 328/93 has been implemented in September 1993. The law is targeted at self-employed and assisting spouses.

The main objective of this law is on the one hand to enhance the security system for self-employed and on the other hand to extend this system to the assisting spouse.

Self-employed workers were experimentally included in the public social security system in Portugal in 1977. Five years after that inclusion, a full-developed system was introduced for these workers in 1982 (Decree-Law 8/82). After this date there have been some revisions of the system in favour of the self-employed.

Major revisions of the system for self-employed occurred in the following years:

- | | |
|---------------|---|
| 1983 and 1984 | Some options for a number of professions of self-employed workers (engineers, medicine doctors, lawyers, etc.) were introduced. |
| 1986 | Exempting payment of contributions for self-employed workers who are already covered by the social security mandatory system because they are simultaneously employees (of a third party organisation). |
| 1988 | Making the 1986 exemption optional. This allowed employees, that are also self-employed, to benefit (and contribute) to the self-employed system concerning sickness, old age and survivors risks if they find this advantageous. |

In 1993 a major revision extended the regulations concerning self-employed to spouses. An assisting spouse was defined as "a spouse who works with the self-employed, collaborating with him/her in carrying out his/her profession on a regular and permanent basis". Under this extended system assisting spouses have the same conditions of the self-employed as regards contributions, benefits and requirements.

After this major change, 2 other revisions were made:

- | | |
|---------------|---|
| 1996 | Making the system optional for individuals with very low income. Exempting self-employed from paying contributions during the 1st year of registry. Also some adjustments have been made to the sickness insurance. |
| 1999 | Making some changes in exemption cases when the self-employed (or spouse) may accumulate benefits because he/she is also a pensioner or an employee of a third party and introducing an adjustment to counteract the improper use or abuse of the system. |
| 2000 and 2004 | Some minor revisions were introduced. |

Under the system introduced in 1993 and revisions thereof, contributions paid by self-employed (and spouses) are based on a conventional income specified by the self-employed at the time of registering or at the time changes to the conventional income are notified therefrom². This conventional income is selected by the self-employed from 10 levels, defined as multiples of the national minimum wage, starting with 1.5 times (2006: Euro 578.85/month) and ending with 12 times this minimum wage (2006: Euro 4,630.80)³. The contributions are calculated by applying one out of 2 rates to the selected conventional income: 25.4% applies to the mandatory system (maternity, invalidity, old age and survivors) and 32% applies to the voluntary extended system (same risks plus sickness, occupational disease and child care).

Self-employed with annual income below 18 minimum wage/salaries may ask the social security system to apply a conventional income below the established brackets, but this income cannot be lower than half of the minimum wage.

Self-employed (and assisting spouses) are exempt from paying contributions during the first 12 months of activity, being the first monthly contribution due on the 13th month after the inception of their businesses. This exemption does not apply to the self-employed resuming an activity that he/she had suspended in the past.

If the income of the self-employed is below half of the minimum wage (2006: Euro 2,315.40/year), the registration with the social security system is not mandatory, but remains an option for the self-employed.

At the time of adopting the legislation in 1993, there was an intention that the budget of self-employed sub-system was to be shown as separate item, both in terms of contributions paid by the beneficiaries and of the disbursements of the system. Notwithstanding, though the overall contributions are made publicly available by the social security system, there are no figures concerning the overall cost of the sub-system in terms of disbursements paid to self-employed and assisting spouses. Thus, the financial data of both contributions and payments of this system are aggregated with the ones pertaining to the other mechanisms into an overall system (*regime geral*). This mandatory system is funded by the social security budget, which is funded by mandatory contributions of employers and employees, including the self-employed and assisting spouses, as well as the government (on a supplementary basis). Since long, and as in many other European countries, the payments of pensions and other expenses of the state security system have been growing at faster pace than revenues from contributions, generating an annual deficit which is covered by direct transfer from the state budget. In Portugal, this social security deficit increased from Euro 364 mn (0.8% of the GDP) in 1990 to Euro 6,692 mn (3.7% of the GDP) in 2007⁴.

As noted before, besides the general mandatory social security system applying to the private sector, there is a special security system for government employees, the Civil Servants' Pension Fund (*Caixa Geral de Aposentações*), which suffers from similar problems: the ratio of pensioners to contributors almost doubled since the 90's and the government does not pay its social contributions as an employer, but makes the transfers needed to cover the deficit. This financial transfer from the budget to the Civil Servants' Pension Fund to finance the gap has been rising continuously⁵; in the last years these transfers amounted to more than 2% of the GDP⁶.

