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**“TOWARDS SAFE, HEALTHY
AND DECLARED WORK IN UKRAINE”**

Telework

Online training series
International and EU Labour Standards
Background paper

July, 2020

This material was developed within the EU-ILO Project “Towards safe, healthy and declared work in Ukraine” www.ilo.org/shd4Ukraine.

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▶ EXECUTIVE SUMMARY

Telework or remote work can be defined as the work performed through the use of information communication technology (ICT's such as smartphones, tablets, laptops and desktop computers) outside the employer's premises.

Telework features a modernization of the organization of work, aimed at increasing undertakings productivity and competitiveness, whilst achieving the necessary balance between business flexibility requirements and workers' security aspirations, enhancing job quality and promoting the access to formal labour market to particularly vulnerable groups of workers (e.g., workers with family responsibilities, workers with disabilities, etc.).

In addition, due to the COVID-19 outbreak, as an organizational measure of physical distancing aimed at preventing coronavirus contagion at workplaces, the resource to telework arrangements had a substantial increase.

It is important to recognize, however, that along with the opportunities it creates, telework can also pose important challenges to workers and employers, which should be properly addressed through the way legislation and policies are structured, formulated and implemented.

In this context, it is therefore expected that the present background paper may provide a valuable contribution in the efforts to address telework challenges.

It was prepared under the scope of the Activity 1.3.2 of the EU funded and ILO implemented technical cooperation project "Towards safe, healthy and declared work in Ukraine"¹.

It is aimed at supporting the projects' online training series on International and EU Labour Standards, especially regarding its module on Telework.

¹ Additional information at: www.ilo.org.shd4Ukraine and www.facebook.com/shd4Ukraine.

It is aimed at providing project stakeholders, in particular policy decision makers and legal acts' drafting experts, with insights and technical advice and guidance on how to better align Ukrainian legal framework with International and EU Labour Standards on telework².

It is expected that it may also contribute to the development of more enabling conditions for the approximation of Ukrainian legislation with the aforesaid standards and, therefore, for promoting the transition from undeclared to declared work, for fostering implementation of the EU-Ukraine Association Agreement and for the advancement of decent working conditions for all in Ukraine.

It starts by contextualizing telework and presenting its opportunities and challenges.

It then moves to the discussion of the most relevant provisions of the main applicable international and EU labour standards.

Finally, it concludes with the discussion of the main implications of such standards for policy decision-makers and legal acts' drafting experts, in particular, regarding the main aspects that should be considered when it comes to legally institute a telework regime.

It should not be seen, however, as an ILO code of practice or a set of official guidelines, nor as a replacement of the positions of the ILO supervisory bodies.

Kyiv, 14 July 2020

António J. Robalo Santos

Manager of the EU-ILO Project

“Towards safe, healthy and declared work in Ukraine”

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² In particular, regarding ILO Home Work Convention, 1996 (No. 177), ILO Home Work Recommendation, 1996 (No. 184) and EU Social Partner's Framework Agreement on Telework, of 16 July 2002.

► TELEWORK

Telework or remote work can be defined as a form of organizing and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employers premises, is carried out away from those premises on a regular basis (UNICE/UAPME et al., 2002).

The intensity of the use of information and communication technology, in both our professional and personal lives, continues to grow.

As a result, more employees have been able to work from remote locations — that is, separate from the premises of their employer — through the use of computer networks and telecommunications devices (Eurofound, 2010).

In fact, today's office work and, more broadly, knowledge work, is supported by the internet, and can be carried out from practically any location and at any time. This new spatial independence has transformed the role of technology in the work environment, offering both new opportunities and new challenges for employers and workers (ILO, 2020).

Telework features a modernization of the organization of work, aimed at increasing undertakings productivity and competitiveness, whilst achieving the necessary balance between business flexibility requirements and workers' security aspirations, enhancing job quality and promoting the access to formal labour market to particularly vulnerable groups of workers (e.g., workers with family responsibilities, workers with disabilities, etc.).

It is recognized by both sides of industry as a means of modernizing work organization by introducing flexible work arrangements and greater autonomy and of achieving better reconciliation of work, private and family life. In addition, regular telework also reduces carbon emissions from commuting to work and therefore has a positive impact on the environment. It is also seen as a key element to achieve the objectives

of the Lisbon Strategy for growth and jobs, and in particular to the modernization of labour markets and the development of the information society in a knowledge-based economy (European Commission, 2008).

