



IOE Position Paper on Remote Work beyond Covid-19

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and balanced
voice for business



Remote work beyond Covid-19

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Executive Summary

This paper explores different aspects of remote work and how it may impact the way we work after the pandemic. It examines the needs, challenges, and opportunities based on an assessment of teleworking regulations in 30 selected countries and the EU (*see Annex for full details*).

In particular, **working time** is one of the major concerns in policy debates. The existing international standards for “fixed” working time to allow for resting periods and to prevent health risks no longer respond to the current demand for more flexibility. Some countries have adopted regulations that allow a more flexible and balanced approach to working time without hindering the right of workers to rest or adversely impact their health.

Other aspects identified in this paper are **skills demands** and **technology**. These are important to enable the workforce to achieve productivity, as well as address issues concerning employers’ obligations and workers’ responsibility on security and data protection.

Furthermore, **digital divide** highlights that teleworking is not suitable for every sector, industry or country. However, the fast pace of expanding access to internet makes it an issue which must be considered, even in countries and regions where accessibility is more limited.

Occupational safety and health (OSH) is singled out as an important aspect of remote work concerning questions on liability and compensation. The fact that employers have limited control over the preventive and security measures taken in a working environment other than the normal workplace, represents some challenges to OSH compliance, as well as highlights the importance of creating a positive and healthy working culture and the need to clearly define what are the responsibilities and liabilities for employers. In addition, teleworking may involve psychosocial risks, linked to working alone and the possibility of blurring of personal and work life, which need to be properly managed. Some examples of countries providing for OSH specific standards in remote work are included for consideration.

Cross border mobility aspects derived from situations where the teleworker and the employer are based in different countries, draw attention to the application of labour and tax laws across jurisdictions.

The **associated economic costs** of teleworking are also examined through an assessment of the benefits of reducing the commuting time, the costs for the workforce associated to working from home, as well as a wide range of benefits for employers like possible reduction of the office space. In addition, many questions are raised such as whether costs associated to remote work shall be covered by the employer or if these are transferred in full or partially to the worker. The considerations around the economic burdens can vary depending on the nature of remote work, whether the working relationship has been agreed as such from the beginning, or if it is provided as a benefit for the workforce; whether is mandated by the employer or agreed bilaterally. The approach taken in various jurisdictions is brought for analysis and the paper calls for more clarity on the related costs of teleworking and calls for parties to find and agree on a fair and efficient balance between costs and benefits.

The impact on **productivity** due to external factors at home is leading the discussions on the policy needs and implications of remote working modalities. The paper refers to the findings of various surveys.

Moreover, this paper looks at the limitations, challenges and opportunities of remote work and telework from a gender, diversity and inclusion perspective, acknowledging that the use of digital technologies and data, on the one hand has certain limitations and on the other, it can offer new opportunities. The positive impact on inclusion has been recognized by some jurisdictions and used as a tool to foster employability of people with family responsibilities.

Finally, this paper highlights the **role of the IOE** in supporting its members in developing remote work.

Introduction

Covid-19 measures have pushed companies to adopt innovative and digital strategies to keep business afloat and remain productive. The shift to remote work has drastically become the new work modality for many around the world.

With vaccination programs rolling out in most developed countries, employers, workers and policymakers worldwide have started to discuss the possible changes in the world of work after the pandemic? Will workers return to the office and in-person meetings? Will remote work and telework practices remain? What are the needs, challenges, and opportunities? What policies should be adopted, and at what level?

Before the pandemic, in most European countries, a large proportion of workers carried out telework occasionally, rather than on a regular basis.¹ However, an Eurofound

study estimated that a significant spike in the number of new teleworkers in 2020, which made up close to 40% of those working from home in the EU since the pandemic started.²

In Asia, data on teleworking varies greatly among countries, but according to a Gartner webinar poll, 91% of Human Resources leaders across the Asia Pacific region indicated that their companies had allowed working from home to maintain business continuity during this pandemic.³

In Latin America, data from CEPAL indicated that an increase of 324% in internet traffic for applications associated to telework was registered during the second quarter of 2020 (CEPAL August 2020). This finding suggested that teleworking has tripled, yet the percentage of occupations in which it is possible to telework is conditioned due to high levels of informality.⁴



Likewise, in Africa, where high levels of informality also prevail and where only 24% of the population have access to internet, teleworking presents complications. However, there is a visible increase in its digital space that will likely result in a wider use of technology as a working solution in the short term.

Among IOE members, a recent poll showed that more than 80% of business federations intends to continue teleworking after the Covid-19 crisis at least a few days a week, and at least 50% already have a teleworking policy in place. Similarly, a recent Eurofund research report,⁵ revealed that 78% of employees survey indicated a preference for working from home at least occasionally if there were no COVID-19 restrictions. The main teleworking preference cited was several times a week (32%) with only 13% indicating that they would like to telework daily. Most respondents still preferred working at the workplace.

Also, a SHRM survey of over 350 respondents (SHRM August 2020), many of whom are human resources vice presidents, directors or managers, indicated that they believe that much of the increase in telework that occurred during the COVID-19 outbreak is expected to be remain.⁶

Considering that many businesses would have found beneficial reasons in remote working and teleworking, it must be acknowledged that teleworking is here to stay after this pandemic. Therefore, sooner than later, there will be

broader policy debates around this practice at all levels.

But what are the policy implications from the rapid surge of teleworking practices? What should be expected and what are the areas where business need to draw their attention on this matter?

This paper aims to analyse various employment aspects of remote work with a special focus on remote work and telework policies and regulations, outline the challenges and opportunities; as well as explore the impact of innovative practices and measures that have been adopted in various jurisdictions. There is currently no international definition of remote work and telework. However, remote work can be described as situations where the work is fully or partly carried out on an alternative place other than the default place of work, whereas telework has an additional element of using personal electronic devices such as a computer, tablet, or telephone (mobile or landline) to perform the work.⁷ The paper proposes some policy recommendations to inform and guide policy making in the post-pandemic world of work.

Working time

Blurring boundaries between work and private lives has been one of the major concerns for teleworking policy debates. For example, checking emails after regular working hours, taking conference calls during holiday time, and working in uncertain working schedules. Moreover, full time and mandatory teleworking has further stressed the need to manage work-life constraints when organising work and collaboration among the workforce. Flexible working hours, part time arrangements, and other necessary policies should be developed to better address the workers' and employers' individual needs, while not compromising productivity and work life balance.

While flexible working time has proven to have a positive impact on business productivity, it requires a strong commitment and responsibility from the workers to derive these positive outcomes. In this context, some countries such as Germany, trust-based working time arrangements (TBW) can be seen as a prerequisite for telework. Similar to telework, TBW implies giving up control over working time and assessing workers' performance solely based on their outputs. It involves a transition from working time registration to the evaluation of employees by measurable objectives. In other words, a shift

from input control to output control, thus reducing the emphasis on when and where work is completed.⁸ Nonetheless, certain mandatory and conventional restrictions must be respected and also to be agreed upon between the employer and employee. In some jurisdictions, employers must still set up systems to track and measure working time in order to secure disconnection and control overtime.⁹

Yet, working time management varies widely among businesses and sectors, making it difficult to achieve a one size fits all policy. Flexibility attached to the freedom of setting one's work schedule to attain work-life balance, is among the major benefits for the workers, but it shall be balanced with employers' needs on availability and capability to collaborate with other employees and achieve the desired productivity.

Working time standards have historically sought to establish reasonable limits to allow resting periods and prevent health impact. For these reasons, the international community addressed these issues in the very first ILO Convention, Hours of Work (Industry) Convention, 1919 (No. 1) and later adopted the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30). Nonetheless, it has also presented long standing challenges derived from the diverse nature of business

and sectoral needs, as well as for the new working modalities arisen in the context of the future of work and the use of information communication technologies (ICT). Nonetheless, the Committee of Experts on Applications of Conventions and Recommendations (CEACR) noted in its 2005 General Survey, these instruments no longer respond to current needs in many respects.¹⁰

The CEACR indicated that:

“... the government reports and the information provided by the social partners reveal that Conventions Nos. 1 and 30 do not fully reflect modern realities in the regulation of working time. In fact, there are elements of the Conventions that are clearly outdated. ... In general, these two instruments are viewed by an increasing number of countries as prescribing overly rigid standards. The “fixed” working hours system adopted by both Conventions as a cornerstone for the regulation of working time conflicts with today’s demands for more flexibility from all sides, employers, workers, clients, patients, [...] Severe restrictions on the number of hours by which the standard daily and weekly limits of hours of work may be extended have, in many cases, created an obstacle to the ratification of the two Conventions. Furthermore, in an increasing number of countries, hours of work are governed not by laws or regulations, as required by certain of the provisions of the Conventions, but by collective labour

agreements or other mechanisms and in many cases by individual agreements. These problems associated with the instruments are reflected in their modest rates of ratification and the absence of perspectives for future increased ratification rates.”

Furthermore, it is worth mentioning there are other more flexible international standards related to working time in telework, such as Article 24 of the Universal Declaration of Human Rights, and Article 7(d) of the International Covenant on Economic, Social and Cultural Rights, which establish rights to rest and leisure, including reasonable limitations on working hours.