² Some restrictions apply to these changes, e.g.: changes are accepted on an yearly basis, increases are only allowed to the immediately following level.

³ The conventional income of the assisting spouse must not exceed the self-employed conventional income.

⁴ Mateus, Abel (2002) and Portuguese Government (2006)

⁵ OECD (2004)

⁶ Mateus, Abel (2002)

The mandatory social security system in Portugal is managed by the ISS (Social Security Institute) and distributed throughout the country by regional and local offices: there are 18 district centres (*Centros Distritais de Segurança Social*) and a network of 352 local offices (*Serviços de Atendimento*). This institute also oversees the National Pension Centre, responsible for managing the pensions of the system. Other agencies of the Ministry of Labour and Social Solidarity (MTSS) also perform tasks related to the security system, notably in financial, statistical, technical, computer and other matters. MTSS oversees the activities of these bodies and is the government department responsible for policymaking in the labour and social security areas. The Minister is assisted by 3 Secretaries of State, one of them being in charge of the social security system.

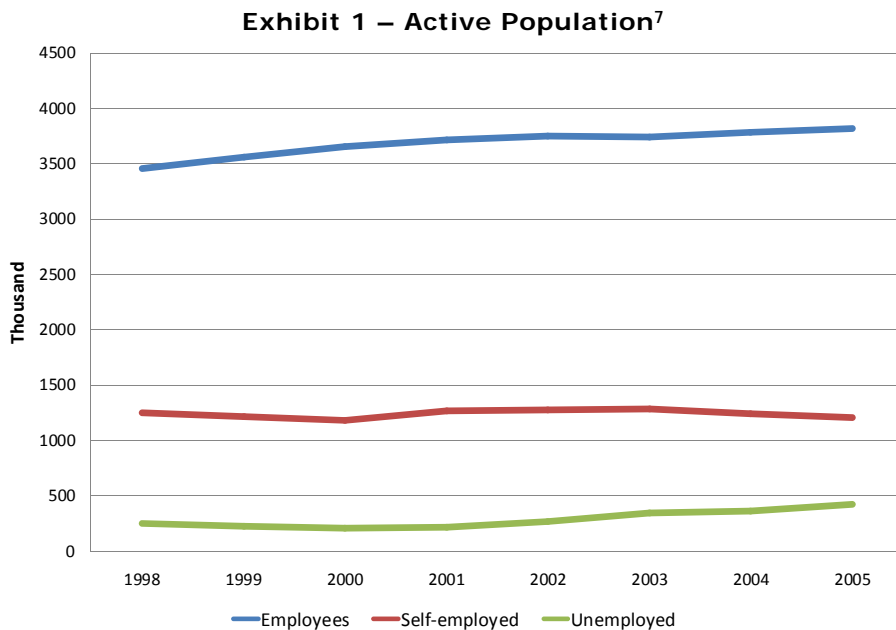
C - Results (Impact of practice)

In recent years the number of self-employed in Portugal has remain stable (around 1.2 mn. people), showing a small decline, from 24% (1998) to 22% (2005), as a percent of total labour force.

According to the latest statistics published by MTSS there were slightly more 400 thousand self-employed registered and contributing to the social security system, thus beneficiaries of the Decree-Law 328/93 sub-system.

So, only about 1/3 of the self-employed are using the Decree-Law 328/93 sub-system. Some explanations for this gap are:

- some self-employed professionals are covered by different social security systems; this is the case of lawyers, solicitors, etc.;
- some entrepreneurs though running their businesses incorporated under sole proprietorship firms, or trading under family partnerships, thus being covered by the general social security system for employees, may be classified as self-employed in the labour survey questionnaires of INE (the national institute of statistics);
- some public servants (particularly in the health and educational systems) who simultaneously carry out independent practices, may be classified under self-employed for labour statistics purposes, though being covered by the Civil Servants' Pension Fund system for social security purposes.