More recently, however, due to the COVID-19 outbreak, the resource to telework arrangements, as an organizational measure of physical distancing, aimed at preventing coronavirus contagion at workplaces, as substantially increased its use.

However, along with the opportunities it creates, telework can also pose important challenges to workers and employers, which should be properly addressed through the way legislation and policies are structured, formulated and implemented.

These opportunities and challenges depend, at a great extent, on the type of telework arrangements concerned. The latter can be agreed for a short-term period of time (such as an ad-hoc remote work arrangement or a scheduled remote work arrangement); or as a more long-term method of work (such as a fixed remote work agreement).

Ad-hoc remote work might take place where a worker needs to be away from the employer premises for a few hours or a day. It is usually aimed at addressing a short-term issue such as a problem at home (e.g. meeting a commodity service provider) or to deal with a particular work issue (e.g. finalizing a project proposal) away from possible distractions in the office. This can take place over a longer period of time (e.g. more than a week, but less than a few months) in order to address a work or personal matter, but the intention of the worker and/or employer is to return to the workplace, as soon as possible. The scheduled remote work, on the other hand, can be seen as an agreement between a worker and an employer for remote work, which may involve a mix of work at the employer's premises and at home or elsewhere. In this case, the worker and employer might agree to schedule a few days a week where the worker is performed at the employer's workplace and a few days worked at home or elsewhere. An example of this might be a worker who works two days at the employer's premises and three days at home. Finally, the fixed remote work, is usually agreed

for a longer period of time, within which the worker works completely away from employer's premises, either at his home or elsewhere (ILO, 2020).

In any case, and regardless of the type of telework arrangements agreed, the teleworker should be recognized as an employee (with the only difference in relation to the other workers being the fact that he works, temporarily or permanently, outside the employer premises) with the same rights and responsibilities as any other worker of the employer.

The different nature of the telework concerned has important implications on the organization of the work and working time. For example, in the case of ad-hoc remote work, the impact on working hours and rest periods can be easily adjusted between workers and employers during the course of a workday or work week. However, in the case of scheduled remote work, it may require the worker to be available by technological means (e.g. mobile phone, tablet, laptop linked to internet) during certain slot of "core" business hours to address work related issues on the days and hours when the worker is working remotely. In the case of fixed remote work, although it may offer more working time flexibility, it might also require worker to be available in certain slots of "core" business hours (for office meetings, etc.). It is of paramount importance to ensure that national legal provisions on maximum daily and weekly working time, overtime, breaks, daily and weekly rest and annual paid leave, fully apply to all teleworkers (ILO, 2020).

One of the main challenges of telework, in particular, of scheduled or fixed remote work arrangements, is that, due to technology, the boundaries between work and personal life can overlap and become very blurred. A recent study has indicated that remote workers may feel a particular pressure to stay electronically connected to the employer premises all the time (Eurofound & ILO, 2017). This is similar to many workers who work at the employer premises, but feel the need to constantly be connected to their workplace (e.g. reading emails), leading to some mental fatigue (Belkin et al., 2016). In all of these cases the "right to disconnect" from work becomes very important. Many enterprises have begun to

recognize this and have initiated policies to address the blurred boundary between work and personal life³. At national level, countries have begun to create legislation to address this issue. For example, countries such as the Philippines (House Bill 4721) and France (Law n° 1088/2016, of 8 August) have proposed national regulations to address workers' rights to disconnect (ILO, 2020).

Other concerns include, especially in the case of fixed remote work, the responsibility for the installation and maintenance of the work instruments and the payment of the inherent expenses. In fact, in this situation, the worker will likely need electronic equipment, internet connectivity, internet security systems, and potentially an ergonomic work area to perform their normal working hours. The question with regard to these issues is whether the worker or the employer will be paying for them. Also, a fixed remote worker will have additional electricity and heating needs, which should also be addressed by the employer, if the worker was working at the employer's premises. These factors will likely arise in discussions between employers and workers in their use of fixed remote work. To address some of these remote based work issues (notably if the worker is working from home) consideration should be given to the ILO Home Work Convention, 1996 (No. 177) and ILO Home Work Recommendation, 1996 (No. 184). These standards have historically been applied to home based workers and may offer some guidance on how to approach some of these issues (ILO, 1996a, 1996b, 2020).