Good working time policy and regulation for remote work must be able to reconcile the needs and interests of employers and workers in an effective and balanced manner using flexible arrangements and ICT tools. This means that governments should focus on setting a basic regulatory framework and rely on employers and workers to work out adequate and adaptable solutions to achieve better business performance, productivity, and competitiveness, as well as secure workers’ wellbeing at the same time. Such flexibility can be achieved through innovative solutions such as staggered or flexible working schedules with variable beginning and ending times, or the use of working time accounts/time banks. For example, in Germany, the introduction of “working time

accounts" has become an instrument for flexible working time arrangements.¹¹ However, these agreements must observe the provisions of the German Working Hours Act (*ArbZG, Arbeitszeitgesetz*), where it is provided that the employee may not work more than eight hours a day on average, but the maximum working time can be extended to up to ten hours a day if appropriate rest periods are granted.¹²

The "fixed" working hours system, adopted by both Conventions as a cornerstone for the regulation of working time, conflicts with the demand for more flexibility in telework. Therefore, various national regulations have sought a more flexible approach. For example, in Argentina the telework regulation prescribes that, employees and employers are free to agree on the time working remotely or in the company premises; and, how they distribute the working hours, with a limit of maximum working hours and a minimum of 12 hours of continued rest, where the worker is not

obliged to be connected. Similarly, in Colombia, it is mandated that the telework agreement establishes the days and times when the teleworker will carry out activities to avoid non-observance of the legal maximum working day. Other countries such as Ecuador, Mexico, France, Romania and Spain have included an express provision in their regulations, allowing for the right to disconnect from work and primarily not to engage in work-related electronic communications such as e-mails or messages during non-working hours. Likewise, some collective bargaining agreements include special provisions to this end, such as in Germany in the metal sector, where collective agreement provides for the exclusion of premiums for overtime or working late hours or at night whenever employees have the flexibility to determine their work hours individually. Another modification is the shortening of the rest period between two daily work cycles from 11 to 9 hours.¹³

Skills demands

Technical skills, human and social skills, computer literacy and the ability to work independently are key aspects to make teleworking modalities feasible and successful, yet not all workers may be readily equipped. It is important for the workforce to develop human and social skills such as autonomy, flexibility, creativity, organization, management, teamwork, and leadership.

Furthermore, there is also a need for workers to develop skills to cope with constant changes in using technology for teleworking purposes. Evidence drawn by a recent OECD Survey on Adult Skills,¹⁴ shows that workers who possess higher levels of skills are significantly more likely to be able to work from home. Therefore, a learning culture has become more important than ever in a future of work where business

will likely benefit from productivity and cost-effectiveness of telework, and where the workforce would be more interested in jobs where telework is available.

Embracing telework through effective digital transformation strategies will necessarily include investment, both from the employer to make the workforce readily fit for effective teleworking modalities, as well as from the workers to be open and show willingness for continued learning, adapting and updating new skills much more quickly.

According to Eurofund, generational differences in ICT skills favour higher adoption of telework among workers in the younger and prime age groups.¹⁵ However, telework could also be used to boost inclusion of older workers by offering adequate skilling and training packages that are agreed between the worker and the employer, and in some cases provided within collective agreements.

At the national level, there are only a few regulations that refer to skills in the context of telework. For example, Mexico's regulation¹⁶ explicitly outlines the employer's obligation to provide training to workers,¹⁷ whereas Philippines' regulation¹⁸ requires employers to provide training opportunities to prevent teleworkers from discrimination in training. However, some governments, acknowledge the relevance of technological skills and the benefits of telework, and offer skilling programs and technical assistance to companies willing to implement teleworking

practices. For example, the government of Colombia, through the Ministry of Information and Communication Technology, oversees the so-called "Pact for telework", which creates a cooperation framework to promote teleworking through a public-private alliance that contributes to the digital transformation in the country. It offers free advice, training, workshops, and conferences, with an aim of promoting the use of telework as mean to increase productivity in organizations, generate sustainable mobility, promote sustainable organization, improve workers' quality of life, and foster the effectiveness of ICT in the productive sector.

Other countries adopt a more flexible approach to skilling by leaving the issue to the relevant employment contracts or collective agreements. For example, in France, social dialogue is encouraged at the company and sectoral levels, as well as in professional branches to determine rights and obligations related to the access to training.

In any case, skilling and training should be seen not only as an imperative to telework, but as a win-win strategy where employers will gain productivity and become more resilient as they build further on a digitalization strategy; and on the other hand, workers will not only be able to enjoy the benefits of teleworking but will also become more employable as they will become more adapted to the dynamic nature of future of work. Workers also do not have to wait for employers to propose training

programmes, but rather take their own initiatives in participating many free courses available online. This personal time investment at their own pace will increase their employability and attract more recruiters and employers in general. A workforce that is

Technology

Building up an effective teleworking strategy requires planning and resources, as well as technological means and a human capital fit for making the best use of digital tools. The exponential and rapid adoption of teleworking strategies triggered by the lockdowns during the pandemic forced many businesses to accelerate and adopt telework modalities. For example, a Randstad Singapore's survey conducted in March 2020, found that only 40% of employers were fully technologically equipped to cope with teleworking.¹⁹

Moreover, the forced transition to telework revealed that many businesses were not technological ready, whether because of the lack of hardware and software or because of the lack of technological skills. Technological tools include not only the appropriate hardware and software, but also internet access and stable connections, that not everyone might have had before the lockdown. An Eurofund e-survey on "Living, working and COVID-19" revealed that only 47% of teleworkers surveyed were provided with the equipment needed by their employer to work

capable of driving sustainable results no matter where and when they perform their work will make them fit for emerging business models and more agile ways of working.

from home. The survey reported that *"this is consistent with the fact that the transition to working from home was unplanned and ad hoc, based on using the employee's own IT equipment and pre-existing home connectivity"*.²⁰

The question on employer's obligations to provide technological tools, including for example a computer and an internet connection enabling telework is on the table for discussion. In some cases, it would depend on the voluntary nature of the working modality, whether it is deemed to be a benefit for the employee or a mandatory aspect of the contractual relationship, and in many cases, parties will specify what equipment is provided or reimbursed in contractual arrangements. Regulations in some countries such as Chile, Mexico, Slovakia, Spain, Singapore and UAE, contain specific provisions on the employer's responsibility in this regard, other legislations refer only to a duty of care and responsible use of the equipment by the worker.

In principle, the employer's coverage of the costs generated by telework should be limited to what is strictly necessary. However, the provision of computer equipment (hardware,

software and access) is recommended (also for cyber security reasons). According to the feedback from our members, it is necessary to keep in mind that telework is primarily a favour granted by the employer to the employee avoiding certain costs (e.g. travel, ...) and that the possibility of carrying out telework should be built on the principle of “give and take”. The Voice of Luxembourg’s Industry (FEDIL).²¹

The use of personal computers may raise some issues, not only in terms of the technical aspects that might restrict the capacity to perform the business needs, but on the aspect of data protection and cybersecurity. Data protection and secure use of information outside the workplace are major concerns for business and should be handled with care. Unfit hardware and open internet connections may represent a threat to businesses and their clients. Employees who are teleworking should be knowledgeable of preventive measures and exercise their duty to handle information and equipment storing sensitive and confidential information with due care.

Moreover, privacy represents important challenge for employers as use of technology can significantly increase the risk of breach of client personal data handled by the company. Surveillance on the workforce performance and the use of technological methods to monitor actions of teleworkers may also raise questions around the invasion of the employee’s privacy. Furthermore, the

interference of communications and the presence of third parties at remote working places, or with access to personal computers where teleworks is being performed, can also expose the company to further risk of breach client’s personal information.

While data protection rules and regulations would normally remain valid to every employment relationship, there are some jurisdictions that have included specific provisions in the relevant telework regulations. For example, the Polish Labour code expressly provides that it is up to the employer to determine rules for the protection for the data transferred to the teleworker and should provide them with training in this respect where needed. On the other hand, the teleworker must confirm in writing his or her understanding and acceptance of the applicable data protection rules. Moreover, under Polish regulations the employee can only use devices provided by the employer if they can ensure the protection of confidential information, business secrets and personal data. Likewise, under Romanian regulations, the employer has the obligation to inform the employee of data protection related matters. In the Philippines, employers must ensure the protection of data used by teleworkers and inform employees about their data protection duties.

Digital Divide

Despite the accelerated global transition towards a digital economy, the digital

landscape remains unequal across the world, especially in the less developed regions. An analysis from UNCTAD illustrates the fast pace at which the digital landscape has evolved in the recent years, and how different is the digital readiness in the context of the Covid-19 crisis compared to another crisis, like the 2008 financial crisis. For example, the number of internet users has surged from 1.6 billion to 4.1 billion in 2019 and the internet user penetration from 23% to 54%.²² This means that teleworking is still not yet available or suitable for everyone. However, the fast pace at which access is granted to more regions makes it an issue which must not lose sight of, even in countries or regions where accessibility is more limited.

“Those that do not have access are at risk of being left further behind as digital transformation accelerates, especially those in least developed countries.”
*Torbjörn Fredriksson, UNCTAD’s digital economy head*²³

There is a concern for the possibility of a new divide between those who can telework and those who cannot. In this regard, businesses have an important role to play on building inclusivity while embracing digital technologies and new employment strategies such as telework. A responsible approach will be to make our best efforts to avoid discriminating those workers who have not been able to work remotely.