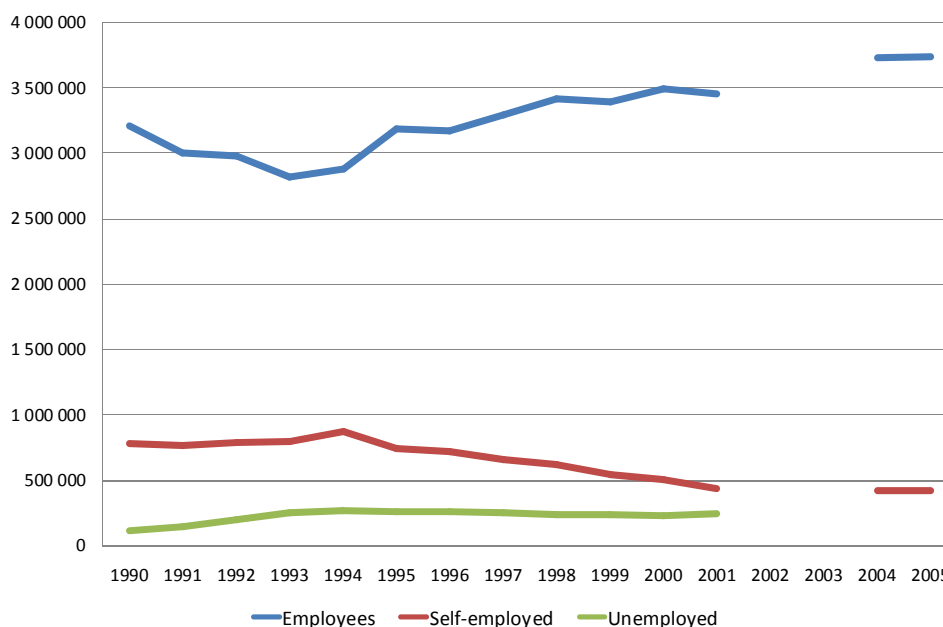


⁷ Source: INE (2005)

The number of beneficiaries of the self-employed system, which attained a maximum in 1994 immediately after the legislation was passed, has been declining since then (Exhibit 2). Thus, the gap between the total number of existing self-employed and the number of beneficiaries of the self-employed system has been increasing. The reasons explaining this behaviour are the following:

- both the 1996 and 1999 revisions reduced the number of self-employed covered by the sub-system, notably by restricting the coverage to the self-employed with annual income above 18 times the minimum wage/salary and by exempting the self-employed that were already covered by other social protection system;
- due to some rigidity of the Portuguese labour market, some companies (particularly in the service and trade industries) have part of their staff contracted as self-employed on a renewable monthly basis, thus avoiding some running costs and making easier the dismissal process when a downsizing process takes place; but when the demand for workers is very strong it is more difficult for these companies to recruit or maintain workers under these precarious contractual conditions; thus, whenever there is a strong upturn in the general economic conditions of the country (which happened in the 2nd half of the 90's), there is a substantial transfer of workers from the self-employed to the employee statuses;
- in 1996 the government decided that workers that had been recruited by central government agencies and departments under the same scheme (self-employed on a renewable monthly basis) should be integrated in the civil servants' cadre; following this decision, and during the next 4 years or so, some 70,000 workers were integrating thus adding to the transfer from self-employed to the employee statuses (civil servants in this case);
- when a economic crisis situation occurs, as in 2002 and following years in Portugal, the first workers to be dismissed are the ones contracted under this precarious self-employed status; as there is no unemployment subsidy coverage for self-employed, when dismissed they simply vanish from the self-employed social security system.

Exhibit 2 – Beneficiaries of the Public Social Security System⁸



⁸ Source: MTSS, Estatísticas e Publicações da Segurança Social. There no figures available for 2002 and 2003.

As no independent evaluation was carried since the inception of the Decree-Law 328/93 system, the above explanations for the discrepancies between statistically self-employed and beneficiaries of the self-employed have a qualitative and conjectural nature.

The self-employed social security sub-system has been object of some criticism by trade union organisations, particularly by the CGTP confederation. There are two main points to this criticism⁹:

- the self-employed security system is not financially balanced, accruing losses every year, which are compensated by transfers from the budget of the general system; as the latter is funded by contributions of employees¹⁰, some trade unions feel that employees (who are the vast majority of the membership of trade unions) are subsidising the self-employed (who tend to have a quite low unionisation rate);
- the contributions of the self-employed are based on fictitious income amounts, because the self-employed select arbitrarily a conventional income, a multiple of the national minimum wage (as explained before), which can be quite modest when compared with the income he/she actually earns; in this way the self-employed are cheating the system.