Another concern regarding telework, that should be addressed, refers to the extent to which employer can monitor the worker. This issue, by the way, is one of the main reasons why telework is not more widely used by workers and employers, even when it is technologically feasible. In fact, employers tend to avoid telework arrangements due to limitations on monitoring workers when they work outside their premises, even when advances in technology already offer several solutions to monitor remote workers (e.g., key stroke monitoring software). In the context of working time and rest periods for remote workers, these technological

³ <https://www.dw.com/en/banning-e-mail-after-work/a-17445387>

developments become very important. An employer might seek to use such software to monitor working hours and rest periods. However, it may lead to excessive working hours and mental fatigue for the worker who feels under constant pressure to be available to the employer. As such, it is also important to ensure the proper balance of the employers' rights to monitor worker's performance, working time and rest periods with the need to protect workers' privacy and personal data. Guidance on how to address some of these concerns can be found in the ILO Code of Practice on Protection of Workers' Personal Data (ILO, 1997, 2020).

Besides the ones mentioned above, other additional concerns regarding telework, according to the European Commission (2008), include: the voluntary nature of telework and the right to return; the guarantee of maintenance of the employee status; the guarantees of equal treatment; the employer's obligation to provide information to the teleworker; the coverage of the costs of telework arrangements by the employer; the guarantee of provision of specific training to teleworkers; the protection of teleworkers in the field of occupational safety and health (OSH); the need of ensuring the contact of the teleworkers with the firm; the collective rights of teleworkers; and the facilitation of the access to telework.

▶ MAIN INTERNATIONAL AND EU INSTRUMENTS

The main applicable International and EU instruments specifically focused on telework include the Home Work Convention, 1996 (No. 177) (ILO, 1996a) and the ILO Home Work Recommendation, 1996 (No. 184) (ILO, 1996b), which have historically been applied to home based workers and may offer some guidance on how to approach some of the aforesaid telework challenges, as well as the Framework Agreement on Telework, concluded on 16 July 2002, by the European cross-industry social partners (UNICE/UAPME et al., 2002).

In addition, and considering that telework is not more than a specific type of employment relationship, besides the ILO Recommendation No. 198 (specifically focused on the employment relationship), the generality of the other International and EU Labour Standards, applicable to the different aspects of an employment relationships (e.g., working time, night work, part-time, employer's obligation to inform workers and to ensure transparent and predictable working conditions, labour inspection, OSH, freedom of association, right to organise, collective bargaining, tripartite consultation, workers' representatives, equality of opportunity and treatment, vocational guidance and training, employment security, wages, social security, maternity protection, etc.), are also applicable to telework employment arrangements.

Home Work Convention, 1996 (No. 177)

Home work is defined in this Convention as work carried out by a person (homeworker) in his or her home or in other premises of his or her choice, other than the workplace of the employer for remuneration and which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used (Art. 1).

This Convention does not apply to independent workers or to subordinated workers that only occasionally perform their work at home, rather than at their usual workplaces (Art. 1).

Each Member State that ratifies this Convention is required to adopt, implement⁴ and periodically review a national policy on home work, aimed at promoting the equality of treatment between home workers and other workers, in particular as regards to (Arts. 3 and 4):

1. Right to establish or join organizations of their own choosing and to participate in the activities of such organizations;
2. Protection against discrimination in employment and occupation;
3. Protection in the field of occupational safety and health;
4. Remuneration;
5. Statutory social security protection;
6. Access to training;
7. Minimum age for admission to employment or work; and
8. Maternity protection.

Moreover, the Convention also foresees that national laws and regulations on OSH shall apply to home work, taking account of its special characteristics, and shall establish conditions under which certain types of work and the use of certain substances may be prohibited in home work for safety and health reasons (Art. 7).

In addition, The Convention also foresees that compliance with the laws and regulations applicable to home work should be ensured by a system of labour inspection and adequate remedies, including penalties, shall be provided for and effectively applied in case of violation of these laws and regulations (Art. 9).

This ILO Convention was not yet ratified by Ukraine.

⁴ By means of laws and regulations, collective agreements, arbitration awards or in any other appropriate manner consistent with national practice (Art. 5).

Home Work Recommendation, 1996 (No. 184)

This ILO Recommendation further specifies the measures that should be implemented by ILO Member States, in order to ensure the attainment of the purposes of the above Convention.

Besides foreseeing the involvement of tripartite bodies or organizations of employers and workers in the formulation and implementation of the above mentioned national policy, the Recommendation highlights the need to ensure that homeworkers are kept informed of the specific conditions of their employment in writing, in particular regarding⁵:

1. Name and address of the employer and the intermediary, if any;
2. Scale or rate of remuneration and the methods of calculation; and
3. Type of work to be performed.