Beyond the enormous efforts that governments shall make to secure access to internet everywhere, it must be acknowledged that the digital divide is not only about the lack of access to internet but also the capacity of users/workers to make use of it to work remotely. Thus, on the one hand, governments must put more attention to existing and emerging digital divides to allow everyone to take advantage of digitalization. On the other hand, business shall contribute by providing the necessary skills to the workforce, promoting a learning culture and preventing discrimination among workers who can telework and those who cannot. For workers, openness and an adaptable mindset are key for current labour market demands.

According to the International Telecommunication Union (ITU), between 2005 and 2019 the number of internet users grew on average by 10% every year.²⁴ Similarly, the OECD reports that the share of individuals using the internet in G20 countries almost doubled on average between 2010 and 2019, with especially considerable increases seen in Saudi Arabia, Turkey, Brazil, Mexico, South Africa, Indonesia, and India - narrowing the gap among G20 economies. It is also the case for Latin America where according to the Economic Commission for Latin America and the Caribbean (CEPAL) in its Latin American digital ecosystem development index.²⁵ Furthermore, the Caribbean presents a compound annual growth rate of 6.21% between 2004 and 2018 resulting to 67% of the

population are internet users. According to a recent report from the International Monetary Fund (IMF), other regions like Sub-Saharan Africa struggle to advance on digitalization strategies and the use of telework, due to lack of reliable internet connectivity and electricity supply in the region.²⁶ However, the report suggests that the gaps between the region and the rest of the world are narrowing fast. Internet penetration in Sub-Saharan Africa has grown tenfold since the early 2000s, compared with a threefold increase in the rest of the world.

Moreover, the global agenda towards fostering access to and increased use of telecommunications/ICT in support of the digital economy and society, has set ambitious goal for 65% of households having access to internet by 2033.²⁷ Observing the trend towards a rapid penetration of internet and the integration of digital strategies, businesses have no choice but to be agile in their contribution to developing policy frameworks that foster a digital friendly business regulatory environment.

Occupational safety and health (OSH)

One of the most important health and safety questions arising in connection to remote work is the liability, and worker's compensation if the worker is injured. The limited control by the employers over the preventive and

security measures taken in a working environment different from the workplace, represents some challenges to OSH compliance. Certain exclusions may be needed given employers limited control over the remote working environment. Also, the restrictions for the health and safety authorities to access locations outside the workplace for safety inspections, make it difficult to have full control over OSH aspects when working remotely.

On the other hand, there could be some risks and factors that blur the lines between the responsibility of the employer, occupational risks, and compensation aspects, if an accident occurs or the health of the worker is compromised outside the company's premises. Responsibilities on the employers may need to be adjusted depending on whether the work is performed at the employee's home, or if it is performed elsewhere, including multiple locations (e.g. cafes, hotels).

Provisions on OSH matters related to remote work, usually take OSH regulations for onsite working modalities as a starting point, and rarely deviate from these when referred in specific regulations. Employers are generally obliged to take the necessary measures to ensure occupational safety and health of remote workers, including performing risk assessments. Given the employers' ability to perform such a risk assessment may be limited (for practical reasons e.g. necessity to inspect

thousands of scattered premises; and for legal reasons e.g. as inspecting employee home may not be allowed due to privacy protection), it is accepted in some countries that employers can rely on information specifically obtained from the employee for this purpose (e.g. self-declarations, photos, self-checklists, provision of certificates of conformity with safety rules etc). Some countries like Ireland allow for a risk assessment to be done remotely via a video call.²⁸ For example, in Colombia, teleworking laws expressly provide that the OSH regulations remain unchanged. Some countries seek to establish mechanisms to enable more control and inspection of the working environment. For example, Romania's regulation provides rights to inspection. According to Romania's teleworking law, the employer has the right to regularly check the activity of the employee, while the labour authorities, as well as the trade union or the representatives of the employees have the right to verify the working conditions of teleworkers. However, even if the employers were to have the right to inspection, it may not be practicable to inspect many scattered premises.

In some cases, laws contain specific exclusions with regard to telework – e.g. in Poland, Polish Labour Code 29, article 67/17 provides that the employer is specifically released from the duty to ensure and care for the state of the building and room in which work is performed or the duty to ensure appropriate hygiene and

sanitary facilities. Some other regulations, the the generic OSH laws may provide for the obligation of the employer to ensure health and safety "as far as reasonably practicable". The interpretation of what would be then "reasonably practicable " in different cases of remote work would remain a question for the courts to decide.

In other cases, official guidance provides clarifications on the division of responsibilities between employers and employees. For example, in Ireland, Health and Safety Authority guidance states that fire detection and firefighting equipment are the responsibility of the homeowner. Also, household electrical supply and equipment provided by the employee for example sockets, lighting, or heaters should also be checked by the employee.³⁰

Just a few countries provide specific OSH standards for employers to observe. For example, in the Netherlands, it is specifically provided that employers must ensure that their employees have an ergonomic chair and a desk at home and are responsible for the costs for them, as well as to ensure that there is enough artificial light at the place of telework. To secure such specific compliance, the Dutch regulation provides for a physical visit by the employer or a health and safety expert to assess whether the workplace complies with rules and obligations as set out in the legislation. Some other countries will be enacting OSH specific regulations for telework,

like Mexico, where the Ministry of Labour will have to issue a Mexican Official Standard for the health and safety measures that should be implemented under this type of work, following the recent entry into force of its teleworking regulation.

Another important aspect of OSH that often associates with remote work is mental health. For example, UK's Health and Safety Executive indicates that being away from managers and colleagues may lead remote workers to feel disconnected, isolated or abandoned, causing additional stress. Working from home could also make it more difficult for workers to get proper support if needed.³¹ Loneliness, stress, irritability, worry, and guilt are among the few psychological impacts on teleworkers.³² Employers should carefully consider these and other aspects, such as isolation, lack of direct supervision, and the blurring of work and private life as they represent an enormous threat to the health and productivity of the workforce.

Acknowledging that employers around the globe will face a more extended use of remote work, business should strive and make its best efforts to allow work being performed in a productive manner but also in a safe work environment, adapting their internal policies, processes, and practices in line with the new and existing regulations. Creating a positive and healthy working culture and minimizing the risk of stress when teleworking has

become crucial at times where many will keep on using remote work as a long-term practice.

Beyond any regulatory obligations, employers could, when possible, develop and implement wellbeing policies to promote good mental health practices, such as flexible working hours and time to disconnect; guidance and training on communication and interpersonal skills; and promotion of work-life balance.

Cross border Mobility, Tax and Social Security

Working from anywhere is one of the main advantages of remote work. This can in some cases become an incentive for workers to work from places that not necessarily close to the company's workplace. Moreover, it avoids relocation, long commutes and allows the workforce to take jobs that are far away from home. Moreover, remote work strategies and teleworking models allow workers to be based anywhere in the world, not only where the workplace is located. However, this creates challenges from a regulatory point of view when workers are commuting across national borders, as well as implications concerning the applicability of social security legislation of more than one country.³³

Indeed, when the worker and the employer are based in different countries, the application of labour and tax laws as well as social security regulation shall be considered, as laws vary across different jurisdictions. Also, the use of

technology to disguise workers location using virtual personal networks represents a problem.

However, due to the special circumstances of the COVID-19 pandemic, various countries have taken exceptional measures. For example, the French Ministry of Europe and Foreign Affairs published on 19 March 2020 a communiqué on the situation of cross-border remote workers. The Ministry has established that remote work of cross-border workers does not have any consequences on the tax regime applicable to them in this situation of emergency.

Likewise, on 13 May 2020, Switzerland and France signed an agreement for cross-border workers who are now forced to work from home as a result of measures taken by both governments. Thus, cross-border teleworkers continue to benefit from the applicable tax regimes in the country of their usual place of work.

As a consequence, France renounces to its right to tax the teleworking days of cross-border workers during the period of confinement due to the COVID-19. In other words, a French resident cross-border teleworker continues to be only subject to the Swiss tax regime.³⁴ Also, the Belgian Social Security Authorities have taken the position that days of teleworking in another member State or other changes in an employee's work pattern that are exclusively linked to COVID-19 measures and limited to the duration of the

exceptional situation (currently until 30 June 2021) will not be taken into consideration to determine the applicable social security regime.³⁵

An example of how telework is boosting mobility, is shown in a recent survey from Upwork Inc, which suggests that as many as 23 million Americans plan to relocate to a new city. The survey results point to an increase of at least three to four times the normal migration rates.³⁶

The OECD has issued some recommendations concerning the implications of the Covid-19 crisis on cross-border workers and other related cross-border matters that are of the most interest to business.³⁷ These recommendations draw attention to various tax issues, especially in connection with cross border mobility. Aspects such as the residence of companies for tax purposes, working permits and social security restrictions should be looked at by employers and anticipate the end of any existing restrictions that could have been put in place due to the pandemic.

In countries like Greece, acknowledging the reality of work mobility thanks to technology have allowed the creation of policies fit for what they call "Digital Migrants", which is used for foreigners or Greeks based abroad and who decide to move to Greece and work remotely for a company or clients in other countries via telework. Greece is offering tax incentives for these digital migrants.³⁸

Bearing in mind the special circumstances and trends, it must be acknowledged that exceptional measures cannot over last the pandemic and some solutions must be taken. Business will be accountable again and smart solutions have to be found, both at the company level and at the level of bilateral cooperation among countries. Flexible and adaptable policies will prevent the disguise of cross border working relationships, tax evasion or informality.

