

Regulating telework in a post-COVID-19 Europe

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This report was commissioned by the European Agency for Safety and Health at Work (EU-OSHA). Its contents, including any opinions and/or conclusions expressed, are those of the authors alone and do not necessarily reflect the views of EU-OSHA.

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Cataloguing data can be found on the cover of this publication.

Luxembourg: Publications Office of the European Union, 2021

ISBN: 978-92-9479-541-0

doi:10.2802/125499

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1 Introduction

The unprecedented extension of telework as a result of the outbreak of COVID-19 gives rise to questions about the impact of this form of work organisation in the longer term, particularly because there are many reasons to believe that it will accelerate pre-existing trends towards the digitalisation of work and the increasing flexibility of work arrangements. Many employers have had a large proportion of their employees working from home since March 2020. Both employers and employees with no previous experience of telework have faced the advantages and drawbacks of this work arrangement. As time goes on, it is likely that telework and more flexible work organisation arrangements will become a more prominent and permanent feature for employers and employees.

While literature outlines the potential benefits of telework for both organisations and individuals in terms of flexibility, autonomy, performance and work-life balance, studies also point out potential drawbacks. Telework has traditionally been associated with psychosocial risks, mainly related to the pervasiveness of information and communications technology (ICT) (extended availability and increased workload), blurring boundaries between work and private life (work-life conflict) and isolation. Telework also entails higher ergonomic risks because working outside the employer's premises increases the complexity of risk assessment and the enforcement of occupational safety and health (OSH) standards by either the company or workers' representatives.

The increased prevalence of telework as a consequence of the COVID-19 pandemic has led to increasing interest regarding this form of work organisation and its impact on the well-being and health of employees. For this reason, in autumn 2020 the European Agency for Safety and Health at Work (EU-OSHA) conducted a consultation with [its national focal points \(FOPs\) network](#) through an online survey about existing legislation applicable to telework in a national context, and any legal changes, initiatives and debates resulting from the COVID-19 pandemic.

This report presents an analysis on how telework is regulated in Europe, based on this consultation and an additional literature review, including a review of the International Labour Organisation's ([ILO's national legislation database](#)). The report starts with an introductory overview of EU regulation pre-COVID-19, followed by an analysis of national regulation pre-COVID-19. The next chapter provides an account of changes in legislation, other initiatives and policy debates post COVID-19. The report ends with some concluding remarks.

2 Regulation of telework in the EU pre-COVID-19

Telework is not regulated at EU level through hard-law mechanisms. No specific directives focus on telework, although several directives and regulations address issues that are important for ensuring good working conditions for teleworkers. For instance, the EU Working Time Directive ([Directive 2003/88](#))¹ includes provisions aimed at protecting the safety and health of workers (maximum of 48 working hours per week, etc.), including those performing telework. In addition, the Framework Directive on Safety and Health at Work ([Council Directive 89/391/EEC](#))², which aims to encourage improvements in the safety and health of workers in the workplace, does not specify the work location when it comes to the application of its provisions and, accordingly, also applies to teleworkers. More recently, the Transparent and Predictable Working Conditions Directive ([Directive \(EU\) 2019/1152](#))³ has indirectly

¹ Directive 2003/88/EC of the European Parliament and the Council of the European Union of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003).

² Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989).

³ Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L 186, 11.7.2019).

addressed some of the challenges associated with the protection of teleworkers. This directive requires that provisions be made in relation to the place of work and that work patterns be clarified in the employment contract. This ensures more predictable working time patterns for workers, which could have a positive impact on work-life balance. In addition, it is also worth mentioning the Work-Life Balance Directive ([Directive \(EU\) 2019/1158](#))⁴, which includes telework as one of the flexible working arrangements to which working parents and carers are entitled. However, this directive does not deal with the potentially negative impact of telework (Eurofound, 2020a). Attention should also be drawn to the General Data Protection Regulation ([Regulation \(EU\) 2016/679](#))⁵, replacing Directive 95/46/EC, which regulates the collection, use and transfer of personal data, and also establishes provisions related to data-processing operations, including employee monitoring. In this sense, this regulation requires that employees' consent be given prior to the introduction of any employee monitoring system (Eurofound, 2020b). Finally, it is worth mentioning a recent legislative initiative from the European Parliament ([January 2021](#))⁶, which calls on the Commission to propose a law aimed at recognising the right to disconnect. This law should also establish minimum requirements for remote working and clarify working conditions, hours and rest periods. The legislative initiative was passed with 472 votes in favour, 126 against and 83 abstentions.

The main EU regulation addressing telework was introduced through the [EU Framework Agreement on Telework](#) (2002)⁷. This is an autonomous agreement between the European social partners (ETUC, UNICE, UEAPME and CEEP) that commits the affiliated national organisations to implementing the agreement according to the 'procedures and practices' specific to each Member State. This method of implementation is one of two options for the implementation of EU agreements negotiated by the European social partners provided in the Treaties. The other option entails that negotiated agreements are incorporated into EU directives, which must be transposed into national law. Unlike the second option, the first approach (where agreements are implemented according to the 'procedures and practices' specific to each Member State) is not legally binding and so greater diversity is expected in its implementation and effectiveness, given the diversity of national industrial relations contexts.

In this EU Framework Agreement on Telework (2002), telework was defined as a '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 employers' premises, is carried out away from those premises on a regular basis' (Article 2).

The most important elements of this definition, which was considered at that time very broad (ETUC et al., 2006), are as follows:

- Telework is understood as a work arrangement instead of a labour contract.
- Only employees with an employment contract are covered.
- Only telework that is carried out on a regular basis is covered (1 day a week or 5 days a week).
- Telework is exclusively understood as ICT-enabled mobility arrangements, covering only those stationary jobs that could also be performed at the employers' premises.
- Telework may include several alternative workplaces to the employers' premises.

With regard to content, the EU Framework Agreement on Telework regulates the following:

⁴ Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.7.2019).

⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016)

⁶ European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL))

⁷ Agreement of the European social partners ETUC, UNICE, UEAPME and CEEP of 16 July 2002 concerning telework.

- The voluntary principle: telework is voluntary for both employees and employers except in those cases where it is required as part of the initial job description.
- Reversibility: when telework is not part of the initial job description, the decision to move to telework is reversible by individual and/or collective agreement. The modalities of this reversibility are established by individual and/or collective agreement.
- Employment conditions, training and collective rights: teleworkers are entitled to the same rights and opportunities granted by legislation, and collective bargaining and company rules/policies as comparable workers at the employers' premises.
- Data protection: the employer is responsible for ensuring the protection of data used and processed by the teleworker.
- Privacy: employers respect privacy of employees and monitoring systems have to be proportionate to the objectives.
- Equipment: issues regarding equipment have to be agreed before starting the telework arrangement. As a general rule, the employer is responsible for providing, installing and maintaining the equipment unless the teleworker uses their own equipment.
- Safety and health: the employer is responsible for the OSH of the teleworker. Among other aspects, this requires that employers conduct a risk assessment and inform teleworkers of potential risks.
- Organisation of work: the teleworker manages the organisation of their working time under the limits of national legislation and collective bargaining.

3 Regulation on telework at national level pre-COVID-19

In EU countries, telework is regulated either through statutory legislation or by social dialogue and collective bargaining. Moreover, both types of regulation are in place in most EU countries (although with different levels of coverage) and complement each other.

The role played by the state or industrial relations actors in the regulation of telework partly depends on historically constituted configurations of national institutions, which tend to show some stability owing to 'path dependencies', resilience or complementarity of national industrial relations institutions (Hall and Soskice, 2001). Accordingly, those countries with strong traditions of voluntarist regulation (mainly Nordic countries) have mainly addressed telework through collective bargaining, whereas statutory legislation has been more prominent in 'state-centred' industrial relations models (France, Portugal, etc.).

At the same time, changes in the balance between both types of regulation can occur. In fact, state intervention in employment relationships has increased in recent years at the expense of regulation dependent on social dialogue and collective bargaining. This has happened particularly in those countries that were greatly affected by the 2008 economic crisis and where industrial relations' institutions and actors were comparatively more fragile (Meardi, 2018; Sanz de Miguel et al., 2020). Interestingly, in some of these countries ([Spain, Law 3/2012](#))⁸ statutory legislation on telework was developed in recent years in the absence of social dialogue processes.

