



REGULATIONS NEED TO BRING TELEWORK INTO LINE ACROSS THE EU

The widespread and rapid adoption of teleworking in response to the Covid-19 lockdowns in 2020 exposed gaps in the legislation governing telework arrangements across EU Member States. In some cases, it was too restrictive, while in others there was no regulation in place. With different approaches taken by each state, will the EU now bring them all into line?

Governments scrambled to put temporary measures in place to cover the emergency situation and the urgent need to enable workers to work from home.

Now that the pandemic is receding and wholesale telework seems to be here to stay, governments are faced with the need to properly regulate such arrangements. Member States are following different paths, but the EU

might step in to promote some level of standardisation.

Most workers who worked from home during the COVID-19 pandemic say they would like to continue to do so occasionally or full time even when it is safe to return to the office, while a considerable number of companies concede that this is a feasible prospect.

It is likely, therefore, that as many as one out of five employees in Europe

will be working remotely regularly or occasionally for the foreseeable future.

This means that Member States need proper legislative frameworks to regulate telework arrangements – for example, to establish their voluntary character and the employer's obligation to provide equipment. There is also a need to protect employees from the risks of telework, such as long working hours and infringements of privacy.



In some cases the legislation explicitly states that employees working remotely are insured against accidents, or that employers should guarantee a safe working environment, even outside their premises – as is the case in Austria and Germany.

POST-PANDEMIC REGULATIONS

Prior to the pandemic, around two-thirds of Member States had implemented regulations on telework at national or sectoral level, either through legislation or collective agreements. Generally, the content drew on the framework agreement on telework agreed by the European social partners in 2002.[1]

The shift to telework in 2020 sparked debate in most Member States around the necessity to introduce new and permanent regulations, or to adapt existing regulations to address the challenges and opportunities of teleworking in a post-pandemic world.

However, an actual update of telework regulatory frameworks is not happening in all Member States, and among those that are acting, the approaches adopted vary.

Just a few countries have already amended their legislative frameworks, whether totally or partially. One notable example is Spain, which adopted Royal Decree-Law 28/2020 in September 2020, introducing comprehensive legislation covering remote working.[2]

Austria passed a new federal law in March 2021 to partly amend existing labour legislation by introducing a definition of 'home office' and provisions regulating it.[3] The Irish government took a different approach, introducing a code of practice for employers and

drafts of laws. Meanwhile, Croatia, Germany and Poland are in the middle of the legislative process.

THE RIGHT TO DISCONNECT

The legislative moves vary across the EU, with some aspects receiving more emphasis than others, depending on country.

The right to disconnect is a key concern for many. This refers to employees' right to switch off from work outside normal working hours and not to respond to incoming messages from work.

The term, though seldom used in legislation, has become popular in public and policy discourse. Spain's legislation does use it, as does the code of practice introduced in Ireland, which focuses specifically on this aspect by requiring employers to develop a 'Right to Disconnect' policy.

In other countries, the measures passed or proposed are intended to guarantee decent working conditions and generally require the agreements between employers and employees regarding telework to clearly define working hours and rest periods.

Germany's draft law on mobile working states the obligation of employees to record their working hours but also clarifies that it is intended as a form of protection for them.

employees on the right to disconnect in April 2021.[4]

The debate is ongoing in Belgium, Cyprus, Greece, Latvia, Portugal and Malta, some of which have announced



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THE RIGHT TO PRIVACY

The organisation and monitoring of working time is a key issue included in these new legislative texts. These generally recognise the right of employers to monitor and control employees who are working remotely but require that employees' right to privacy is respected at the same time.

New regulations guarantee the balance between the two rights in different ways. The Spanish law, for instance, states that companies must respect employees' dignity and privacy when implementing measures to monitor and control them.

It also provides for inspections of employees' workspaces by the employer if the place chosen by employees is different from their home – but states that the procedure must not impose a disproportionate burden on people using the property, including the worker.

By contrast, the Austrian law addresses employees working from home and forbids inspections of employees' home offices by the labour inspectorate.

PROVISION OF IT EQUIPMENT

Another important issue is the provision of IT equipment. The temporary emergency measures have usually allowed employees to work with their personal devices, but long-term provisions oblige employers to provide the necessary equipment.

Alternatively – or even additionally, in a few cases – the employer may meet this obligation by covering employees' expenses for equipment and also for the cost of domestic utilities such as heating and electricity.

In Romania, an amendment to its national fiscal code introduces a fiscal incentive for employers who decide to cover employees' teleworking expenses, exempting these from tax and making them deductible from the company's annual profit.

DISCRIMINATION AND HEALTH RISKS

The new legislation in many cases is alert to the risk of discrimination against teleworkers and explicitly refers to teleworkers' rights to equal remuneration, working conditions and career opportunities.

Sometimes, this consists of a generic acknowledgement that all the rights and obligations of employees working at the employer's premises extend



The Code of Practice introduced in Ireland focuses specifically on an employee's right to disconnect, by requiring employers to develop a 'Right to Disconnect' policy.

to employees working remotely. It is legitimate to assume that such provision also implicitly guarantees the health and safety rights of teleworkers.

However, in some cases, the legislation states that employees working remotely are insured against accidents, or that employers should guarantee a safe working environment, even outside the employer's premises – as in Austria and Germany.

The new law in Spain goes even further in that it considers protection against social isolation, a common risk of working remotely for long periods.

ROLE FOR THE EU

The challenges of telework vary little from one Member State to another, but the way they are addressed differs quite a bit. Among those few countries that have passed new legislation, regulatory frameworks have not been updated to the same extent, through the same procedures or at the same pace. This reflects the diversity of work cultures and practices.

However, EU co-ordination of the regulations of Member States could establish minimum standards aimed at better protecting workers' health and employment conditions. This could be done by adapting the existing social partners' framework agreement or adopting new regulation at EU level.

If high levels of telework are here to

stay, it is likely to lead to an increase in cross-border teleworking – something that so far has not been addressed in the new national legislation nor at EU level. This could, however, have implications for social security rights and working conditions.

This is a synopsis of a blog entitled 'As Member States take different approaches to regulating telework, will the EU bring them into line?' published by Eurofound on 31 May 2021.

References

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