Associated economic costs and benefits

Remote working has reduced the commuting time as well as the costs for the workforce associated to working from the office, such as transport, meals, clothes, etc. It can also present a wide range of benefits for employers, for example office space, energy, absenteeism and productivity. Even before the pandemic, some companies have implemented telecommuting policies to reap cost savings and economic benefits. For example, Sun Microsystems implemented a telecommuting policy in 2007, which eliminated 7700 physical office spaces saving the company more than \$255 million over four years and continues to save \$68 million for the company annually. The company has also 115 flex offices around the world to allow their workers to use if they need to work in a physical office.³⁹

In fact, nearly six out of ten employers identified significant economic benefits as well as savings by allowing their workers to work remotely. For example, Alpine Access Remote Agents increased 30% sales than traditional agents the year before, as well as decreased customer complaints by 90%.⁴⁰ Furthermore, remote working reduces healthcare costs for the company, as workers who work remotely have reported have 25% lower stress levels and experience a better work-life balance. In addition, companies that operate virtually have also saved costs associated with business travel and hotel accommodation.⁴¹

Also, it is estimated that the pandemic-induced shift to working from home yields to 62.4 million fewer commuting hours per workday. Cumulating these daily savings from mid-March to mid-September 2020, the aggregate time savings associated with the pandemic-induced shift to working from home is more than 9 billion hours.⁴² Along with the economic benefits, the lack of a daily commute to and from work, may also assist in preserving a greater environment by reducing carbon emissions.⁴³

Nonetheless, while some companies are able to reap the benefits of implementing remote working to their business, remote working is not suitable for all sectors.⁴⁴ A study by Economic and Social Council (CES) calculated the impact of teleworking on the Luxembourg economy and it estimated that one day a week of telework reduces €350m annual income for

the retail and hospitality sectors.⁴⁵ This amount is significant and will have great impact if telework policy prolongs for a long period. The report concludes that there is a need to find the right balance between the application of teleworking regime and the related budgetary and economic losses.

Whether costs associated to telework shall be covered by the employer or if these are transferred in full or partially to the worker, raises questions and shall be considered when implementing telework modalities. The considerations around the economic burdens can vary depending the nature of remote work, whether the working relationship has been agreed as such from the beginning, or if it is provides as a benefit for the workforce; whether is mandated by the employer or agreed bilaterally. The principle of voluntariness shall play an important element to the equation.

It is in this context that policies and regulation, as well as working contracts should find a right balance where a win-win situation is found, where any economic constraint or additional cost for the workforce is prevented, and where these on the other hand do not represent a barrier for business. For example, a situation where remote work is commonly agreed or where the principle of voluntariness is evident, should find more easily an appropriate solution for the economic implications by means of internal policies, or contractual arrangements.

An example could be the associated costs to the connectivity needs, and energy. Indeed, these two elements are evident costs associated to telework. Nonetheless, in some cases, these are costs that in voluntary teleworking (as an option and benefit for the worker) shall be borne by the worker, who shall in any case, can choose not to telework and rather use the energy and internet connection at the workplace. A different scenario is the one of unilateral and mandatory telework (mandated by the employer), where the worker has no option but to telework. It is worth highlighting that in the context of the health emergency situation there has been a blur differentiation on the costs burden, on the one hand because the confinements leading to telework has been mandated mostly by the government authorities and not by the employer, and on the other hand, everyone, employers and workers have had to share the burden and responsibility to keep the boat afloat and preserve companies and employment. This led in some cases to the use of any available means, even if coming from the worker, such as personal computers, home internet connection and working space.

However, beyond the pandemic, in order to make telework effective and provide both employers and workers with legal certainty about the principles ruling their employment relationship, there will be need for clear policies and a common understanding of what a remote work modality represents, whether it been a regular working relationship or an

option and a benefit that the worker may or may not be willing to take.

Some jurisdictions have already anticipated the challenges around economic implications and have established rules for the allocation of costs associated to telework, for example in Mexico employers are responsible of providing, installing, and taking care of the maintenance of teleworking equipment, such as computer equipment, ergonomic chairs and printers. They are also responsible of the payment of telecommunication services and the proportional part of electricity. Despite the fact that in Mexico telework is only considered as such when at least 40% of the tasks are performed outside the company's premises, it remains unclear how to calculate the proportional part of electricity or internet connection, which has been criticised as representing a barrier to telework which also leads to legal uncertainty both for workers and employers. Other example is Poland where the employer is responsible of providing materials and logistical support required to work remotely; and the Netherlands, is responsible for the costs of making the workplace ergonomically sound and safe.

A more flexible approach is contained in Serbia's regulation where it is left to the employer to regulate aspects concerning the equipment and work tools to be used, its maintenance and whether there would be any compensation for the use personal equipment, or other related costs.

However, it is worth highlighting emerging regulations providing a right of the employee to request for telework, and for the employer to consider such request, and in some cases the need for the employer to justify the denial of such request. This is the case of Ireland, where the situation raises also questions around the burden of costs associated to telework in the context of the granting of such request.

In any case, whether at the company level or by means of policy and regulation, it is convenient to provide certainty on the related costs associated to telework, so the parties can agree and find a fair and efficient balance between costs and benefits in a way to enable rather than restrict the use of telework.

Productivity

Increased productivity associated to telework and external factors at home impacting productivity are leading the discussion on the policy needs of this working modality. According to the World Economic Forum Future of Jobs Report 2020,⁴⁶ 78% of business leaders think that working from home will have some negative impact on productivity, with 22% expecting a strong negative impact and only 15% believing that it will have no impact or a positive impact on productivity. The report identifies three reasons for this scepticism. First, the change to remote working is occurring during a period of additional stress

caused by the risks associated with COVID-19. Second, workers with young children face additional pressure to look after their children as schools and nursery are closed. Third, workers need to adapt to the remote-working policies to recreate a sense of community and a flow of effective communication using different technological tools. However, some of these challenges will no longer exist post-COVID as schools will reopen and the stress associated with the pandemic will gradually disappear, allowing for the full potential and benefits of telework to be harnessed.

Other studies have confirmed the positive impact of telework on productivity beyond the pandemic. For example, a Stanford study involving a randomised control trial on 1000 employees of Ctrip, a Chinese travel company, indicated that working from home during a nine-month period resulted in a 13% increase in performance. That is almost an extra day of output per week. It also showed a 50% decrease in employee resignation rates. In an Airtasker study, people reported that working from home helped them (i) to skirt office politics and distractions and (ii) to have improved concentration, attributing this to a change in scenery. In addition, Harvard Business Review found that 'high trust organisations' (i.e. companies which embraced flexible working arrangements) are 50% more productive. Also, a Deloitte survey found that 43% of professionals indicate less stress and better mental health as the No. 1 benefit of work flexibility and better work-life integration

as No.2. One in three professionals say work flexibility would increase their job satisfaction and morale, and almost 30% say it would increase their overall productivity or efficiency at work.⁴⁷ Furthermore, an Oxford University research showed that agile workers are 13% more productive, happier in their jobs and less likely to leave than office-bound colleagues.⁴⁸

Therefore, some studies show that effective implementation can increase productivity as well as provide employee's more freedom and flexibility. More importantly, teleworking allows business continuity, which is crucial for employers to ensure their business are sustainable and resilient.

However, some studies also evidence a negative impact of telework on productivity (Monteiro et al 2019, Battiston et al 2017). Barriers to effective telework include difficulties in maintaining efficient communication with the team (Daim et al 2012, Battiston et al 2017), lack of skills (Espinoza and Reznikova 2020, Berube and Swanson 2005) or lack of appropriate IT equipment or software for remote work (Valmohammadi 2012). Also, some teleworkers may feel isolated from other team members, which ultimately may reduce their well-being and productivity (Kim and Coghlan 2020). Others may lack self-discipline and self-management capacities to work efficiently from home (Haines III et al. 2002).

Employers might have legitimate concerns or hesitation with implementing teleworking policy in their business operations. As mentioned before, telework is not suitable for everyone. Each profession and each sector have particularities that may or may not benefit from telework. According to a recent McKinsey analysis of 2000 tasks, 800 jobs and nine countries, more than half the workforce has little or no opportunity for remote work. The reasoning behind is in some cases the collaboration requirements of the job, or the use of specialized machinery at the company's premises.

Challenges, limits and opportunities

An ILO study estimates that *“close to 18% of workers, work in teleworkable occupations, and live in countries with the infrastructure that would allow them to effectively perform their work from home”*.⁴⁹ Teleworkability figures widely range, from 30% of workers in Northern America and Western Europe to 6% in sub-Saharan Africa and 8% of South Asian workers. In Latin American and Eastern European estimates fall between at 23% and 18%, respectively.⁵⁰

In the same lines, the European Commission has reported that around 37% of the EU-27 are in occupations that can technically be carried out from home. The share of employees in teleworkable occupations ranges between

35% and 41% in most EU countries.⁵¹ The ILO analysis also shows that at least one in six occupations are teleworkable at the global level and just over one in four in advanced countries.

While teleworkability linked to occupations and the current state of internet access do still represent some limits for an equal and global access to the benefits of telework, it is most likely that States not willing to be left behind in the digital era, will be forced to invest in telecommunications. Connectivity will continue to grow. The nature of jobs for the future is changing and the extended use of technology and AI, as well as developments in the digital infrastructure may change today's figures on teleworkability, such is the case of, for example, the use of robots that can be controlled at a distance. It is likely that there will be an overall decrease of physical workplaces with more virtual remote work and hot desking.⁵² However, the readiness of regulatory frameworks to boost the use of digital strategies like telework and the capability of business to embrace telework will have to keep pace with modernization, so these do not become a barrier to close the digital gap.