Looking at the role played by **statutory regulation on telework**, a general distinction can be made between two main groups:

- countries with statutory definitions and specific legislation on the use of telework (work organisation, employment conditions, etc.) established in the labour code or related legislation (Belgium, Bulgaria, Czechia, Spain, Germany, Estonia, France, Greece, Hungary, Croatia, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia and Slovakia);

⁸ Law 3/2012 of 6 July 2012 on urgent measures to reform the labour market (BOE-A-2012-9110)

- countries without statutory definitions and specific legislation addressing telework or where telework arrangements are dealt with in different laws related to data protection, safety and health or working time (Austria, Cyprus, Denmark, Finland, Ireland, Latvia and Sweden).

3.1 Countries with statutory definitions of and specific legislation on telework

3.1.1 Statutory definition

In **Belgium, Czechia, Spain, France, Greece, Hungary, Croatia, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia** and **Slovakia** ⁽⁹⁾, there are statutory definitions of telework or related national categories, for example ‘remote work’ in Bulgaria, ‘distance work’ in Spain (later replaced by telework), ‘alternative workplace’ in Croatia and ‘location-independent’ work in the Netherlands.

In most of these countries, national statutory definitions resemble the wording used in the EU Framework Agreement or follow a similar approach. More specifically:

- In all of these countries, telework is understood as a *work arrangement* rather than a *labour contract*, although in at least one country (**Portugal**) there are also specific fixed-term telework contracts. In some countries (e.g. **Bulgaria, Hungary, Luxembourg, Slovenia**), terms and procedures have to be set up in a collective or individual employment contract (or as an amendment in the employment contract); however, in other countries, legislation requires only a written agreement (e.g. **Estonia, Spain, France, Greece, Croatia, Italy, Malta, Portugal**).
- In all of these countries, telework is circumscribed to dependent employment relationships.
- In many countries, the definitions specify that telework covers only those jobs where mobility is ICT-enabled and, accordingly, can also be performed at the employers’ premises, thereby excluding jobs where mobility is required by the labour process (**Belgium, Bulgaria, Czechia, Spain, France, Malta**). However, it is worth noting that some national definitions (**Czechia, Croatia, Spain, the Netherlands**) do not make explicit references to ICT use.
- In some of these countries, only telework that is carried out on a regular or ‘predominant’ basis is covered (**Germany, Spain, Hungary, Lithuania, Luxembourg, Malta, Poland, Romania**). In other countries (**Belgium, Italy, see Box 1 below**), a distinction is made between regular or structural telework and occasional, non-regular or smart telework, and different legal frameworks apply to each category. In other countries, the frequency of telework is not specified or it is broad enough to cover different frequencies (e.g. **France, Portugal**).
- In most of the countries, telework tends to include several alternative workplaces to the employers’ premises. In some countries, there is a distinction between homework and telework (**Slovenia**), whereas in other countries the term ‘homework’ was replaced by new categories that explicitly acknowledge the diversity of workplaces outside employers’ premises (**Czechia, Spain**).

⁹ In Belgium and Luxembourg, which was then extended to all the companies and employees and declared binding by law (Visser and Ramos Martin, 2008), statutory legislation is the result of a previous cross-sectoral agreement aiming to implement the EU Framework Agreement on Telework (Eurofound, 2010).

Box 1: Countries with more than one statutory definition

In Belgium, a distinction is made between 'structural' and 'occasional' telework. The difference is that structural telework is performed on a regular basis (following a specific pattern) whereas occasional telework is performed irregularly or sporadically. An employee is entitled to do occasional telework in case of force majeure or for personal reasons.

In Italy, the flexible determination of space-time factors distinguishes 'smart work' from telework. Smart work is defined as a more flexible arrangement where work takes place partly at the company's premises and partly outside, with no constraints in terms of place of work or working time beyond the limits of maximum hours established in legislation or collective bargaining. As of mid-2019, there were an estimated 480,000 smart workers in Italy (Eurofound, 2020a).

In other countries, alternative definitions have been introduced through collective bargaining. For instance, in Germany, some company collective agreements have introduced alternative categories such as 'mobile work'.

3.1.2 Main issues addressed in statutory legislation

In this section, we discuss the main issues addressed in national statutory regulation. To this end, we focus on the most important regulatory dimensions identified in the literature and in the EU Framework Agreement: employment and working conditions (including work organisation related to working time); privacy and employers' surveillance; equipment; OSH; collective rights; and work-life balance.

With regard to **employment and working conditions**, the most common approach is to follow the principle of guaranteeing the equal treatment of teleworkers and workers who always work at the employers' premises. This principle is based on the fact that telework affects the organisation of work and does not create a special employment status (Visser and Ramos Martin, 2008). However, in some countries national legislation goes beyond this general approach by establishing a range of issues where the rules applicable to telework differ from the general labour law provisions. This applies particularly to working time regulation. For instance, in **Belgium, Bulgaria, Czechia, Lithuania and Slovakia**, legislation establishes that working time schedules do not apply to teleworkers. This means that teleworkers can organise their working time themselves. Moreover, in **Belgium, Czechia and Slovakia**, legislation states that teleworkers are not entitled to compensatory rest or to overtime pay. In **Slovenia**, legislation establishes that the employment contract for teleworkers may define working time, night work, breaks, and daily and weekly rest periods in a different manner if the employee can schedule working hours independently. In **Hungary**, legislation requires that, in the absence of an agreement to the contrary, the employee's working arrangements must be flexible. Moreover, in this country, rules applicable to teleworkers are also different from those for employees working at the employers' facilities in terms of the employer's rights to give instructions (Visser and Ramos Martin, 2008).

In some countries, the principle of equality in terms of employment conditions is reinforced through explicit non-discrimination clauses. In **France, Malta and Portugal**, legislation explicitly acknowledges that teleworkers have equal rights to employees working at the employers' premises in relation to promotion and training (and in Portugal also in relation to limits on normal working hours). In **Croatia**, it is specified that a teleworker's remuneration shall not be less than the remuneration of a worker engaged in the employer's premises in the same or similar tasks. Similarly, pre-COVID-19 legislation in **Spain** stresses the need for non-discrimination with regard to remuneration. It states that 'distance workers shall have the same rights as those who work at the employers' premises, except for those inherent to the performance of the work at the employers' premises. In particular, the distance worker shall be entitled to receive, as a minimum, the total remuneration established in accordance with his professional

group and functions' (Article 13.3 of the [Workers' Statute Rights](#))¹⁰. In **Romania**, attention is drawn to alternative employee benefits such as medical packages, gym memberships, fruit or similar. In this case, legislation establishes that the employer should either grant access to these benefits or give comparable benefits (Andersen, 2020). In **Poland**, legislation includes a comprehensive non-discrimination clause for teleworkers, which applies to the establishment and termination of employment, conditions of employment, promotion and access to training. Similarly, in **Luxembourg**, non-discrimination clauses make reference to conditions of remuneration, access to promotion, and collective and individual access to ongoing vocational training.

Particular attention should be drawn to those countries that have legislated for new employment rights for teleworkers and, in particular, the right to disconnect, namely **Belgium, France, Italy and Spain** (see Box 2).

Box 2: The regulation of the right to disconnect in Belgium, France, Italy and Spain

France was the first European country to introduce the right to disconnect through a provision in the new Labour Code in 2016. In Italy, the right to disconnect was established in Law 81 of 22 May 2017, which legislated for a new framework on flexible ('smart' or 'agile') work. In Spain, it was established by Law 3/2018 of 5 December 2018 on the Protection of Personal Data and the Guarantee of Digital Rights. In Belgium, some provisions favouring the right to disconnect were included in the Act regarding the strengthening of economic growth and social cohesion of 26 March 2018.

As noted by Eurofound (2020a), the approach to implementing the right to disconnect and its coverage differ between countries. In terms of approach, legislation in Spain leaves the implementation of the right to disconnect to collective bargaining, whereas in France implementation relies on agreements between employers and unions at company level. In Belgium, the right to disconnect should be negotiated by health and safety committees at company level. In contrast, in Italy, the right to disconnect should be implemented through individual agreements between the employer and the employee.

In terms of coverage, the right to disconnect applies to only smart workers in Italy (see Box 1 for the definition of a smart worker). In France, the right to disconnect has to be implemented in all companies with more than 50 employees (less than 1 % of employers and 45-50 % of the workforce). Similarly, in Belgium, the right to disconnect covers only those companies with more than 50 employees, in which the law requires that health and safety committees are established (Eurofound, 2020a).