In order to ensure proper supervision of home work, the Recommendation also provides that the competent authority at the national level⁶ should provide for registration of employers of homeworkers (and of any intermediaries used by such employers), specifying the information employers should submit or keep at the authority's disposal (Para. 6).

With the same purpose, the Recommendation also foresees that employers should (Para. 7):

1. Be required to notify the competent authority when giving out home work for the first time;
2. Keep a register of all their homeworkers, classified according to sex;
3. Keep a record⁷ of work assigned to each homemaker, showing:
 - a. The time allocated;
 - b. The rate of remuneration;

⁵ Paragraphs 3 and 5.

⁶ And, where appropriate, at the regional, sectoral or local levels.

⁷ A copy of this record should be provided to the homemaker.

- c. Costs incurred, if any, by the homeworker and the amount reimbursed in respect of them;
- d. Any deductions made in accordance with national laws and regulations; and
- e. The gross remuneration due and the net remuneration paid, together with the date of payment.

In addition, this Recommendation provides that (Paras. 8 and 9):

1. Labour inspectors or other officials entrusted with enforcing provisions applicable to home work should be allowed to enter the parts of the home or other private premises in which the work is carried out; and
2. In cases of serious or repeated violations of the laws and regulations applicable to home work, appropriate measures should be taken, including the possible prohibition of giving out home work.

As for the rights to organize and to bargain collectively, the Recommendation provides that measures should be taken to encourage collective bargaining as a means of determining the terms and conditions of work of homeworkers and that legislative or administrative restrictions or other obstacles to the exercise of the right of homeworkers to establish their own organizations, to join workers' organizations of their choice, to participate in the activities of such organizations and to the exercise of the right of organizations of homeworkers to join trade union federations or confederations, should be identified and eliminated (Paras. 11 and 12).

In what regards homeworker's remuneration, the Recommendation foresees that (Paras. 13–18):

1. The minimum rates of wages for home work should be fixed in accordance with national law and practice, and preferably by collective bargaining or by agreement between the homeworker and the employer;

2. For specified work paid by the piece, the rate of remuneration of a homeworker should be comparable to that received by a worker in the enterprise of the employer, or if there is no such worker, in another enterprise in the branch of activity and region concerned;
3. Homeworkers should receive compensation for:
 - a. The costs incurred in connection with their work (e.g., use of energy and water, communications and maintenance of machinery and equipment); and
 - b. Time spent in maintaining machinery and equipment, changing tools, sorting, unpacking and packing, and other such operations.
4. National laws and regulations concerning the protection of wages should apply to homeworkers;
5. National laws and regulations should ensure that pre-established criteria are set for deductions and should protect homeworkers against unjustified deductions for defective work or spoilt materials;
6. Homeworkers should be paid either on delivery of each completed work assignment or at regular intervals (of not more than one month);
7. Where an intermediary is used, the intermediary and the employer should be made jointly and severally liable for payment of the remuneration due to homeworkers.

Concerning OSH, the Recommendation provides that (Paras. 19–22):

1. The competent authority should ensure the dissemination of guidelines concerning the OSH regulations and precautions that employers and homeworkers are to observe;
2. Employers should:
 - a. Inform homeworkers of any hazards associated with the work given to them and of the precautions to be taken, and provide them with the necessary training;

- b. Ensure that machinery, tools or other equipment provided are equipped with appropriate safety devices and ensure that they are properly maintained; and
 - c. Provide homeworkers with necessary personal protective equipment for free;
3. Homeworkers should be required to:
 - a. Comply with prescribed OSH measures;
 - b. Take reasonable care of their own safety and health and that of other persons who may be affected by their acts or omissions, including the proper use of materials, machinery, tools and other equipment placed at their disposal.
4. A homeworker who refuses to carry out work which s/he has reasonable justification to believe presents an imminent and serious danger to her/his safety or health should be protected from undue consequences and should report the situation to the employer without delay;
5. In case of an imminent and serious danger to the safety or health of a homeworker, her/his family or the public, as determined by a labour inspector or other public safety official, the continuation of home work should be prohibited until appropriate measures have been taken to remedy the situation.