The effects on economies and societies of digitalisation and the use of interconnected digital technologies and data, offer new opportunities across the globe and hold promises for enhanced productivity growth and improved well-being for all.⁵³ Yet, based on

a European Working Conditions Survey (EWCS), Eurofunds' findings evidence that a higher percentage of men (54%) have a telework arrangement than women (46%).⁵⁴ In general, men are more likely to perform telework than women, however, women carry out more regular home-based telework than men. This suggests that country-specific gender roles and models of work and family life play a role in shaping telework.⁵⁵ The EWCS also shows that telework arrangements are more common among the workforce that has caring responsibilities. The survey states that *"[i]t is also common for these workers to be the main earners in the household, implying that such employees place a greater value on work and are thus more motivated to work when they are away from their employer's premises."*⁵⁶

Considering that workers who possess higher levels of skills are significantly more likely to be able to telework, and that women are outnumbering men in terms of participation in higher education and have highly developed human skills, teleworking can offer new employment opportunities with the potential of having a greater positive impact on women.⁵⁷ The 2017/2018 UNESCO's Global Education Monitoring Report affirms that as women become more educated than men, it is all the more wasteful not to use their human capital and knowledge to improve the economy's output, productivity and knowledge base.⁵⁸

The positive impact on inclusion has been acknowledged by some jurisdictions and used as a tool to foster employability of people with family responsibilities. For example, in Uruguay's draft legislation, teleworking is recognized as a necessary modality for employment creation, particular for people with family responsibilities, disability or taking care of other people.⁵⁹

In this context, adequate policies and regulations on telework can enable more people to access the formal sector, especially those who were not able to access to the benefits of formality due to their limitations to work at the business premises. Flexible and adaptable regulations allowing business to hire more women who can telework without requiring an excessive expense or creating new regulation, will also result in more inclusion and empowerment of female workforce.

IOE support

The prolonged social distance measures for the Covid-19 pandemic and the evolving regulatory and policy developments around the globe, suggest that business will continue facing implications on the use of remote work. Moreover, business will face the need to adapt and engage in the policy making process at various levels. Special attention should be paid at the company level on digitalisation strategies and policy implications attached to the use of telework.

At the international level, longstanding debates around working time, the classification of workers, as well as diverse aspects of occupational safety and health, put more pressure on the international policy agenda for an item on telework. Trade unions have been campaigning for the need to elaborate on a set of principles that safeguards labour rights and protections in the implementation of remote work and teleworking agreements. There is no doubt that debates will continue to appear on the international agenda and gain pace as the remote work and teleworking practices become more extensive.

The IOE, as the largest global network of the private sector, shall continue delivering the voice of business in the policy debates at the ILO and other global forums. Moreover, the IOE can serve as a hub for knowledge sharing and best practices on the policy experiences at the national level. Keeping cognisant on the approach taken towards regulation in other jurisdictions, the IOE will serve our members through informing them of policy decisions, positions to be taken in consultation processes and debates to the tailor regulation, internal policies and collective agreements. It will also help members to set their digital strategies in an effective and cost-effective manner.

Policy Recommendations

Whether developing policies and guidance internally at company level or more broadly at national level, it is important to take into account every possible implication of remote work to clarify expectations and requirements, as well as identify costs and responsibilities. Moreover, it shall also seek preparedness for compliance aspects in the various fields outlined above (tax, OSH, agreement formalities and employee requests, among others). These are some key policy recommendations to consider:

Eligibility

- Policies and regulations should seek to allow business self-determination of positions and tasks where telework is possible and reversibility of remote work modalities shall be agreed in line with business changing needs and requirements.
- Internal policies should clearly identify eligible positions and prevent undue discrimination among the workforce.
- The right of a worker to request remote work/telework should not be based on the company's obligation to grant it. Management should always have the final say on the feasibility and pertinence of telework. Yet, policies can focus on the promotion of telework and the creation of enabling environments for business to harness the benefits of telework.

Working Time and Productivity

- Adopt a new mindset towards working time. Productivity should be measured based on outcomes rather than on working hours.
- Define the details and limits of a flexible working schedules that accommodates the workers' and company's needs in a written contractual agreement. These should refer to working time parameters, rest breaks and holidays. Regularly review and amend as necessary in line with government advice and measures.

Technology, Skills Demands, Digital Divide

- Identify the technological needs and companies' capability (including SMEs) to provide the workforce with the necessary tools to telework.
- Connectivity requirements and the associated costs shall be clearly agreed between the employer and the employee.
- Promote skilling, peer-learning and training for using technological tools to facilitate remote working, team collaboration and virtual meetings.
- Invest in necessary equipment and programs to protect confidential and client information and minimise the risks of cyberthreats.
- Business shall be mindful of data protection laws and regulations that may apply for the information handled

by the workforce even outside the company's premises. This is especially relevant for financial institutions where specific rules may apply.

- Provide the workforce for specific rules on the use of personal equipment.
- Be mindful of workers' privacy when monitoring their performance.
- Lobby for Governments to invest in digital infrastructures in cooperation with the private sector and to encourage incentivising companies.

Occupational Health and Safety

- Policies shall be mindful of the limitations for the employer to access the working space and the limited control over tools and working environment outside the company's premises.
- Policies should favour social dialogue and bilateral agreements to allow for flexibility and a better adaptation of remote work to the specific needs of the worker and the company.
- Assess and make clear the eligibility of each worker to work remotely, considering the availability of a safe work environment. Clear expectations and establish rules for adaptation of working spaces to comply with national OSH regulations.
- Transparency on the responsibilities and limitation in coverage for accidents occurred when outside the

workplace is key to avoid unexpected claims and charges for both parties.

- Regularly check on workers' physical and mental health to protect their well-being and raise awareness of the employees' responsibility to take care of their own physical and mental well-being at home.
- A joint assessment and communication on the needs to perform work in a healthy and safety manner will serve as a preventive measure.
- Assess and agree on responsibilities and limits to provide ergonomic equipment for workers to avoid any unexpected health situation and claims.
- Promote mutual support and collaboration to prevent the feeling of isolation.
- Establish clear expectations and limits concerning working time and the right to disconnect.
- Make sure insurance policies are fit for telework schemes.

Cross border mobility, tax and social security

- Keep informed of tax and legal changes at the national and international levels and ensure company policies are up to date. Look at bilateral agreements and temporary exemptions available to your company.

- Avoid an unexpected shift of the primary right of taxation from the work country to the home country. Look at permanent establishment rules that could trigger entity filings and tax obligations.
- Be mindful of regulations on the company's place of effective management when having key executives working abroad.
- Avoid new or dual tax residency implications when working in a country other than where the company is located.
- Avoid bureaucratic and overly difficult policies for tax registration and declarations for teleworkers.
- Be careful of potential concealment of locations by means of the use of technology. Employers and workers shall clearly establish the place(s) where telework can be carried out. Company internal regulations shall contain disclaimers and protect the business against an unauthorized change of location.

Gender, diversity and inclusion

- Promote an anti-discrimination environment and tackle discrimination in pay among remote workers and other workers, including skilling opportunities and other labour rights.
- Assess the needs of workers with family responsibilities with the aim of

finding solutions that accommodate the work life balance and avoid a negative impact on productivity.

- Harness the benefits of telework to include workers with disabilities among your workforce.

ANNEX: National Law and Regulation

AFRICA

South Africa

On 29 April 2020, South Africa introduced Alert Level 4 Lockdown Regulations and a new set of Occupational Health and Safety Directions, which provided employers an opportunity to formalise flexible working arrangements. Among various measures, these regulations mandate employers to adopt ‘physical distancing’ measures, which include enabling employees to work from home or minimising the need for employees to be physically present at the workplace. In terms of the Occupational Health and Safety Directions, employers must *“as far as practicable, minimise the number of workers on at the workplace at any given time through rotation, staggered working hours, shift systems, remote working arrangements or similar measures in order to achieve social distancing.”*⁶⁰

Kenya

The existing labour laws in Kenya do not incorporate the concept of telework. However, the Employment Act 2007 and the Employment (General) Rules 2014 specifies that the employment contract or letter of appointment should indicate the place of work and the number of working hours of an employee.⁶¹

As a measure to contain the transmission of Covid-19, the ILO and the Government of Kenya introduced a best practice manual known as “Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019”, published in May 2020. According to this manual, the Government advises employers to allow their employees to work from home, except those providing essential services. This allowed for a shift of the place of work to that indicated in signed employment contracts.⁶²

Nigeria

Nigeria has no legal framework on remote working. However, employers should educate their employees who are working remotely on data privacy, the dangers of unauthorized access to confidential information and the need to comply the provisions under the Nigerian Data Protection Regulations 2019.⁶³

It is obligatory for the employer, under employment contract to provide safe place of work and to take measures to ensure the safety of the worker. However, these health and safety laws are applicable only to factories covered by the Factories Act and Labour Law.