Countries that have not established legislation on the right to disconnect have legal provisions that are intended to ensure compliance with legislation on working time. For instance, **German** legislation establishes that a teleworking agreement should oblige employees to comply with the Working Hours Act. Furthermore, a telework agreement should oblige employees to provide documentation of the working hours performed daily.

Some countries have also legislated for the *right to ask for telework* (e.g. **France** and the **Netherlands**). All employees have this right and, in the case of a refusal, the employer must justify this in writing.

As far as **privacy and employers' surveillance** is concerned, countries' legal provisions on telework tend to refer to the general principles of proportionality, legitimacy and balance between employers' control and privacy rights. In some cases, telework legislation also states that any monitoring system has to be compatible with safety and health requirements for work with display screens (**Malta**), that

¹⁰ Royal Legislative Decree 2/2015 by the Labour and Social Security Ministry of Spain by which the consolidated text of the Workers' Statute Rights is approved (BOE-A-2015-11430).

employees' consent in writing is required prior to implementing any monitoring system (**Greece and Malta**) or that the use of remote monitoring systems for measuring employees' performance is prohibited (**Portugal**).

Beyond the provisions included in telework legislation, several of the countries included in this group regulate the digital monitoring of employees through data protection legislation. In some countries, this regulation prohibits email/internet monitoring (**Bulgaria, Portugal**), telephone/video surveillance (**Croatia**) or direct monitoring through installed apps in devices (**Italy**). In other countries, data protection legislation limits digital surveillance to certain contexts, professional activities or circumstances (**Bulgaria, France, Estonia, Germany, Greece, Latvia, the Netherlands, Romania, Slovenia, Slovakia**). For instance, in **Estonia**, digital surveillance equipment (cameras, internet or email monitoring systems) is permitted only for the purpose of protecting persons and property, whereas in **Germany** digital surveillance equipment can be used only in case of a concrete suspicion of criminal activity or serious malpractice (Eurofound, 2020b).

In terms of **equipment**, several countries have established in legislation that the employer should be responsible for providing and maintaining the equipment (e.g. **Malta, Poland**) or providing economic compensation to the employee to cover those expenses (e.g. **Greece, Lithuania**). In other countries, legislation provides that issues related to operational, technical and other equipment in the workplace should be specified in the individual telework agreement (Bulgaria, Slovenia). Interestingly, in France the legal requirement that the employer should cover the costs related to telework equipment was removed after a legal amendment ([Ordinance No 2017-1386 of 22 September 2017](#))¹¹, 2017 on the new organisation of social and economic dialogue in businesses and favouring the exercise and promotion of union responsibilities.). However, some doubts have arisen regarding the actual implication of this legal amendment considering the employer's legal obligation to bear professional expenses ([Cass. soc., Sept. 19, 2013, no. 12-15.137](#))¹². In other countries, legislation simply does not address this topic, although it can still be addressed through collective bargaining. For instance, in Spain, the lack of regulation on equipment was identified as a legal vacuum in telework legislation in the pre-COVID-19 period (Sierra Benítez, 2013, 2015).

In relation to OSH, statutory telework legislation generally acknowledges the equal rights of teleworkers and employees working at the employers' premises. Thus, the general rules on OSH are applicable to teleworkers. However, the practical implementation and enforcement of OSH standards is more problematic when employees are working outside the employers' premises. Under telework arrangements, employer responsibility for the protection of employee OSH is more challenging and can be legally constrained owing to employees' privacy rights. Similarly, labour inspectorate and workers' representatives may experience more limitations and difficulties in verifying that the relevant safety and health provisions are correctly applied. In relation to these matters, several countries provide labour inspectorates, employers (or safety and health experts) and/or workers' representatives with access to teleworkers' workplaces to inspect workers' compliance with OSH, subject to prior notification of the employee and their consent or agreement (**Belgium, Bulgaria, Estonia, France, Greece, Hungary, the Netherlands, Poland, Romania, Slovenia**). **Bulgaria** provides particularly detailed provisions on this matter. In this country, the capacity of employees to refuse employers' inspections is seriously restricted, as teleworkers do not have the right to deny access to the workplace during the established working hours and/or within the limits established in the individual employment agreement and/or collective agreement without giving reasons. The teleworker has in turn the right to request a formal

¹¹ Ordinance 1386/2017 of the Republic President of France of 22 September 2017 relative to the new organization of social and economic dialogue in the company and promoting the exercise and valorisation of union responsibilities (OJ 223, 23.09.2017).

¹² Cour de cassation 12-15.137, 12-15.138, 12-15.139/2013 of the French Republic of 19 September 2013.

inspection in their workplace. In contrast, there are countries where legislation prevents or seriously restricts the inspection of teleworkers at home (**Croatia, Germany, Italy, Spain, Portugal** ⁽¹³⁾).

The problem of ensuring employers and employees' compliance with OSH standards can also be addressed through other measures. For instance, in **Slovenia**, an evaluation by the Labour Inspectorate is required prior to telework starting, although based only on the notifications submitted by the employers. Only those companies authorised by the Labour Inspectorate can implement telework. It is also worth mentioning the case of **Estonia**, where the problem of ensuring workers' compliance with OSH standards has been addressed through an approach that stresses employees' responsibility. In this country, an amendment to the Occupational Safety and Health Act was approved in May 2018 (in force since 1 January 2019), which stipulates the right to make an agreement between the employer and employee doing telework, where that agreement contains a contractual penalty in case the employee does not fulfil the OSH regulation. Thus, the aim of this stipulation is to act as a deterrent and guide, so that employees comply with the OSH regulation. In this way, **Estonia** has conferred this responsibility mainly on employees, although employers still have to arrange instruction and training for employees.

Beyond the problem of enforcement, a second potential challenge for the regulation of OSH standards is related to employer liability in the case of teleworker work accidents. Generally, the same regulations apply to accidents during teleworking as to accidents at work at the employer's premises. Thus, employers are liable for accidents during teleworking in the same way as they are for accidents that occur at the company premises; entitlement to accident insurance is limited for teleworkers, as it applies to on-site employees and to accidents occurring during a professional or labour activity. However, the application of the work accident concept to teleworkers may be more problematic. Generally, national legal frameworks establish that a teleworker is required to prove that the accident really happened in the workplace and during work hours, and the competent authorities are responsible for investigating and determining whether the accident occurred during a professional or private activity ⁽¹⁴⁾. An exception to this general regulation is found in **France**, where legislation establishes a different presumption in cases of accidents occurring in the location where the telework is performed and during work activity hours. This presumption has the benefit of relieving the employee from the responsibility of evidencing causation between the accident and the professional context.

Attention should be drawn to those countries that have adopted specific provisions that require employers to provide additional resources or tailor-made plans for teleworkers with a view to helping them comply with OSH standards. In at least one country (**Lithuania**), legislation provides that the employer must train the employee in how to safely use the work equipment provided by the employer. In several countries, legislation explicitly requires employers to conduct a risk assessment of the place of telework and to take measures based on this evaluation (**Croatia, Germany, Hungary, Slovenia**) or inform the employee of the risks existing in their place of telework (e.g. **the Netherlands**). In the countries where legislation prevents or seriously restricts the inspection of teleworkers at home (**Croatia, Germany, Italy, Spain**), any risk assessment should be carried out on the basis of information collected from the teleworker.

It is also worth mentioning cases in which national legislation covers specific risk factors related to telework.

In **Italy**, particular attention is paid to avoiding risks associated with 'technostress'. To avoid this risk, employees are obliged to comply with the rules on rest periods and breaks established by law and

¹³ In Portugal, legislation establishes that the workplace visit shall be carried out only for monitoring the work activity and the working instruments, and may only take place between 9.00 and 19.00, with the assistance of the employee or person designated by the employee. However, this is not applicable for monitoring compliance with safety and health regulations.

⁽¹⁴⁾ In Germany, public accident insurance carefully examines work accidents in the case of teleworkers, with a view to clarifying whether the accident occurred during a professional or private activity (Andersen, 2020).

collective agreements. During breaks and rest periods, employees must switch off the equipment they use to perform their work. Legislation in **the Netherlands** encompasses the assessment and prevention of psychosocial risks. In **Slovenia**, legislation states that the following factors should be considered by the employer in the case of telework: stress and mental well-being, the fact that the employee works alone and other risks such as manual lifting of loads, electric shock, etc. In **Portugal** and **Luxembourg**, attention is drawn to the risk of isolation. In **Portugal**, the labour law requires the employer to promote regular contact between the remote worker, the company and other workers, to prevent isolation. In **Luxembourg**, the national agreement on telework (which was declared binding by law) stipulates that employers should ensure that measures are taken to prevent teleworkers from becoming isolated from their office-based colleagues (Eurofound, 2010).