Regarding working time, rest periods and leaves, the Recommendation foresees that (Paras. 23 and 24):

1. A deadline to complete a work assignment should not deprive a homeworker of the possibility to have daily and weekly rest comparable to that enjoyed by other workers;
2. The conditions under which homeworkers should be entitled, as other workers, to paid public holidays, annual holidays with pay and paid sick leave should be established by national laws and regulations;

This Recommendation also provides that national laws and regulations concerning minimum age and in the field of maternity protection should apply to homeworkers and that homeworkers should benefit from social security protection and from the same protection as that provided to other workers with respect to termination of employment (Paras. 10, 26, 25 and 27, respectively). The competent authority should also ensure that there are mechanisms for the resolution of disputes between a homeworker and an employer or any intermediary used by the employer (Para. 28).

EU Social Partner's Framework Agreement on Telework

The Framework Agreement on Telework is the first autonomous agreement negotiated by the European social partners and as such it represents a landmark in EU industrial relations. For the first time, the European social partners and their member organisations at national level directly addressed the emerging challenge posed by new forms of work organisation by defining a set of principles and rules and by undertaking to ensure their timely implementation across the Member States of the European Union and the countries of the European Economic Area (EEA). The Agreement set an important precedent, which has subsequently been followed in three other cases⁸ (European Commission, 2008).

In the context of the European Employment Strategy, the European Council invited the social partners to negotiate agreements to modernise the organisation of work. The European Commission in its consultation on modernizing and improving employment relations invited the European social partners to start negotiations on the issue of telework (Eurofound, 2010).

As a result of the negotiations at European level, on 16 July 2002, the European Framework Agreement on Telework was concluded and signed by the peak European cross-industry social partners⁹.

⁸ Framework Agreements on Work-Related Stress (2004) and Harassment and Violence at Work (2007), both negotiated by the social partners at EU cross-industry level, and the Agreement on Workers' Health Protection through the Good Handling and Use of Crystalline Silica and Products containing it (2006), the first multi-sector agreement negotiated by the social partners.

⁹ In particular, BusinessEurope (formerly UNICE), the European Association of Craft, Small and Medium-sized Enterprises (UEAPME), the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) and the European Trade Union Confederation (ETUC).

The unique aspect of this agreement was that it should not be implemented through a European directive. Instead, it was to be transposed through the autonomous route, in ‘accordance with the procedures and practices specific to management and labour in each Member State’. The social partners agreed to implement measures in each Member State of the European Union by July 2005 (Eurofound, 2010)¹⁰.

The Framework Agreement establishes a general framework of rules on telework. It aims to promote the development of this new form of work while safeguarding the protection of workers and the interests of employers. The social partners wanted to ensure that no new employment status would result from expansion of telework. While the Agreement stresses that teleworkers enjoy the same legal protection as employees working permanently at the employer’s premises, it also identifies the aspects that are specific to distance working and which call for adaptation or special attention, such as employment conditions, data protection, privacy, equipment, health and safety, organisation of work, training and collective rights (European Commission, 2008).

It defines telework as form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employer’s premises, is carried out away from those premises on a regular basis.

¹⁰ In fact, contrary to previous framework agreements between the social partners, and in particular those on parental leave, part-time work and fixed-term work (implemented through Council directives), the social partners decided to implement this Agreement through the members of the signatory parties in accordance with the procedures and practices specific to management and labour and the Member States, as provided for in Article 139(2) of the EC Treaty. An implementation period of three years from the date of signature was set. After four years, the European Social Partners adopted a joint report on the implementation of the Agreement, which was published on 11 October 2006. By this formula and implementation method, covered by the first alternative in Article 139(2) of the EC Treaty, the autonomous Agreement confers the main responsibility for implementation on the signatory parties’ member organisations at both national and sectoral levels within the different industrial relations systems. By virtue of the Agreement’s approval by the European organisations’ internal decision-making bodies, the member organisations have accepted this responsibility. The Agreement was concluded in 2002 when the European Union consisted of just 15 Member States and only the social partners from those countries participated fully in European social dialogue. However, the social partners from the former candidate countries were already involved to some extent in the negotiation process and the signatory parties invited «their member organisations in candidate countries to implement this agreement» (Clause 1). All of these former candidate countries except Turkey are now all EU Member States. Furthermore, the member organisations in the EEA countries participating in European social dialogue (Iceland and Norway) also committed themselves to implementing the Framework Agreement (European Commission, 2008).

Teleworkers are defined as any person carrying out telework as defined above (Art. 2).