The Employees Compensation Act 2010 (“ECA”) provides for an open and fair system of guaranteed and adequate compensation for all employees or their dependents for any death, injury, disease or disability arising out of or in the course of employment.⁶⁴ The ECA requires that any employee, whether or not in a workplace, who suffers any disabling injury arising out of or in the course of employment, shall be entitled to payment of compensation in accordance with Part IV of the Act.⁶⁵ The ECA also offers for the compensation of an employee for mental stress, where a) arising from a sudden and unexpected traumatic event out of or in the course of employment; b) arises out of the nature of work; or c) arises out of employers’ decision to change the work or working conditions in such a way that unfairly exceeds the work ability and capacity of the employee.

Section 11 of the ECA provides that an employee would be entitled to compensation if the injury to an employee occurs outside the normal workplace where the nature of the business extends beyond the usual workplace, or the nature of the employment is such that the employee is required to work both in and out of the workplace, or the employee has the authority or permission of the employer to work outside the normal workplace. This provision covers for an injury suffered by an employee in the course of working remotely. It is worthy of note that the ECA defines the “workplace” to include any premises or place where a person performs work or needs to be or is required to be in the course of employment.

AMERICAS

Argentina

On 14 August 2020, Argentina passed a Law on the Contractual status of telework. The purpose of the law is to establish the minimum legal requirements for the regulation of the Teleworking modality in those activities that, due to their nature and particular characteristics, allow it. The specific aspects that might benefit from additional regulation can be agreed in the framework of collective bargaining. It defines telework as the performance of acts, execution of works or provision of services, whether carried out totally or partially at the domicile of the person who works, or in places other than the employer's establishment or establishments, through the use of information and communication technologies. The regulatory decree excludes from this definition a) tasks carried out at the headquarters or establishments of the clients to whom the employer provides services on a continuous or regular basis, and b) work carried out at the dependent's domicile sporadically and

occasionally, either at the request of the latter or for some exceptional circumstance.¹ The regulation also excludes jobs that are performed remotely due to emergency regulations that restrict attendance at the workplace.²

The law provides for a principle of equality among the workforce by establishing that teleworkers will enjoy the same rights and obligations as people who work under the face-to-face modality and their remuneration may not be less than what they received or would receive under the face-to-face modality. However, it leaves room for collective agreements to foresee a combination between in-person and teleworking benefits.

Working time must be previously agreed in writing in the employment contract in accordance with the legal and conventional limits in force. For this purpose, the law has taken an innovative solution by establishing that software for telework is expected to prevent connectivity outside working hours. Business using telework modality shall be registered with the Ministry of Labour and authorizing the software to be used, as well as informing the workers representatives. The right to disconnect is also covered by the regulation, unless the communication is “essential for an objective reason” such as when the employer's activity is carried out in different time zones; in the case of force majeure, accident or imminent risk of accident.

The law also provides for the principles of voluntariness and reversibility, given reasonable motivation and a 30 days’ notice. When the permission to telework is reversed by the employer, he must - to the extent possible- grant the worker tasks in the establishment in which he had previously engaged him/her, or failing that, in the one closest to the dependent's domicile, in which the work can be performed. When telework is agreed ab initio of the labour relation, workers cannot request reversion unless provided in the collective agreement or individual contract.

The employer must provide the equipment -hardware and software-, the work tools and the support necessary for the performance of the tasks, and assume the costs of installation, maintenance and repair thereof, or compensation for the use of the worker own tools. Also, the teleworker will be entitled to compensation for high connectivity and / or consumption of services expenses he bears. Compensation will operate according to the guidelines established in collective agreement.

The OSH Agency will prepare a study on the applicable OSH conditions and the eventual need to incorporate specific occupational diseases to the list in accordance with the tripartite procedure provided for in Law No. 24,557 Accidents that occur in the place, working hours and on the occasion

¹ <https://www.boletinoficial.gob.ar/detalleAviso/primera/239929/20210120>

² <https://www.boletinoficial.gob.ar/detalleAviso/primera/242073/20210319>

of teleworking, are presumed occupational accidents in the terms of the applicable legislation (law 24.557).

The law contains a cross border workers provision establishing that in the case of transnational teleworking benefits, the law of the place of execution of the tasks or the law of the employer's domicile will be applied to the respective employment contract, whichever is more favorable for the worker.

In the case of hiring of foreign persons not resident in the country, prior authorization from the enforcement authority will be required. The collective agreements, according to the reality of each activity, must establish a maximum limit for these contracts.⁶⁶

Chile

On 26 March 2020, Chile enacted Law No. 21.220, a new labour law regulating telework which modifies the Chilean Labour Code by adding provisions for remote working and flexibilization of working methods⁶⁷ With this new law, employees and employers are free to agree on the time for working remotely or in the company premises; they may decide on how to distribute the working hours, with a limit of maximum working hours and a minimum 12 hours of rest. The agreement between employers and employees shall contain information on how the employee will be supervised and must be registered with the Labour Directorate.

The law grants employees a right to disconnect. Also, it requires employers to provide employees with the necessary technological equipment to work from home and to inform employees about health and safety issues. Furthermore, a specific provision obliges employers to inform in writing employees on the existing and newly established trade unions at the company level.

The specific OSH conditions to which teleworkers are subject will be regulated by a separate regulation issued by the Ministry of Labour and Social Welfare. The employer shall inform the worker of the health and safety conditions that the job must comply with to secure compliance with these conditions.

Colombia

In Colombia, telework is regulated by Law 1221 of 2008 and Decree 884 of 2012.⁶⁸ Law 1221 of 2008 recognises that telework as a work modality in Colombia and establishes the framework for public policy to promote telework and a public policy on telework for the vulnerable population. It creates the National Network for the Promotion of Telework to promote and disseminate this practice in the country, and to also look after labour, union and social security guarantees for teleworkers.

Decree 884 of 2012 specifies the working conditions that govern telework in a dependency relationship, the relations between employers and teleworkers, the obligations for public and private entities, the labour risk managers, and the Network for the Promotion of Teleworking. It also establishes the principles of voluntariness, equality and reversibility that apply to the model.

Resolution 2886 of 2012 defines the entities that are part of the Telework Promotion Network and their obligations.⁶⁹

Accordingly, telework is defined as a form of labour organization in the frame of a contractual relationship or a dependent labour relationship, consisting in the development of remunerated activities with the support of information technology tools and communication tools for the contact between the employer and the employee, without the need of physical presence in a specific working site.⁷⁰

The teleworking agreement must respect the social security obligations provided in the Labour Code and must specially provide for the conditions of service, the technological means and the environment required and the way to execute it under time conditions and if possible, space; establish the days and times when the teleworker will carry out activities for the purposes of delimiting liability in the event of a work accident and avoiding non observance of the legal maximum working day; define the responsibilities regarding the custody of the work tools and set the procedure for the delivery by the teleworker at the time of the end of the telework modality; and the information technology security measures that the teleworker must observe.⁷¹

Once engaged into a teleworking modality, the worker cannot demand to perform his activities at the workplace, unless expressly agreed by the parties. The conditions on teleworking modalities for existing labour relationships must be agreed upon and attached to the working contract.⁷²

The Decree also provides for equal remuneration and treatment among the teleworkers and other workers, including skilling opportunities and other labour rights.⁷³

The obligations of the employer and the teleworker in occupational safety and professional risk prevention are those defined by current regulations. However, the employer must incorporate into the internal work regulations or by resolution, the special conditions for teleworking to operate in the private company or public entity.⁷⁴

Colombia has a very restrictive telework regulation with high economic and administrative costs. The application of the telework regulation has been minimum and that is why during the Covid -19 crisis the Government had to create a new legal regulation for “work from home – *trabajar desde casa*” – Circular 021/2020. Nowadays there are several law projects in our Congress to modify the telework regulation or trying to create new legal regulations for the remote work.⁷⁵

Ecuador

On 24 August 2016, Ecuador issued Regulations on Telework in the Private Sector by Ministerial Decree MDT-2016-0190 and amended on 30 January 2018 by Ministerial Decree MDT-2018-002A.

On 14 September 2020, the Ministry of Labour also issued a Ministerial Decree MDT-2020-181⁷⁶ with directives to regulate telework, aiming at the application of measures on different working mechanisms using information technologies.

The latter was triggered by the enactment of the Law on Humanitarian Support to Combat Health Crisis Derived from Covid-19, and in response to the primary duty of the State to guarantee stable, fair and decent work in its various forms.

Accordingly, in Ecuador, telework is defined as a form of labour organization, which consists of the performance of remunerated activities or provision of services using information and communication technologies as a support for the contact between the worker and the employer, without requiring the physical presence of the worker at a specific job site.

The directives on telework establish various obligations for the employer. Among others, the employer must provide the equipment, work elements and inputs necessary for the development of telework.⁷⁷ The employer must respect the teleworker's right to disconnect, guarantee the time in which the worker will not be obliged to respond to communications, orders or other requirements.⁷⁸ The employers hiring under a teleworking modality must also report such relationship to the labour authority.⁷⁹

An important aspect of the Directives is the principle of reversibility, where an employee that has moved to a teleworking scheme, can return to an on-site working modality.⁸⁰

México

On 9 December 2020, the Mexican Congress approved a decree amending Article 311 of the Federal Labour Law and adding a Chapter XII BIS on Teleworking. The decree promotes teleworking as a form of labour organization establishing rights and obligations for both employers and employees.

Among the relevant aspects, it defines telework as the provision of personal and subordinate services in a place other than the company or workplace, using primarily information and communication technologies, if more than 40% of these tasks are performed in the domicile selected by the worker; or as provided in the working contract or companies' internal work regulations.