In terms of **collective rights**, the most that national legislation recognises are the telework equality principles on this matter. Specific provisions aiming to reinforce teleworkers' rights to works council representation or shop stewards seem to be lacking in the majority of the EU Member States. Some of the concrete provisions identified concern the teleworkers' right to elect an individual information and consultation representative (**Bulgaria**); information and consultation rights related to the introduction of telework or the number of teleworkers (**Croatia, Greece, Hungary, Luxembourg**); and the employer's obligation to reach an agreement with the company trade union prior to the introduction of telework (**Poland**)⁽¹⁵⁾. An interesting exception to this common approach was identified in **Germany**, which confers extensive competences to the works councils in several matters directly and indirectly related to telework (see Box 3).

Box 3: Collective teleworker rights in Germany

In Germany, the employer must regularly involve the works council before introducing telework in a business. A right of co-determination of the works council exists if the employment constitutes a transfer to another place of work (*Versetzung*). In addition, the works council has further rights of co-determination applying to all employees regarding OSH, the allocation of working time and digital surveillance (i.e. in case a device/software for monitoring teleworking employees shall be introduced). Moreover, in case telework is implemented as a company measure that affects several employees, a works agreement would have to be concluded (Andersen, 2020).

Finally, **work-life balance** in relation to telework was a topic specifically addressed in a recent Eurofound study (2020a). This study distinguishes two main groups:

- countries where legislation has strengthened workers' protection against the negative consequence of telework and permanent availability through the right to disconnect (**Belgium, France, Italy and Spain**; see Box 2);
- countries where telework has been promoted as a way to support conciliation between work and family or personal life, without dealing with any of the associated negative consequences (**Germany, Lithuania, Malta, Poland, Portugal and Romania**).

In the second group of countries, telework is recognised as a right that some employees are entitled to, with a view to attending to family responsibilities. Thus, legislation goes beyond the voluntary principle acknowledged in the EU Framework Agreement. In **Lithuania**, this right applies to pregnant workers, new parents, parents of young children and single parents. In **Germany**, it encompasses employees with care responsibilities. In **Poland**, the right is mainly circumscribed to parents of disabled children. In

⁽¹⁵⁾ It is worth noting that in Poland legislation also allows the implementation of telework through individual agreements (Andersen, 2020).

Malta, Portugal and Romania, legislation provides broader provisions, establishing that telework can be used as one of the measures to improve work-life balance.

3.1.3 Regulation through collective bargaining

Beyond statutory legislation, attention has to be drawn to the role played by collective bargaining in regulating telework. Collective bargaining can complement statutory legislation by providing more detailed provisions. It can also adapt telework regulation to the needs of specific sectors and provide more balanced regulatory solutions than individual agreements.

The role played by collective bargaining in the regulation of employment and working conditions greatly varies in the group of countries having statutory legislation on telework. Collective bargaining coverage ranges from more than 70 % in countries such as Belgium, Spain, France and the Netherlands to less than 20 % in countries such as Bulgaria, Hungary, Estonia or Slovakia (Eurofound, 2018).

Collective bargaining coverage is positively correlated with the degree of collective bargaining centralisation (Eurofound, 2018).

Countries with a more decentralised collective bargaining structure (e.g. Bulgaria, Czechia, Estonia, Hungary, Lithuania, Malta, Poland and Slovakia) are more likely to implement telework arrangements through individual agreements or company agreements.

Literature shows that company collective agreements regulating telework generally have been concluded in knowledge-intensive sectors and in large companies with well-established worker representation structures. However, in some countries, large companies in knowledge-intensive sectors implement telework through individual agreements that entail, at most, some form of individual consultation through direct voice mechanisms. An example is Estonia, where social partners concluded a cross-sectoral framework agreement on telework in 2017. However, implementation of the Estonian framework agreement on telework has been scarce. In those sectors where telework is more widespread (Computer, programming and related activities (IT) or financial activities), collective agreement is non-existent at sectoral level. At company level, collective bargaining has been concluded in only a small proportion of companies; more often, employers implement telework unilaterally through human resource management practices. In some cases, companies in the IT and financial sectors have relied on information and consultation procedures that use different methods, such as working groups or online surveys. Through these mechanisms, companies analyse workers' views and demands on flexible work arrangements, and develop plans accordingly (Sanz de Miguel, 2020).

In those countries with more centralised collective bargaining structures (Belgium, France, Germany, Italy, the Netherlands, Slovenia or Spain), within-country differences appear regarding the extent to which sectoral and company collective agreements address telework.

In countries such as **Spain and Portugal**, very few collective agreements deal with telework. In **Spain**, less than 5 % of company agreements and 3 % of sectoral agreements include a clause on telework, according to the 2016 data of the Collective Bargaining Statistics of the Ministry of Employment. Telework is regulated at sectoral level in the chemical industry, daily press media and, more recently, in the financial sector. At company level, the most important telework agreements have been concluded in the finance and insurance, energy and IT sectors. Collective agreements with telework clauses do not address many aspects that are relevant for tackling and preventing some of the potential negative effects on working conditions and OSH identified in the literature. Generally, the specific safety and health problems facing teleworkers are not covered by such agreements. Furthermore, innovative organisational measures to support teleworkers, provided by either the employer (specific training, etc.) or employee representatives (new channels for representation, etc.) are scarce. The most innovative clauses are related to the right to disconnect, which is regulated at sectoral level in the financial sector

and at company level in some banks (e.g. Banco Santander) and insurance companies (e.g. AXA). In **Portugal**, the introduction of telework clauses in collective bargaining agreements remained rather stagnant following the 2008 economic crisis. In 2017, only six collective agreements referred to telework, of which two were multi-employer agreements (Centro de Relações Laborais, 2018).

Collective bargaining has played a more prominent role in the regulation of telework in some countries, for example **Germany, France or Italy**. In **Germany**, telework regulation at company level has a long-standing tradition and first agreements can be traced back to the 1990s. In 1999, Telekom and the postal trade union (Postgewerkschaft) signed the first collective agreement. In 2000, a report of the Hans-Böckler-Stiftung counted 68 enterprise agreements regulating telework. More recently, several high-profile company-level agreements have been established to regulate different aspects of telework and, in particular, the right to disconnect. In 2011, Volkswagen pioneered an approach that prevented emails from being sent to staff mobile phones between 18.00 and 7.00. In 2014, automobile company Daimler introduced the 'mail on holiday' scheme, which employees can use to avoid seeing incoming messages while on holiday. Other companies such as Allianz, Bayer, Evonik, Henkel, IBM Germany and Telekom have introduced similar policies. Evonik uses an 'email brake', which is set out in a works agreement and applies to all employees of the company. Employees, together with their supervisors, define a period of availability and do not have to answer emails outside this time. However, the email servers are not turned off and emails are not blocked. IBM Germany blocks employees' emails between 20.00 and 6.00, whereas no employees at Henkel are required to check their emails outside official working hours.

In **France**, 25 % of employees were covered in 2017 by a collective telework agreement concluded at company level that established more provisions for the protection of employees (DARES, 2019). Those agreements were more prevalent in large companies (with more than 500 employees) than in small and medium-sized enterprises (SMEs). In 2017, 57 % of employees working in large companies were covered by a company collective telework agreement compared with 4 % of employees working in SMEs (DARES, 2019).

In **Italy**, about 30 % of the national collective bargaining agreements contain clauses on telework and/or smart working (Cetrulo, 2021).

3.2 Countries without statutory definitions of and specific legislation on telework

3.2.1 Statutory provisions addressing matters related to telework

In the countries where there was no statutory definition of and specific legislation on telework before the COVID-19 pandemic crisis (**Austria, Cyprus, Denmark, Finland, Ireland, Latvia and Sweden**), telework was dealt with by different laws.