The Framework Agreement applies to employees who perform telework on a regular basis.

Concerning the voluntary character of telework, the Framework Agreement establishes that (Art. 3):

1. Telework is voluntary for both the worker and employer concerned. It may be required as part of a worker's initial job description or it may be subsequently engaged in it as a voluntary arrangement;
2. In both cases, the employer provides teleworker with relevant written information in accordance with Directives 91/533/EEC (European Council, 1991) and 2019/1152 (European Parliament & European Council, 2019), including the information on applicable collective agreements, description of the work to be performed and, in particular, with additional written information specifically required by the specificities of telework, including:
 - a. The department of the undertaking to which the teleworker is attached;
 - b. Teleworker immediate superior or other persons to whom s/he can address questions of professional or personal nature;
 - c. Reporting arrangements;
3. Where telework is not part of the initial job description:
 - a. If the employer makes an offer of telework, the worker may accept or refuse this offer;
 - b. If the worker expresses the wish to opt for telework, the employer may accept or refuse the request;
 - c. The passage to telework as such, does not affect the teleworker's employment status, because it only modifies the way in which work is performed;

- d. A worker refusal to opt for telework is not, as such, a reason for terminating the employment relationship or changing the terms and conditions of employment of that worker;
4. If telework is not part of the initial job description:
 - a. The decision to pass to telework is reversible by individual and/or collective agreement;
 - b. The reversibility may imply returning to work at the employer's premises at the worker's or at the employer's request;
 - c. The modalities of this reversibility are established by individual and/or collective agreement.

The Framework Agreement also provides that, regarding employment conditions, teleworkers benefit from the same rights, guaranteed by applicable legislation and collective agreements, as comparable workers at the employer's premises, although foreseeing that, in order to take into account the particularities of telework, specific complementary collective and/or individual agreements may be necessary (Art. 4).

It also addresses the issues regarding data protection and worker's privacy. In this respect, and according to Articles 5 and 6, the employer is responsible for:

1. Taking the appropriate measures, notably with regard to software, to ensure the protection of data used and processed by the teleworker for professional purposes;
2. Informing teleworker of all relevant legislation and company rules concerning data protection¹¹, in particular:
 - a. Any restrictions on the use of IT equipment or tools such as the internet;
 - b. Sanctions in the case of non-compliance;

¹¹ Whereas it is teleworker's responsibility to comply with these rules.

3. Respecting the privacy of the teleworker and, in case any kind of monitoring system is to be put in place, it needs to be proportionate to the objective and introduced in accordance with Directive 90/270 on visual display units (European Council, 1990).

In what concerns work equipment and instruments, the Framework Agreement on Telework provides that (Art. 7):

1. All aspects concerning work equipment, liability and costs should be clearly defined before starting telework;
2. As a general rule, the employer is responsible for providing, installing and maintaining the equipment necessary for regular telework¹²;
3. If telework is performed on a regular basis, the employer compensates or covers the costs directly caused by the work (in particular those relating to communication);
4. The employer provides the teleworker with an appropriate technical support facility;
5. The employer has the liability regarding costs for loss and damage to the equipment and data used by the teleworker;
6. The teleworker takes good care of the equipment provided to him/her and does not collect or distribute illegal material via the internet.

As for the occupational safety and health of teleworkers, Article 8 of the Framework Agreement establishes that:

1. The employer is responsible for the protection of the occupational safety and health of teleworkers, in accordance with Directive 89/391/EEC (European Council, 1989) and relevant daughter directives, national legislation and collective agreements;
2. The employer informs teleworkers of company's policy on occupational safety and health;

¹² Unless the teleworker uses his/her own equipment.

3. The teleworker applies these safety policies correctly;
4. In order to verify that the applicable health and safety provisions are correctly applied, the employer, workers' representatives and/or relevant authorities should have access to the telework place¹³. However, when teleworker is working at home, such access is subject to prior notification and his/her agreement;
5. The teleworker is entitled to request inspection visits.

As for the organization of work, the Framework Agreement foresees that (Art. 9):

1. Teleworkers manage the organisation of their working time, within the framework of applicable legislation, collective agreements and company rules;
2. The workload and performance standards of the teleworker should be equivalent to those of comparable workers at the employer's premises;
3. The employer ensures that measures are taken to prevent teleworkers from being isolated from the rest of the working community in the company (such as giving them the opportunity to meet with colleagues on a regular basis and access to company information).