It also provides for teleworking being part of the collective agreements. Where non-existent, the law mandates its inclusion in the company's internal work regulations.

Employers are responsible of providing, installing, and taking care of the maintenance of teleworking equipment, including such as computer equipment, ergonomic chairs and printers, as well as the payment of telecommunication services and the proportional part of electricity.

Other provisions relating to data protection, the right to disconnect, skilling and social security will also be part of the new telework chapter of the Federal Labour Law.

On the workers' side, the decree establishes a duty to preserve the equipment they receive from the employer; reports on the agreed costs for the use of telecommunication services and electricity consumption; respects the provisions on health and safety; uses established operating systems to monitor activities; and complies with data protection policies.

The principle of voluntarism is an important element of the reform, by providing for the flexibility to switch from telework to onsite work and vice versa, with the exception of cases of *force majeure*.

The health and safety conditions of telework will be established by the Ministry of Labour and Social Security through an Official Mexican Standard (NOM).⁸¹ The Ministry of Labour and Social Welfare will have 180 days to elaborate such a NOM, to regulate the special conditions concerning health and security of teleworking, such as ergonomic factors, psychosocial factors, and other work-related risks.⁸²

Panama

On 16 September 2020, Panama passed an Executive Decree No. 133, where the Teleworking Law is regulated, formalizing all the agreements reached in the Tripartite Dialogue Table for the Economy and Labour Development. This Regulation also provides for the voluntary nature of the teleworking modality, and the worker's right to disconnect.

The workplace is defined depending on whether telework is full time or part-time. Full-time: any location other than the employer's premises, including, but not limited to, the worker's home, where work is performed on behalf of the employer; and part-time: the workplace may also include the employer's premises, understanding that at some point work is performed outside the business premises. Overtime will be governed by the limitations and other provisions contained in the Labour Code.

The employer must keep a record of the hours worked by the employee through ICT, and similar means that the employer determines, and that are verifiable by both parties. These records must be available to workers for consultation at all times.

The employer's instructions, for the performance of telework, may be issued by ICT or similar means, without prejudice to another modality, which provide certainty about the issuing authority, clarity of the instruction, date, and its direct relationship with the execution of the telework modality in development.

Professional risks include events occurring at telework locations, including the worker's home, when such events derive from the work performed on behalf of the employer. Work accidents related to on-call work will also be included. The Social Security Fund will be responsible for investigating and assessing the nature of the events, according to the regulations in force.

The law provides for reversibility of the agreed modality, both for the employer and the worker.

The employer is responsible of supplying the worker with the tools, instruments, materials, and software necessary to execute telework. Also, the employer must secure that the worker's connectivity through ICT and similar means to carry out work. In the event of failures in telecommunications services or electricity, the worker is obliged to notify the employer.

The installation of any software that violates the privacy of the worker or his family is prohibited.

The employer must cover expenses related to electricity and internet services, as well as the equipment, maintenance, repair, tools, training, and other costs inherent to the provision of the service in the teleworking modality.

In case of doubt in the interpretation of the provisions set forth in this Regulation, the principles and rules of the Labor Code will be applied.

Peru

On 5 June 2013, Peru enacted Law 30036⁸³ on telework. This law regulates telework as a working modality characterized by the subordinate performance of work without the physical presence of the worker, called "teleworker", in the company with which he/she has an employment relationship, through computer, telecommunications and similar means, through which the control and supervision of the work is exercised, among other elements that help to typify the subordinate nature of this type of work are the provision by the employer of the physical means and computer methods, technological dependence and ownership of the results.⁸⁴

On 27 October, a Supreme Decree that approves the Regulation of the Law Nº 30036, Law that regulates teleworking, was enacted.⁸⁵ Such regulation is applicable to Workers and civil servants whose work is carried out in the national territory and provides that any agreements on telework shall be in writing and establish at least: i) The computer, telecommunications and similar means to be used for the provision of the service, as well as the part of the contract responsible for providing them; ii)

the conditions of use, the responsibilities of the teleworker on them and the procedure for return at the time of termination of the mode of teleworking; iii) the amount of compensation to be made by the employer, in case the means are provided by the teleworker; iv) The measures on the management and security of the information derived from the use of the means with which the service is provided under the modality of teleworking; v) the working day that is assigned to the teleworker, in accordance with the limits provided in the rules that are applicable; and vi) the mechanism of supervision or reporting to be implemented to facilitate the control and supervision of the work.

It also provides for the following principles:

- a) Voluntariness: the employer or public entity, for duly substantiated reasons, may make the variation of the provision of services to the modality of teleworking, counting for it with the consent of the worker or civil servant.
- b) Reversibility: the employer or public entity may reinstate the teleworker to the mode of provision of services prior to teleworking, if it is shown that the objectives are not achieved under the modality of teleworking.
- c) Equal treatment: the employer or public entity must promote equal treatment in terms of working conditions of teleworkers, in relation to those who work in person.
- d) Reconciliation between personal, family and work life: promote a balance between the activities carried out in the areas, personal, family and work of workers or civil servants, through the modality of teleworking. In this regard, there must be an adequate correspondence between the workload and the workday or services assigned.

The regulation also established two modalities for telework, a full telework modality where the teleworker provides services outside the work center; being able to go occasionally to the work center, and a Mixed form, where the teleworker provides services alternately inside and outside the work center or premises.

Due to the COVID-19 pandemic, the Government has created a temporary system of “remote work” that will be in force until 31 July 2021. Remote work can be implemented if the employees do not attend the employer’s workplace to render services, whether they use telecommunication means that allow the employer to supervise their work or not. In this case, the employer can implement remote work unilaterally, without the need to obtain the employee’s agreement.

Uruguay

The draft Regulation on Telework of 22 April 2020, further developed by an initiative presented to the Senate in November 2020, are currently under discussion for final approval.⁸⁶

The proposals define telework as the provision of work, total or partial, through the use of ICT, outside the “physical space” provided by the employer.

This draft regulation is aimed at regulating subordinate labour relationships in the private sector.⁸⁷ The teleworker and the employer must agree at the beginning or during the validity of the employment relationship the modality of telework in the employment contract or document attached to it. Such agreement must be made in writing.

The teleworker and the employer must agree on the place where the work tasks will be performed, which may be at the teleworker's home or in any other place defined in the contract. If the provision of teleworking, by its nature, is capable of taking place in different places, it may be agreed that the teleworker can freely choose the location to perform his or her tasks, even in more than one location. Otherwise, the teleworker may require the employer to be the one who provides the place where telework is to be provided.

Reversibility of the telework modality has to be agreed between the worker and the employer in writing.

The proposals also cover working time, and monitoring are other aspects. In addition, provisions concerning workers individual and collective rights remain valid, as applicable.

A specific reference to professional risks and occupational diseases provides that applicable regulation remains in force.

Also, the proposals establish the right to disconnect, which is defined as the full exercise of the right of every worker to disconnect from digital devices and the use of technologies, in order to guarantee their rest time.

ASIA

Australia

In Australia, the approach to remote work is *ad hoc* and generally managed at the individual workplace level.

At the base level, Fair Work Act 2009,⁸⁸ a federal legislation provides that certain employees who have worked with the same employer for at least 12 months can request flexible working arrangements, including changes to the location of work to allow the employee to work from home. These types of employees include those who are a parent or carer, have a disability, are aged 55 or older or are experiencing family or domestic violence. The employer may refuse the request based on reasonable business grounds.

Other employers, particularly those in white collar workforces, may opt to offer greater opportunities for remote work in a collective agreement applying to their particular enterprise, or in a workplace policy.

In terms of Work Health and Safety (WHS), employers must ensure, as far as is reasonably practicable, the health and safety of their workers. The worker also has a responsibility to take reasonable care for his or her own health and safety, including complying with reasonable directions given by the employer and any policies or procedures provided. Prior to moving staff to work from home, WHS best practice is that employers should conduct a safety assessment of the work area and come to an agreement with employees about any controls or preventative measures that need to be put in place.

When the COVID-19 pandemic hit, employer organisations, including the Australian Chamber of Commerce and Industry, negotiated with employee organisations to apply to Australia's national workplace relations tribunal, the Fair Work Commission, and secured temporary variations to a number of modern awards which regulate employment at the industry or occupation level. These changes allowed employers and employees to vary the location of work to permit working from home, as well as varying duties where necessary, and applied to those in the clerical, hospitality, fast food, restaurants and vehicles repair industries. Employees who had agreed with their employer to work remotely could also agree to change their spread of ordinary hours to allow them to work between 6am and 10pm, Monday to Friday (usually 7am to 7pm), and also to have greater flexibility in the taking of any meal or rest break, which is usually subject to strict requirements in the modern award. Both of these changes meant an employer could accommodate an employee's request without being required to pay overtime or other penalties which might otherwise apply. These changes were instrumental in assisting employees in the balance of work and home responsibilities including child minding and home schooling that occurred as a result of government restrictions imposed to stop the spread of COVID-19.

Building on the ideas developed at the award level, on 8 April 2020 the Australian Government introduced new temporary amendments to the main piece of legislation which governs employment, the Fair Work Act 2009,⁸⁹ which provided that if an employer qualified for the temporary wage subsidy scheme (known as JobKeeper), additional flexibilities were available to that employer. In relation to remote work, this included that the employer could direct an employee to perform duties at a place that is different to the employee's normal workplace – including at the employee's home. These changes were important in the context of the COVID-19 pandemic to get around the restrictive rules

in some modern awards concerning locations of work. These flexibilities were extended on a number of occasions, and ultimately ended on 28 March 2021, the same day as the wage subsidy scheme came to an end.