In some of these countries, telework is addressed by the frameworks of national **OSH regulation**. This is the case in the Nordic countries, where what is known as work environment legislation equally applies to teleworkers and other workers, and provides some additional guidelines for telework. For instance, in **Denmark**, there are 'Guidelines for telework or home-based work' under the Act on the Working Environment. Danish legislation also requires employers to ensure proper safety and health conditions (e.g. by providing an appropriate desk, chair, etc.) for those employees working from home more than 1 day per week. It is also worth mentioning the case of **Finland**, where OSH legislation establishes different insurance coverage for teleworkers. The most significant feature of this is that teleworkers are not covered by labour accident insurance during work breaks. In other countries included in this group, teleworkers are simply covered by general OSH regulation; this is the case in **Austria** where, nevertheless, works councils in some companies have bargained for specific OSH standards for teleworkers.

Some of these countries have also addressed telework-related issues through **data protection legislation**. This is the case in **Austria** in particular, where the [Data Protection Act 2018](#)¹⁶ (specifically Sect. 96a) within the Labour Constitution Act (ArbVG) set up relevant provisions for telework. This provision establishes that the works council (and also the employer) has the right to demand a company collective agreement for the introduction or implementation of the following data processing projects: projects related to the installation of any technological facilities at work, which are (potentially) likely to monitor employees and affect human dignity (Sect. 96 (1) Nr. 3 ArbVG); any system for the computerised collection, handling and processing of employees' personal data, which exceeds the collection of general data regarding the person and their qualifications (Sect. 96a (1) Nr. 1 ArbVG); and any system for the evaluation of employees, if data are collected, which is not justified by operational needs (Sect. 96a (1) Nr. 2 ArbVG).

Finally, regulation on working time has also dealt with telework arrangements. In this regard, **Finland** is an interesting case. The scope of the Working Hours Act was expanded in the 2019 update. The concept of working time is no longer tied to a workplace — working hours are considered the time spent on work regardless of the place. This means that telework (known as 'distance work' in Finland) is generally regulated by the Working Hours Act. In **Austria**, the regulation of working time is subject to enforceable collective company agreements.

3.2.2 Collective bargaining regulation

In the countries where there was no statutory definition of and specific legislation on telework prior to the COVID-19 pandemic, particular attention should be drawn to regulation set up through collective bargaining. Two main groups of countries can be identified based on the role played by collective bargaining in regulating telework.

In the first group of countries, collective bargaining has barely dealt with telework and telework arrangements have mainly been addressed through individual negotiations (**Cyprus, Latvia, Ireland**). In Ireland and Cyprus, the EU Framework Agreement was not implemented through tripartite or bipartite agreement⁽¹⁷⁾. In **Latvia**, a tripartite agreement was concluded, although this agreement provided only non-binding guidelines on the introduction of telework (Eurofound, 2010).

In the second group of countries, sectoral collective bargaining has extensively regulated telework (**Austria, Denmark, Finland, Sweden**). In **Austria**, the EU Framework Agreement has been implemented in around 90 % of sectoral collective agreements through the establishment of more comprehensive regulation. Moreover, company collective agreements implement more detailed regulations in several sectors such as IT and financial activities (Sanz de Miguel, 2020). In the Nordic countries (mainly **Denmark** and **Sweden**), some sectoral collective agreements were already used to regulate telework before the enactment of the EU Framework Agreement (Prosser, 2012). Since 2002, the EU Framework Agreement has been implemented in **Denmark, Finland** and **Sweden** through national framework agreements providing general guidelines and recommendations. Through these mechanisms, the EU Framework Agreement was implemented in most of the sectoral collective agreements in the Nordic countries (Visser and Ramos Martin, 2008; Eurofound, 2010). Nevertheless, a relevant aspect of the regulation of telework in the Nordic countries is that occasional telework, which accounts for the highest proportion of telework arrangements (Sostero et al., 2020), is mainly implemented through individual and informal agreements. In fact, previous research has identified that the regulation of telework in the Nordic countries is essentially based on a culture of 'freedom with responsibility', meaning that telework is largely self-regulated under no particular managerial constraints, relying on trust between employers and employees (Sanz de Miguel, 2020).

⁽¹⁶⁾ Federal Act (23/2018) by the Austrian Parliament concerning the Protection of Personal Data (DSG)

⁽¹⁷⁾ In Ireland, trade unions issued guidelines aimed at implementing the EU Framework Agreement (Eurofound, 2010).

4 Changes in national regulation and debates post COVID-19

4.1 Temporary measures and initiatives

Governments have adopted a variety of temporary measures to foster telework as a preventive measure, to contain the spread of the COVID-19. Although some countries have issued only a recommendation for telework, others have enforced telework, at least during the peaks of the pandemic. In countries such as **France** and **Belgium**, the capacity to enforce telework through *force majeure* was already provided for in legal frameworks to allow the continuity of a company's activity and guarantee the protection of employees. Several countries have adopted a similar approach based on states of emergency (e.g. **Finland, Germany, Hungary, Italy** (in the public sector), **Poland, Portugal, Slovakia, Slovenia**). These enforcement measures mean that the voluntary principle of telework has been temporarily suspended, with telework becoming the default for all jobs that are considered 'teleworkable'. In some countries, the decision on whether to adopt telework lies with only the employer (e.g. **Hungary** and **Poland**), whereas in other countries either the employer or the employee can request a shift to telework (e.g. **Italy, the Netherlands**).

Since the outbreak of COVID-19, social partners, companies and employees in many countries have had to cope with an extraordinary situation in which the adoption of measures to enforce or recommend telework have been changing in tandem with the evolution of the pandemic.

In this context, **Belgium** stands out as a country where social partners have issued a [cross-sectoral collective bargaining agreement](#)¹⁸ providing a framework for employers and employees to make proper arrangements regarding recommended or mandatory telework during the pandemic. The agreement, established in January 2021 and set to expire by the end of 2021, covers telework arrangements in the private sector that do not fall into the categories of 'regular' and 'occasional' telework defined by legislation in place prior to the pandemic. Some of the aspects addressed are flexibility in the implementation of arrangements, combined with respect for social dialogue and the provision of clear information to the employee; issues that have to be agreed between the employer and the employee (equipment and costs, working time and availability); the employer's duty to inform the employee of telework monitoring methods and respect the employee's privacy; respect for collective rights; and well-being at work. Regarding well-being, the agreement states that teleworkers should receive guidelines on the ergonomics of workstations, the correct use of screens and the prevention of psychosocial risks. These guidelines should be based on a risk assessment. The employees should be able to contact their superiors or the competent prevention advisors about any issue related to safety and health. In addition, the agreement states that the employer should take appropriate measures to maintain the connection between teleworkers and their colleagues and to prevent isolation — including by facilitating gatherings at the company premises while respecting sanitary measures.

Parallel to the adoption of temporary measures to enforce or facilitate the extension of telework, EU-OSHA's consultation with national focal points found that public authorities have increased efforts in two main ways.

First, they have been collecting and analysing evidence on the implementation of telework and the perceptions of both employers and employees through new or regular surveys and specific studies. In general, the aim is to explore the advantages and drawbacks of this form of work organisation, as well

¹⁸ Collective labour agreement 2015/149 of the National Labour Council of Belgium of 26 January 2021 concerning the recommended or mandatory telework due to the Coronavirus crisis, signed by the Federation of Enterprises of Belgium, the organizations represented by the Superior Council of Independent and Small and Medium enterprises, De Boerenbond, the wallone Federation of Agriculture, the Union of Enterprises for Social Benefit, the Confederation of Unions Chrétien of Belgium, the Federation General of Work in Belgium, and the General Central of Liberal Unions of Belgium.

as future plans or preferences. In some cases, OSH aspects such as risk management strategies, psychosocial risks and overall well-being are analysed more specifically.

Second they have been developing more specific OSH recommendations and new guidance materials for companies, line managers and employees — in some cases in collaboration with social partners. It has been highlighted that the pandemic has led to increased awareness of the relevance of safety and health issues at work, at both employers' premises and other locations. General guidelines to prevent the spread of COVID-19 at work have been combined with more specific guides and resources to facilitate the transition to safe teleworking, bearing in mind that many companies and teleworkers did not have previous experience with this work arrangement. Some illustrative examples are as follows:

- In **Belgium**, the social partners, with the support of the Ministry of Labour, have developed a [generic guide](#)¹⁹ to help companies deal with the COVID-19 crisis. This guide was then tailored to several sectors by the social partners.
- In **Ireland**, the Health and Safety Authority has provided on its website new [information and guidance on teleworking](#)²⁰ since the outbreak of the pandemic. The Department of Enterprise, Trade and Employment published the website '[Guidance for Working Remotely during COVID-19](#)²¹' detailing where information can be found in relation to telework. A public consultation was launched, to assess the suitability of the guidance provided and indicate further areas of guidance for either employers or employees.
- In the **Netherlands**, the Health and Safety Portal pays special attention to working from home during the pandemic. It provides [information and recommendations](#)²² for employers and employees focused on physical health (such as sitting posture) and mental health (such as preventing work-life conflict). The infographic '[Working from home in corona time](#)²³' provides guidance on setting up a home workplace in accordance with ergonomic principles. The portal also indicates the responsibilities of both employers and employees in relation to OSH.
- In **Latvia**, the recent adoption of new legislation on telework has been accompanied by new guidance and audiovisual materials on [telework in general](#)²⁴, on [how to arrange a home office](#)²⁵ and on [how to carry out exercise at home](#)²⁶.