Moreover, and as regards training, the Agreement foresees (Art. 10) that:

1. Teleworkers have the same access to training and career development opportunities as comparable workers at the employer's premises and are subject to the same appraisal policies as these other workers;
2. Teleworkers, as well as their supervisors and direct colleagues, should receive appropriate training targeted at the technical

¹³ Within the limits of national legislation and collective agreements.

equipment at their disposal and at the characteristics of this form of work organisation and its management.

Finally, regarding collective rights, the Framework Agreement on Telework provides that (Art. 11):

1. Teleworkers have the same collective rights as workers at employer's premises and no obstacles should prevent them from communicating with their representatives;
2. The conditions for participating in, and standing for, elections to bodies representing workers or providing worker representation applicable to workers at employer's premises shall also apply to teleworkers;
3. Teleworkers are included in calculations for determining thresholds for bodies with worker representation;
4. The establishment to which the teleworker will be attached for the purpose of exercising collective rights should be specified from the outset;
5. Worker representatives should be informed and consulted on the introduction of telework.

¹⁴ Without prejudice to the mandatory training on OSH specifically foreseen in EU and national OSH legislation (referred to in Article 8).

► **IMPLICATIONS FOR POLICY DECISION-MAKERS AND LEGAL ACTS' DRAFTING EXPERTS**

The following sections are aimed at providing some examples on how policy decision makers and legal acts' drafting experts could better institute a telework regime, duly aligned with the foreseen applicable International and EU instruments.

They will focus on the most relevant aspects surrounding this institute, including the definition of the concept of telework, provision of information on the main aspects of the telework employment relationship, voluntary nature of telework employment relationship and its reversibility, working instruments, equal treatment of teleworkers and their collective rights.

Concepts

Telework

Telework is the provision of work, in the context of an employment relationship, carried out away from employer's premises on a regular basis through the use of information and communication technologies.

Teleworker

Teleworker is any person who carries out telework.

Main aspects to consider in the institution of a telework regime

Information about the essential aspects of the telework employment relationship

As foreseen in both EU Directives 91/533/EEC and 2019/1152, employers must provide employees with timely information about the essential as-

pects and conditions applicable to the telework employment relationship.

In order to achieve the above, the following legal provision should be considered:

Telework employment agreement

1. *A worker of the undertaking or other admitted to that purpose may carry on the activity on a telework basis by means of the conclusion of a contract for the subordinate provision of telework;*
2. *The contract is subject to written form and must contain:*
 - a. *Identification, signatures and domicile or headquarters of the parties;*
 - b. *Indication of the activity to be provided by the worker, with express mention of the telework scheme, and corresponding remuneration (including the initial basic amount, any other component elements, if applicable, indicated separately, and the frequency and method of payment of the remuneration to which the worker is entitled);*
 - c. *If the work pattern is entirely or mostly predictable, the length of the worker's standard working day or week and any arrangements for overtime and its remuneration and, where applicable, any arrangements for shift changes;*
 - d. *If the work pattern is entirely or mostly unpredictable, the employer shall inform the worker of:*
 - i. *The principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours;*
 - ii. *The reference hours and days within which the worker may be required to work;*
 - iii. *The minimum notice period to which the worker is entitled before the start of a work assignment and, where applicable, the deadline for cancellation;*

- e. The date of commencement of the telework employment relationship;*
- f. In the case of a fixed-term telework employment relationship, the end date or the expected duration thereof;*
- g. If the period foreseen for the provision of telework is less than the foreseeable duration of the employment contract, the activity to be actively held after the end of that period;*
- h. The duration and conditions of the probationary period, if any;*
- i. Ownership of the working instruments as well as the person responsible for their installation and maintenance and the payment of the inherent consumption and use costs;*
- j. Identification of the establishment or department of the undertaking in which the worker is integrated, as well as who he should contact in the context of the provision of work;*
- k. Entitlement to training;*
- l. Amount of paid leave, or the way it is determined;*
- m. Procedure for termination of the employment relationship, or reference to the applicable legal provisions;*
- n. Applicable collective agreements, if any;*
- o. Social security institutions receiving contributions.*

Telework voluntariness and reversibility

In addition, and in order to facilitate the voluntary access to productive and freely chosen telework employment relationships and to properly balance the flexibility needs of both employers and workers, legislations should provide that:

Telework voluntariness and reversibility

- 1. In the case of a worker previously attached to the employer, the initial duration of the contract for subordinated provision of telework shall not exceed the period laid down in a collective agreement;*
- 2. Either party may terminate the contract referred to in the preceding paragraph during an initial period of its execution which duration is laid down in a collective agreement;*
- 3. Terminating the contract for the subordinate provision of telework, the worker resumes the provision of work, in accordance with the agreed terms or in those provided for in a collective agreement;*
- 4. The teleworker may start working under the scheme of the other employees of the company, definitively or for a fixed period, by written agreement with the employer.*

Work instruments and expenses arrangements

Considering the specific nature of telework, it is also advisable to define in the legislation who will be responsible for the provision of the work instruments, as well for its maintenance and for the payment of the inherent expenses, when the telework agreement does not provide for it. Such legal provision can be as follows:

Telework working instruments

- 1. In the absence of stipulation in the contract, it is presumed that the working instruments relating to information and communication technologies used by the employee belong to the employer, who shall ensure the respective installation and maintenance and payment of the inherent expenses;*
- 2. The worker shall comply with the rules for the use and operation of the working instruments made available by the employer;*

3. *Unless otherwise agreed, the worker may not give the work instruments made available by the employer different use than that inherent to the performance of his work.*

Equal treatment and non-discrimination of teleworkers

In order to prevent discrimination of teleworkers in relation to workers that perform their activity within employer's premises, it is crucial to ensure the application of the principles of equality and non-discrimination of teleworkers in relation to the other employers' workers. It should be therefore considered to introduce a legal provision such as the following:

Equal treatment and non-discrimination of teleworkers

1. *Teleworkers has the same rights and duties as other workers, in particular with regard to:*
 - a. *Vocational training and promotion or career;*
 - b. *Limits of normal working hours and other working conditions;*
 - c. *Safety and health at work;*
 - d. *Protection against discrimination in employment and occupation;*
 - e. *Remuneration;*
 - f. *Statutory social security protection;*
 - g. *Minimum age for admission to employment or work;*
 - h. *Maternity protection; and*
 - i. *Reparation of damages arising from accidents at work or occupational disease.*
2. *In the context of vocational training, the employer shall, in case of need, provide teleworkers and their managers and colleagues with adequate*

training on the use of information and communication technologies inherent to the exercise of the activity;

- 3. The employer shall avoid the isolation of teleworkers, in particular through the promotion of regular contacts of the latter with the company and other workers.*

Privacy of teleworkers

Taking into account that, usually, telework is provided from teleworker's domicile, it is of paramount importance to ensure that their privacy is ensured at all times.

With this purpose in mind, the following should be provided for in legislation:

Privacy of teleworkers

- 1. The employer must respect the worker's privacy and rest times, as well as the rest of her/his family, and provide her/him with good working conditions, both physically and psychologically;*
- 2. Where the telework is carried out at the worker's home, the visit to the workplace shall only have the purpose of controlling the work activity as well as the work instruments;*
- 3. The possibility foreseen in the preceding paragraph, however, may only be carried out during the teleworker work schedule, shall not, in any case, disturb her/his family rest time and shall be subject to prior notification, teleworker's agreement and performed with the assistance of the teleworker or a person designated by her/him.*

Vulnerable workers

In order to facilitate access to telework arrangements, in particular by vulnerable groups of workers which, otherwise would have increased

difficulties to access formal labour market, and extend the benefits of telework to all workers and employers, it is necessary to foresee in legislation a provision such as the following:

Vulnerable groups of workers

The following workers, if they do so request to employer, are entitled to carry out their work activity on a telework basis, where it is compatible with the activity performed and the employer has resources and means to do so:

- 1. Worker with a child aged up to 3 years;*
- 2. Worker victim of domestic violence who presented competent criminal charges; and*
- 3. Worker with disability.*

Teleworkers' collective rights

In order to ensure that teleworkers enjoy the same collective rights as the workers that work at employer's premises it is also convenient to foresee a legal provision such as the following:

Teleworkers' collective rights

- 1. Teleworkers integrate the number of employees of the company for all purposes relating to collective representation structures, and may apply for these structures;*
- 2. Teleworkers may use the information and communication technologies allocated to the provision of work to participate in meetings promoted in the workplace by collective representation structure of workers;*
- 3. Any collective representation structure of workers may use the technologies referred to in the preceding paragraph to communicate with the teleworkers in the course of their activity, in particular for the dissemination of trade union information, namely calls, communications, information or other texts relating to trade union life and the socio-professional interests of workers.*

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