Government contends that such criticism is not based on facts because there are no financial data available to support the idea that the self-employed sub-system is running at losses, and that the system was designed so that social benefits paid to self-employed were calibrated to match the contributions paid by the beneficiary. Though conceding that “in the past it was reasonable to infer that an imbalance existed between the declared income and the real income”, the Minister of Labour thinks that with the use of “the new formula (...) the pension will be calculated as a function of the contributions paid during the entire life [of the beneficiary]”¹¹, and rejects the argument of unfairness of the system because “it is not substantiated [by facts] and the separation [of the budget of the self-employed sub-system] would be complex and of debatable effectiveness”¹². This is particularly relevant because many people move among the various sub-systems (self-employed, employee of a private organisation and civil servant) during their working life.

D - Determinants of success and bottlenecks

According to the view of the government officials of the social security system, the main success factors of the self-employed sub-system, and particularly after its major revision of 1993, are:

- the Decree-law 328/93 concentrates in a single legislative act all the public social security system relevant to the self-employed and assisting spouse;
- the statute of the assisting spouse is equal to the self-employed in terms of contributions, benefits and requirements, which was a major innovation at the time it was introduced;
- the sub-system was designed so as to ensure its financial sustainability;
- the introduction of the conventional income concept as the basis for the calculation of both the contribution and benefits, thus avoiding bureaucratic difficulties needed to certify real income of self-employed.

⁹ FENPROF (2005) and Rosa, Eugénio (2006)

¹⁰ Should read “part-funded”, as the general social security system is funded by contributions of the employers (typically 23.75 percent of the nominal wage/salary), the employees (typically 11 percent of the nominal wage/salary) and by transfers from the state budget to cover the increasing deficit.

¹¹ With the “old formula” pensions were based on the average of the 10 bigger annual wages/salaries earned by the pensioner in the last 15 years prior to the retirement time. Within the on-going reform of the social security system in Portugal, this formula is being progressively replaced by a “new formula” where the pension is calculated using the whole contribution history of the pensioner. During a transitional period part of the pension will be calculated using the old formula and part using the new one.

¹² Silva, José Vieira da (2005),

The introduction of this extended system for self-employed in 1993 was done quite swiftly as the changes from the existing system were not disruptive and did not require additional complexity. On the contrary, the revised system proved to be simpler in its application and control. Notwithstanding the increase of the number of beneficiaries after the introduction of the revised system (9.9% from 1993 to 1994), there were no significant bottlenecks or dysfunctions in the implementation of the new regulations.

E - Elements of good practice and transferability

This system is considered an example of good practice by the Portuguese social security services, due to the innovative nature of 2 major features at the time it was introduced in 1993:

- it was the 1st time that assisting spouses were covered by social insurance on the same footing as the self-employed;
- the way contributions were calculated, based on conventional income scales, resolved a (at the time) complex issue for the government agencies involved of having to cross-check the declared income to the social security system and the income declared for tax purposes.

Though there is no indication that the government is considering to change the equalitarian treatment provided to the assisting spouses in the current self-employed system, there are clear indications that the practice of using conventional income scales will be progressively abandoned and replaced by the consideration of the real income of the self-employed, as it was agreed recently by the social partner organisations in the Portuguese Economic and Social Council¹³: "Taking into account the current situation, which enables different contribution relations with the social security, (...) we agree with the gradual revision of the self-employed social security system, having notably in mind to move the conventional income closer to the real income, employing the relevant base used for tax purposes (...)"¹⁴.

Thus, one of the components considered innovative at the time the self-employed system was introduced in 1993, is no longer considered to be a good practice and is going to be changed in the near future in Portugal.

Though most of the mechanisms of the Portuguese self-employed social security system are transferable to other countries, they must be properly adapted to local conditions and updated in terms of methods and technologies. The conventional income approach, which was deemed to be an elegant solution to the technical difficulties of cross-checking information between the databases of the social security and the tax departments, was clearly linked to the sophistication of the relevant government agencies and the availability and use of information processing technologies at the time of its inception. Those technical difficulties are no longer an issue in Portugal and probably in most of the other European countries.

¹³ The Economic and Social Council (*CES – Conselho Económico e Social*) is a constitutional body for consultation, concertation and participation in economic and social matters. It replaced in 1991 the Council for Social Concertation set up in 1984. See European Foundation (2006).

¹⁴ CES (2006)

F - Literature and other references.