4.2 Legal changes, initiatives and debates

The experience of extensive and prolonged telework since the outbreak of the pandemic has fuelled changes in legislation and debates aimed at adapting telework regulation in a post-COVID-19 scenario. It is widely agreed that the pandemic has had a significant impact on work organisation practices and managerial culture. As time goes on, it is likely that telework and a flexible approach to work organisation will become a more prominent and permanent feature for employers and employees.

At the time of writing (March 2021), five countries had implemented legal changes: **Italy, Luxembourg, Latvia, Slovakia and Spain** (see Box 4). Legislation is under review in many other countries (**Austria, Belgium, Cyprus, Croatia, Hungary, Ireland, Germany, Malta, Poland, Portugal, Slovenia**). **The Netherlands** can also be included in this group: the Flexible Working Act that regulates telework is

¹⁹ Generic guide of the Ministry of Labour of Belgium of 14 December 2020 for combatting the spread of COVID-19 at work.

²⁰ Information and resources of the Health and Safety authorities of Ireland relative to the COVID-19.

²¹ Guide of the Department of Enterprise, Trade and Employment of Ireland relative to working remotely.

²² Information page on COVID-19 of the Ministry of Social Services and Occupation of the Netherlands.

²³ Guide related to OSH measures made by arbo, Vakmedianet and TNO concerning working from home due to the COVID-19 in the Netherlands.

²⁴ Audiovisual material of the Rīgas Stradiņa Universitāte of Latvia concerning telework.

²⁵ Audiovisual material of the Rīgas Stradiņa Universitāte of Latvia concerning how to arrange a home office.

²⁶ Audiovisual material of the Rīgas Stradiņa Universitāte of Latvia concerning how to carry out exercise at home.

under evaluation (not as a direct consequence of the pandemic but as required by law). This evaluation aims to investigate whether the views of employers and employees have changed since the outbreak of the pandemic and hence whether legal changes are needed. Table 1 compares the pre- and post-COVID-19 situation in terms of national statutory legislation and specific provisions on telework.

Table 1: Legal regulation of telework before and after the outbreak of the COVID-19 pandemic

| | | Pre-COVID-19 | Post COVID-19 |
|-----------------|-------------|--|---|
| EU Member State | | Statutory definition and specific legislation on teleworking | New specific legislation on teleworking |
| BE | Belgium | Yes | Under review |
| BG | Bulgaria | Yes | No |
| CZ | Czechia | Yes | No |
| DE | Germany | Yes | Under review |
| EE | Estonia | Yes | No |
| ES | Spain | Yes | Yes |
| FR | France | Yes | No |
| EL | Greece | Yes | No |
| HU | Hungary | Yes | Under review |
| HR | Croatia | Yes | Under review |
| IT | Italy | Yes | Yes |
| LT | Lithuania | Yes | No |
| LU | Luxembourg | Yes | Yes |
| MT | Malta | Yes | Under review |
| NL | Netherlands | Yes | Under review |
| PL | Poland | Yes | Under review |
| PT | Portugal | Yes | Under review |
| RO | Romania | Yes | No |
| SI | Slovenia | Yes | Under review |
| SK | Slovakia | Yes | Yes |
| AT | Austria | No | Under review |
| CY | Cyprus | No | Under review |
| DK | Denmark | No | No |
| FI | Finland | No | No |
| IE | Ireland | No | Under review |
| LV | Latvia | No | Yes |
| SE | Sweden | No | No |

Box 4: Legal changes in the regulation of telework since the outbreak of the pandemic

Italy — extension of smart work in public administrations (April 2020)

Law 24 April 2020, n. 2727 establishes an extension of ‘smart work’ in public administrations. By 31 January each year, public administrations, after consulting the trade unions, have to draw up an organisational plan for smart work (POLA), as a section of the performance plan. The POLA aims to identify activities that can be carried out in a smart mode and be used by at least 60 % of employees. In case of non-adoption of the POLA, smart work applies to at least 30 % of employees, if they request it.

Latvia — amendment of the Labour Protection Law (July 2020)

The new regulation on telework was already under preparation before the outbreak of the pandemic as an amendment of the Labour Protection Law²⁸. It came into effect in July 2020. It includes a definition of telework (in line with the EU Framework Agreement) and develops the OSH provisions. The employer remains responsible for work, and safety and health at work. The employee has to cooperate with the employer in the risk assessment and provide information on the conditions of the place where the remote work is carried out, where those conditions may have an impact on their safety and health. The employer must provide support for the risk assessment, irrespective of the number of locations where the employee works. A representative of the employees (or a delegated person) shall be involved in the risk assessment.

Spain — Remote Working Law (October 2020)

Royal Decree Law 28/2020²⁹ was adopted in 2020, partially as a response to COVID-19 and based on agreement with the social partners. The law further regulates the right to disconnect and specific OSH aspects, paying special attention to ergonomic, psychosocial and organisational aspects, and in particular, the distribution of working time, limitation of availability and breaks. The employer is obliged to carry out a risk assessment of the place of telework (e.g. residence or other place selected by the teleworker), and to inform the employee of the risks existing in their place of telework. To obtain information about occupational risks, the company (or OSH-related services) may visit the place of work chosen by the teleworker (only with the permission of the teleworker if they work from home). Risk assessment relates to only the space used for telework. If permission is not granted, a risk assessment should be carried out on the basis of the information collected from the teleworker, in accordance with the operating instructions of prevention. The employer must also take protective measures to support particularly vulnerable employees, such as pregnant employees. In addition, it introduces the obligation of the employer to compensate the employee for the costs of remote working.

²⁷ Conversion into a law, with modifications, of the Decree-Law 18/2020 of the Justice Ministry of Italy of 17 March 2018, measures for the empowerment of the national Sanitary Service and economic sustainment for families, laboratories and companies related to the epidemiologic emergency of COVID-19. Extension of deadlines for the adoption of legislative decrees. (20G00045)

²⁸ Labour Protection Law 1/2001 of the Parliament of the Republic of Latvia of 20 June 2001.

²⁹ Royal Decree Law 28/2020 of 22 September 2020 related to distant work. (BOE-A-2020-11043)

Luxembourg — implementation of new social partners' convention (February 2021)

The Grand-Ducal regulation of 22 January 2021³⁰ implements the social partners' agreement on telework of October 2020. 'Occasional telework' is defined as less than 10 % of a teleworker's normal annual working time, and all other teleworking arrangements are classified as 'regular teleworking'. Regular telework relies on a written agreement between employer and employee, whereas occasional telework requires only written confirmation (for example via email). An agreement on regular telework has to specify, among other things, the location of telework; work schedule; the procedure for agreeing to overtime; any payment for covering internet and communication costs; and the process for returning to the employer's worksite. Employers must pay for and provide the necessary equipment to teleworkers. Regular telework may require a company agreement or collective bargaining. In certain cases, employers have to consult with staff representatives and seek agreement on a telework policy. All employees have the same right to disconnect from work, and teleworkers have the right to the same treatment as employees who work in the employer's workplace. Teleworkers can request that the company's occupational health services inspect their chosen place of work, but the employer does not have the right to carry out an on-site inspection.

Slovakia — amendment of the Labour Code (March 2021)

The establishment of Slovakian regulation on telework was partially triggered by the pandemic. The amendment of the Labour Code³¹ establishes a new set of rights and obligations of the employee and the employer. A telework arrangement requires mutual agreement and some regular or specific pattern (rather than being something that happens on an exceptional basis). The new provisions oblige employers to reimburse the employee for increased costs related to remote work, such as expenses for materials and tools. The code introduces a right to disconnect at the end of the workday and during the weekly rest, unless overtime has been ordered or agreed on, as well as during holidays and public holidays.