Publications

- Portuguese Government (1993), *Decreto-Lei n.º 328/93 de 25 de Setembro, (Decree-Law no. 328/93 of September 25)*, Setembro 1993
- European Foundation (1997), *As Condições de Trabalho dos Trabalhadores Independentes na União Europeia, (Working Conditions of Self-employed in the European Union)*, European Foundation for the Improvement of Living and Working Conditions, Resume no. ef9741pt, 1997
- Graça, L. (2002), *Baixa por doença e incapacidade temporária para o trabalho. Parte II, (Sick-leave and temporary incapacity for work. Part two)*
- OECD (2004), *OECD Economic Survey of Portugal 2004: Ageing-related Pressures on Public Finances*, 2004
- INE (2005), *Inquérito ao Emprego, (Labour Force Survey)*, National Institute of Statistics, 2005
- Silva, José Vieira da (2005), *Cálculo da pensão muda primeiro para independentes – Entrevista com o Ministro do Trabalho, (The calculation of pensions will be changed first to the self-employed - Interview with the Minister of Labour)*, Diário de Notícias, Lisboa, 09.11.2005
- MTSS (2006), *Linhas Estratégicas da Reforma da Segurança Social, (Strategic Orientations for the Social Security Reform)*, Ministry of Labour and Social Solidarity, May 2006
- Guedes, António B. (2006), *Trabalhadores independentes também correm riscos!, (Independent workers also run risks!)*, Newspaper "a Página" , year 15, no. 159, August/September, 2006, p. 46.
- Portuguese Government (2006), *Proposta de Lei do Orçamento do Estado para 2007, (Proposal for the State Budget Law for 2007)*, October 2006
- CES (2006), *Acordo sobre a Reforma da Segurança Social, (Agreement on the Reform of Social Security)*, Economic and Social Council, Permanent Committee on Social Conciliation, October 10, 2006.

Websites

- Acção Socialista (1999): *98/99 integrados 29000 precários, (98/99 29,000 precarious workers were integrated)*, 29/07/1999
[http://accaosocialista.net/99/1030_29_07_1999/SOCIEDADE.htm]
- Mateus, Abel (1999), *Política Orçamental, Crescimento e Reformas Estruturais, (Growth and structural reform)*, 1999
[http://docentes.fe.unl.pt/~amateus/publicacoes/OGE2000_files/OGE2000.ppt]
- Mateus, Abel (2001), *O futuro dos Sistema de Segurança Social em Portugal está em causa?, (Is the future of social security in Portugal at stake?)* 2001,
[<http://docentes.fe.unl.pt/~amateus/entrevistas/Entrev8.htm>]
- FENPROF (2005), *Medidas anunciadas pelo Governo para combater a evasão e a fraude contributiva na Segurança Social são insuficientes, (Measures announced by the government to fight contribution fraud and evasion in the social security system are not sufficient)*, 26/04/2005 [<http://www.fenprof.pt/?aba=27&cat=191&doc=826&mid=115>]
- Rosa, Eugénio (2006), *Reforma da Segurança Social: 17 perguntas e respostas, (The Reform of the Social Security: 17 questions and answers)*, December 2006
[http://resistir.info/e_rosa/reforma_ssocia_faq.html#p17_3]
- Catroga, Eduardo (2006), *Orçamento do Estado para 2007, (State Budget for 2007)*, December 2006 [http://docentes.fe.unl.pt/~jamador/SEPE_Pt/orcamento.ppt]
- MTSS, *Segurança Social, (Social Security System)*, Official web site: <http://www.seg-social.pt/>
- MTSS, *Ministério do Trabalho e da Solidariedade Social, (Ministry of Labour and Social Solidarity)*, Official web site: <http://www.mtss.gov.pt/>

- MTSS, Estatísticas e Publicações da Segurança Social, (Statistics and Publications of the Social Security, December 2006 [<http://195.245.197.202/left.asp?02.21>])
- European Foundation (2006), *Portugal – Social Concertation*, European Foundation for the Improvement of Living and Working Conditions, December 2006, [<http://www.eurofound.eu.int/emire/PORTUGAL/SOCIALCONCERTATION-PT.html>]

Interviews

- Maria da Conceição Araújo, Technical officer, Directorate-General of Social Security
- Cristina Lobo Ferreira, Technical officer, Directorate-General of Social Security
- Zélia Matos, Department Manager, Directorate-General of Social Security