Other relevant initiatives are found in **Ireland** and **France**. In January 2021, the Irish government published its [National Remote Work Strategy](#)³², which envisages some legislative changes, as well as other measures to support telework (e.g. improving telework infrastructure such as internet connectivity and hubs), and the development of national data on the incidence and frequency of remote work, as part of a wider effort to improve data on flexible working arrangements to provide an evidence base for future policy. The strategy partially addresses the Irish Congress of Trade Unions' call to carry out a comprehensive review of employment regulation with regard to telework. Also in January 2021, the social partners in **France** issued a [new cross-sectoral agreement](#)³³ that replaces the 2006 agreement and complements pre-COVID-19 legislation on telework.

Legal changes and policy debates on telework encompass four main aspects: the statutory definition of telework, the right to disconnect, the right to telework and OSH provisions. To a lesser extent, issues related to equipment and costs have also been addressed.

The amendment of the Labour Protection Code in **Latvia** implies the adoption of a **statutory definition of telework** for the first time. Although telework is defined in line with the EU Framework Agreement,

³⁰ Grand-Ducal regulation 76/2021 of the Grand-Duc of Luxembourg of 22 January 2021 concerning the declaration of general obligation of the convention of 20 October 2020 relative to the legal regime of telework. (OJ 76, 29.01.2021)

³¹ Amendment of the Act 311/2001 of the President of the Slovak Republic of 17 February 2021 relating to the Labour Code.

³² Department of Enterprise, Trade and Employment of Ireland, Making Remote Work: National Remote Work Strategy

³³ Cross-sectoral agreement of France of 26 November 2020 for a successful implementation of telework in France signed by CFDT, CFE-CGC, FO, MEDEF, CPME and U2P.

the main purpose of the amendment is to provide specific regulation of safety and health issues, as explained below. A similar reform is envisaged in **Cyprus**, where the regulation of telework will be included in the agenda of the Safety and Health Council for 2021, with the EU Framework Agreement as a base.

Luxembourg has implemented a change in the legal regulation of telework that differentiates between occasional and regular telework. Occasional telework is defined as less than 10 % of a teleworker's normal annual working time; all other teleworking arrangements are classified as regular telework. Agreement on regular telework relies on a written agreement between the employer and the employee and has to specify the location of telework; the work schedule; the procedure for agreeing on overtime; any payment for covering internet and communication costs; and the process for returning to the employer's worksite. Occasional telework requires only written confirmation and allows for more flexibility in its implementation.

A comprehensive reform in the statutory definition of telework is under discussion in **Poland**, based on the experience of enforced telework during the pandemic. 'Remote work' was introduced upon the outbreak of the COVID-19 pandemic as a temporary measure to enforce work outside the employer's premises (including work not based on ICT equipment use) and has been extended until the end of the pandemic. In contrast to the existing statutory regulation of telework, remote work at the request of the employer, for a limited period of time, does not require an amendment of the labour contract and allows the use of employees' own equipment while protecting confidential information. The employer has to confirm that the employee has the skills, and technical and logistical means to work remotely. The employer continues to bear OSH obligations and responsibility for accidents at work. The legislative reform envisages that the concept of telework will disappear from the Labour Code and will be replaced by 'remote work'. According to the draft law, 'remote work' can be partly or completely carried out outside the employer's premises. The draft relies on the principle of voluntary agreement between employer and employee, and includes provisions related to collective bargaining. At the same time, it tries to find a solution that would enable the employer to unilaterally direct the employee to work outside the company's premises in exceptional cases, such as during epidemics or other crisis situations. On the other hand, employees would be entitled in certain cases to stronger rights in this respect (e.g. employees with children under 3 years of age, or with children with disabilities or requiring special care). The employer could refuse their request to work remotely only for objective reasons. The draft stresses the responsibilities of workers to comply with safety and health rules. In the case of accidents at work, the employee will have to agree to an inspection resulting in a safety and health report. If an employee refuses to cooperate in this regard, this may result in the case not being considered an accident. Issues related to control and surveillance have to be further developed. The draft states that the company must provide the necessary materials and tools, and cover the costs associated with the installation, service, operation and maintenance of these tools. The reform is currently under discussion between the government and the social partners. Trade unions have expressed doubts about whether the new regulation on remote working should replace existing regulation on teleworking. In their view, the experience of the pandemic shows that remote working should instead concern the possibility of temporarily performing work outside the company. This work arrangement could be on a rotational basis, to prevent employee isolation. They have also stated the need to set a minimum lump sum to cover, for example, the cost of electricity, internet access or the use of other household appliances for work-related purposes.

The right to disconnect was introduced for the first time by the amendment of the Labour Code in **Slovakia**. The amendment sets out the right to disconnect as the right not to use work equipment during the weekly rest and at the end of the workday, unless overtime has been ordered or agreed on, as well as during holidays and public holidays.

The new legislation on remote work in **Spain** strengthens the provisions already in place before the pandemic. Risk prevention should pay special attention to ergonomic, psychosocial and organisational aspects, in particular the distribution of working time, limitation of availability and breaks.

In **Luxembourg**, the new agreement of social partners transposed to legislation states that all employees have the same right to disconnect from work, and teleworkers have the right to the same treatment as employees who work in the employer's workplace. The telework agreement has to specify when the teleworker will be available (working hours and working days) or how availability will be established.

In **Ireland**, the Workplace Relations Commission (WRC) launched a consultation on a new code of practice that will give employees the right to disconnect outside normal working hours. This code of practice will set out guidance for employees and employers regarding best practice and approaches to employee disconnection outside normal working hours. It would ensure that both employers and employees are aware of their requirements and entitlements in relation to disengaging from work, including understanding how these requirements and entitlements apply, especially in a remote working scenario. The code will be admissible in employment rights disputes. Building on the results of the consultation, which ended in January 2021, the government has asked the WRC to draw up a code of practice. It is one of the measures included in the [National Remote Work Strategy](#).³⁴

In **Portugal**, debate on the right to disconnect was already ongoing before the pandemic and has intensified since then, although legislative reform remains stalled. A parliamentary debate, led by an opposition group, was held in July 2020 to discuss a new law on teleworking. The proposed law focused on the right to disconnect, the prevention of other psychosocial risks (work-life conflict, isolation), the right to privacy and wage aspects. Although the law was not adopted, policy debate continues among political parties, social partners, non-governmental organisations and experts. Increasing awareness of the psychosocial risks related to 'constant availability' is also a topic in policy debates and collective bargaining in many other countries.

The right to telework has been a topic of recurrent debate in **Germany** and has gained relevance since the outbreak of the pandemic. In late 2020, the Ministry of Labour proposed a [Mobile Work Act](#)³⁵ that included the right to telework 24 working days a year (with a 5-day week). This draft act did not reach consensus within the grand coalition government between Social Democrats (SPD) and Christian Democrats (CDU) owing to the strong opposition of the CDU. It was also widely criticised by employers' organisations. A second draft was prepared and remains under discussion. This new draft establishes that employees may ask to work remotely but the draft does not contain a legal entitlement for the employer in this regard. The employer can reject the request for operational reasons but needs to explain the refusal. While debate is ongoing, it is worth noting that the purpose of this law is to regulate mobile working arrangements in a comprehensive way, overcoming the divide between 'telework' as defined by statutory legislation and 'mobile work' as regulated by collective bargaining.

In **Luxembourg**, the right to telework was debated during tripartite consultations prior to the adoption of the new agreement on telework in 2020. Debate was driven by a [citizen's petition](#)³⁶ calling for the right to telework, which was discussed by Members of Parliament. However, the recognition of telework as a right was not included in the agreement, thereby maintaining the voluntary principle. In other countries, the debate is not about the right to telework, but about the right of employees to request

³⁴ Department of Enterprise, Trade and Employment of Ireland, Making Remote Work: National Remote Work Strategy

³⁵ Tschierse, K. (2020, October 10) Do we need a right to work from home? DW. Available at: <https://www.dw.com/en/do-we-need-a-right-to-work-from-home/a-55254341>

³⁶ Montaigu, G. (2020, October 10.) Luxembourg: il n'y aura pas de droit au télétravail. Le Quotidien. Available at: <https://lequotidien.lu/a-la-une/luxembourg-il-ny-aura-pas-de-droit-au-teletravail/>

telework. This is the case in **Ireland**, where the Irish Congress of Trade Unions has been calling on the government to include a right to request flexible working arrangements, including telework. The new [National Remote Work Strategy](#)³⁷ supports this call and commits to legislate to provide employees with the right to request telework.

Legislative reform in **Slovenia** foresees the introduction of a new clause that would allow workers with children and caregivers to request a flexible form of work, including telework. The employer would have to assess the worker's request and, in the event of refusal or postponement, explain the reasons for this decision.

Italy is following a different approach in public administrations that consists of encouraging the extension of smart work through annual work organisation plans. The new law establishes specific targets: from 30 % to at least 60 % of employees should use smart work if they request it.

Most legal changes include new OSH **provisions**. The amendment of the Labour Protection Law in **Latvia** specifies the responsibilities and obligations of employers and employees. Although the employer remains responsible for work, and safety and health at work, the employee has to cooperate with the employer in the evaluation of risks. A representative of the employee (or trusted person) shall be involved in the evaluation of risks.

As explained in Box 4, new legislation in **Spain** adopts a comprehensive approach to safety and health issues, including ergonomic, psychosocial and organisational aspects. The employer has to carry out a risk assessment of the place of telework (home or alternative place) and inform the employee of the existing risks. To obtain information about occupational risks, the company (or OSH-related services) may visit the place of work chosen by the teleworker (although only with the permission of the teleworker if it is the home). If permission is not granted, risk assessment should be carried out on the basis of the information collected from the teleworker, in accordance with the operating instructions of prevention. The employer must also take protective measures to support particularly vulnerable employees, such as pregnant employees.

A new regulation in **Luxembourg** states that teleworkers can request that the company's occupational health services inspect their chosen place of work, but the employer does not have the right to carry out an on-site inspection. Safety and health provisions are a significant aspect in all countries in which legislation is under review. In addition, it should be noted that **Denmark** appears to be the only Nordic country where there is a broad debate on telework, including calls for changes in the safety and health provisions applicable to screen work at home. One of the aspirations is that home work should be able to be carried out on a larger scale before specific safety and health requirements apply.

Finally, legal reforms in **Spain** and **Slovakia** have also addressed the obligation of the employer to reimburse **costs associated with telework** (internet connection and communication, materials, etc.). In Luxembourg, a new regulation specifies that the agreement between employer and employee has to include any payment related to compensating telework costs, and that the employer must pay for and provide the necessary **equipment** required by teleworkers.

This section concludes by highlighting some innovative aspects of the previously mentioned new cross-sectoral agreement on telework in **France**:

³⁷ Department of Enterprise, Trade and Employment of Ireland, Making Remote Work: National Remote Work Strategy

- **Teleworkability:** to facilitate the extension of telework arrangements, employers should define the criteria required to identify jobs that are ‘teleworkable’. This identification should be subject to discussions with worker representative bodies where they exist or, if not, directly with employees.
- **Frequency of telework:** the frequency is determined by agreement between employer and worker on the basis of any work agreement or charter implemented. However, employers should ensure an adequate balance between telework and on-site work, to maintain social cohesiveness and avoid organisational disfunctions.
- **Risk assessment:** telework has to be included in the company’s mandatory risk assessment, with a particular focus on the risks linked to isolation and use of digital tools.
- **Training:** the agreement stresses the key role of managers and the management chain in implementing telework based on a trusting relationship between line manager and employee, the establishment of clear objectives and the autonomy of the employee. In this context, it recommends training for managers, teleworkers and on-site workers regarding how to adapt job activities to teleworking; how to develop the autonomy of teleworkers; how to structure the work day by stages; how to respect work legislation and the right to disconnect in a teleworking context; how to regulate the use of digital tools; and how to set objectives in a team mixing remote and on-site work.

5 Concluding remarks

The EU Framework Agreement on Telework (2002) is the main reference for national legislation and collective bargaining on telework in most EU Member States. This includes the definition of what telework is (a form of work organisation in which an employee uses ICT equipment to perform work outside company premises, where that work could have been performed in the company premises) and the regulation of its core aspects: voluntariness for both employees and employers; reversibility; equal employment, training and collective rights; data protection; respect for privacy; and employers’ responsibility for OSH.

EU Member States regulate telework either through statutory legislation or by social dialogue and collective bargaining. In most countries, both types of regulation are used (although with different coverage and significance) and complement each other. The role played by the state or the industrial relations’ actors in the regulation of telework differs and partly depends on national industrial relations traditions.

Before the outbreak of COVID-19, a general distinction could be made between two main groups:

- countries with statutory definitions and specific legislation on the use of telework (work organisation, employment conditions, etc.) set up in the labour code or related legislations (Belgium, Bulgaria, Czechia, Spain, Germany, Estonia, France, Greece, Hungary, Croatia, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia);
- countries without statutory definitions and specific legislation addressing telework, or where telework arrangements are dealt with in different laws related to data protection, safety and health or working time (Austria, Cyprus, Denmark, Finland, Ireland, Latvia, Sweden).

Taking the EU Framework Agreement as a reference, the main innovative aspects regulated can be summarised as follows:

- **Regular and occasional telework:** the EU Framework Agreement only covered regular telework (at least 1 day per week). However, occasional telework has emerged as the predominant form of telework (meaning less than 20 % of working time and/or not following a specific pattern). National approaches vary.

- Some countries have changed the statutory definition of telework to encompass any intensity (e.g. France); other countries have established different definitions and rules for regular and occasional telework (e.g. Belgium).
- Right to disconnect: the EU Framework Agreement stated that teleworkers should manage the organisation of their working time under the limits of national legislation and collective bargaining. Expectations of constant availability by companies or clients has led some countries to regulate the right to disconnect, which includes agreement on the distribution of working hours, limitation of availability and breaks.
- Right to telework: even if the voluntary principle is maintained, some countries have regulated the right to ask for telework (e.g. France or the Netherlands, where employees have the right to receive a written explanatory reply in the case of a company's refusal) or have provided special treatment to some groups with a view to supporting work-life balance (e.g. Germany).
- Specific provisions in OSH legislation that develop the general approach of the EU Framework Agreement: regulation in this field is varied. In some countries, employers' duty to perform a risk assessment and inform workers is explicitly mentioned in legislation, although procedures for risk assessment differ and, in some countries, employers are severely constrained by the right to privacy (in such cases, the risk assessment is based on the information provided by the teleworker). The range of OSH risks addressed also differ. Some countries have developed regulation to assess and prevent specific psychosocial risks, namely isolation, work-conflict and stress. Finally, employer liability for work accidents is a delicate area and national regulations in this regard vary considerably.

Since the outbreak of COVID-19, governments have adopted a variety of temporary measures to foster or enforce telework as a preventive measure to contain the spread of COVID-19. In parallel, EU-OSHA national focal points highlight that the pandemic has led to increased awareness of the relevance of OSH issues at work, both at employers' premises and other locations. General guidelines to prevent the expansion of the pandemic at work have been combined with more specific guides and resources to facilitate the transition to safe telework, bearing in mind that many companies and teleworkers did not have previous experience with this work arrangement.

Furthermore, in most countries the experience of extensive and prolonged telework has fuelled changes in legislation and debates aimed at better adapting the regulation of telework in a post-COVID-19 scenario. At the time of writing (March 2021), five countries have implemented legal changes (Italy, Luxembourg, Latvia, Slovakia and Spain), while legislation is under review in many other countries (Austria, Belgium, Cyprus, Croatia, Hungary, Ireland, Germany, the Netherlands, Malta, Poland, Portugal and Slovenia). Legal changes and policy debates on telework encompass four main aspects, (1) the statutory definition of telework (including the distinction between regular and occasional telework), (2) the right to disconnect, (3) the right to telework and (4) OSH provisions. They follow trends already in place before the pandemic.

In contrast, the experience of telework during the pandemic has not led to legal changes or policy debates in Nordic countries. The implementation of occasional telework through individual and informal agreements has been traditionally based on self-regulation with no particular managerial constraints, instead relying on trust between employers and employees (the so-called 'freedom with responsibility' approach). This approach appears to have been effective during the pandemic. Denmark is the only Nordic country where there is a broad debate on telework, including calls for changes in the OSH provisions applicable to screen work at home. However, the debate appears to be in line with increased self-regulation: one of the aspirations is that working from home should be possible on a larger scale before specific OSH requirements apply.

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