The Australian Government introduced the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill into Parliament on 9 December 2020 which aimed to extend the flexibilities in the Fair Work Act concerning duties and location of work to employers and employees to whom certain modern awards applies – particularly those in distressed sectors. However, these changes did not have the support of the Opposition or minor parties and did not pass Parliament.

Interest in remote work separate to national legislation remains. The peak employee organisation, the Australian Council of Trade Unions (ACTU) released a 'Working from home charter' in November 2020, which includes matters that unions may seek to pursue through collective bargaining. This included for example a unilateral right for employees to declare that they will work from home, while at the same time requiring employers to pay for that choice through a working from home allowance and reimbursement of other costs.⁹⁰ The peak employer body, the Australian Chamber of Commerce and Industry, urged a common sense approach from the employee organisations when negotiating with employers and engaging in collective bargaining in relation to remote work, noting that it is not beneficial to employees or employers if business is put at risk by calling for more money and placing more demands and restrictions on business.⁹¹

With research revealing that in 2021, 41% of working Australians worked from home at least once a week, compared with 24% in a comparable period before the pandemic,⁹² remote work, including claims from employee organisations about rights relating to remote work, is an important issue that employers will need to continue to manage as trends develop.

Cambodia

In Cambodia, there is no right for an employee to work remotely. This falls under the power of control, direction and supervision of employer. Article 71 of the Cambodian Labour Law provides that an employer has two options: i) to ask employees to work from home or ii) suspend the contract without salary payment.⁹³

In the situation where public transport is closed and employee cannot get to work to perform their duties, it may be considered as an event causing suspension of employment contract. In this case,

where the main obligations of the parties are suspended, the employer is not required to pay the salary unless otherwise specified in the individual employment contract, collective bargaining agreement, internal company rules or employee's manual or mutual arrangement between employer and employees.

India

On 5 November 2020, the Government of India announced simplified guidelines for Business Process Outsourcing (BPO) and IT Enabled Services (ITES) players to reduce the compliance burden for the industry and facilitate 'Work from Home' and 'Work from Anywhere'.⁹⁴

The new rules for 'Other Service Providers' (OSPs) would create a friendly regime for 'Work from Home' and 'Work from Anywhere' while removing several reporting and other obligations for such companies.

OSPs are entities providing applications services, IT enabled services or any kind of outsourcing services using telecom resources. The term refers to BPOs, KPOs (Knowledge Process Outsourcing), ITES, call centres, amongst others.

The new regulations aim to boost flexibility for these companies to adopt 'Work from Home' and 'Work from Anywhere' policies, a development especially relevant at a time when COVID-19 has forced IT/BPO firms to enable employees to work from home.

The new rules also do away with registration requirement for OSPs, while the BPO industry engaged in data related work has been taken out of the ambit of the said regulations. The requirement such as deposit of bank guarantees, requirement for static IPs, frequent reporting obligations, publication of network diagram, and penal provisions have also been removed.

Furthermore, realising that remote work is here to stay, the Government has decided to make it a part of efficient work culture in companies. The Union labour Ministry has for the first time incorporated the 'work from home' option in establishments, as part of its draft model standing order for the service sector.⁹⁵

Standing orders are basically an employment contract that spell out the rules of conduct for employees in industrial establishments that have over 300 workers. It is mandatory for companies to have a standing order that is approved by the state or central government. The draft code states that *"Subject to conditions of appointment or agreement between employer and workers, employer may allow a worker to work from home for such period or periods as may be determined by employer."* This will apply to all those who are working in the industrial establishments covered under the Occupational Safety, Health and Working Conditions Code, 2020.

This is also the first time that the labour ministry has brought out standing orders for the service sector under the new Industrial Relations Code. Before the new labour codes were approved by Parliament in September 2020, there was one standing order across sectors.

The standing order also provides for flexibility to employees within the weekly working hour limit of 48 hours, which has been fixed under the labour code.

Philippines

On 20 December 2018, the Philippines issued the Republic Act No. 11165 (Telecommuting Act).⁹⁶ Telecommuting is defined as work arrangements that allow private-sector employees to work from an alternative workplace using telecommunications and computer technologies.

Under the Telecommuting Act, an employer may put in place a telecommuting arrangement based on a mutual agreement with the employees. The terms and conditions of such an arrangement may not be less than the minimum labour standards set by law. The Telecommuting Act provides for equal treatment between employees who telecommute and those employees working on the employer's premises.

Telecommuting workers must have the same training opportunities and be subject to the same appraisal procedures as workers in comparable roles located at the employer's workplace.

Employers must take measure to keep telecommuting employees from becoming isolated from the rest of the working community.

Employers must assure the protection of data used by telecommuting employees as part of their jobs inform employees about their data-protection duties.

Singapore

On 9 May 2020, the Singapore's tripartite partners, comprising the Ministry of Manpower ('MOM'), the National Trades Union Congress ('NTUC') and the Singapore National Employers Federation ('SNEF') issued an advisory on "Requirements for safe management measures (SMMs) at the workplace".⁹⁷ Based on the Advisory, work-from-home is the default mode of working. However, from 28 September 2020, employees who are able to work from home may return to the workplace to better support work and business operations.

As the COVID-19 situation is evolving, the advisory would be updated where necessary, with the last update on 22 Oct 2020.⁹⁸

Where employers fail to adhere to the SMMs, they may be fined and/or be ordered to cease on-site operations.⁹⁹

Beyond the emergency measures mandating telework in the context of Covid-19, the Ministry of Manpower has provided some guidelines on the adoption of teleworking modalities managed by Tripartite Standard Flexible Work Arrangements (FWA). FWAs refer to work arrangements where employers and employees agree to a variation from the usual work arrangement. For example, flexibility can be applied to working time, work location, including telecommuting, working from home and working from smart work centres.¹⁰⁰

Thailand

In Thailand, there is no statutory law allowing the right to telework. “Home Office” is up to the employer’s discretion.¹⁰¹ In this case, section 75 of the Labour Protection Act concerning the suspension of work does not apply and wages must be paid in full. However, employers may enter into agreements with employees to cut working hours and wages.

Under Thai labour law, rights and obligations of employees working from home remain unchanged. Consequently, duties from employers remain unchanged for teleworking practices.

However, it is worth noting that changes to company policies and procedures affecting employment terms and conditions must be notified and communicated in accordance with the requirements of the applicable labour laws. Moreover, any reduction in working hours or salary and other monetary entitlements will continue to constitute a change in working conditions requiring employee’s consent.

There is no statutory requirement to reimburse electricity, internet and other expenses incurred by employees working from home. Employers should check their employment terms to determine if there is a contractual obligation to meet such costs.

The Employers' Confederation of Thailand observed that *during the lock-down, both employers and employees seem to adopt telework effectively, although difficulties on the part of employees were visible due to inadequate of appropriate office settings at their residences, family disturbances including young children cares, but benefits clearly outweigh including time and cost savings from no commuting, better work-life-balance, etc. However, after ending the first Lockdown, some employers required employees to return to office and some employees willingly wanted to go back to office. On benefits of the national scale, during lock-down, they can observe much less traffic and better air quality, in particular, Particulate Matter 2.5 during the winter months.”*

They also commented that in-Post Covid-19, the Government should ensure Telework to continue for White-Collar Workers to reap those benefits. Incentives for business should be put in place, for example: Tax benefits for business that have certain percentage of employees commit to telework; tax benefits & low interest rates for home improvement to accommodate home office; and national policy to promote telework as part of digital transformation.

United Arab Emirates

On 31 October 2017, UAE adopted the Ministerial Order No. 787/2017 regulating Teleworking (the "Resolution").¹⁰² It defines teleworking, as the concept of using information and communication technology (ICT) to enable an employee to work away from the regular place of work.

The Resolution aims at creating job opportunities for UAE citizens looking for work in remote areas by encouraging employers to offer teleworking employment options; and to provide for flexible work options for UAE citizens (particularly female nationals), to enhance family relationships by improving the balance between work and family.

Under the Resolution, UAE nationals will have the right to request that their employer to consider facilitating teleworking. The employee must have completed at least six months of service in the company if employed on a full-time basis, or at least one year if employed on a part-time basis. Employers must respond to an application for teleworking within 20 working days and must state the reasons for rejection.

Employers must clearly specify which roles may be suitable for teleworking and must provide all necessary tools and electronic equipment to telework.

Upon approval of an employee's application for teleworking, an agreement setting out terms and conditions should be entered between the employer and employee. It should include i) a breakdown of the hours to be worked remotely and those to be worked at the employer's premises; ii) the remote locations from which the employee will be permitted to perform their role; and iii) any wages, allowances and leave provided in excess of the minimum rights detailed in the UAE Labour Law.

The teleworking agreement should be appended to the employee's contract of employment.

EUROPE

EU

On 20 September 2001, the European Commission invited the social partners, ETUC (and the liaison committee EUROCADRES/CEC), UNICE/UEAPME and CEEP announced their intention

to start negotiations aimed at an agreement on telework to be implemented by the members of the signatory parties in the Member States and in the countries of the European Economic Area. The outcome was a four page Framework Agreement on Telework which sets out the basic definition and basic framework which the text has now been used and inspired in subsequent regulations and agreements.¹⁰³

In particular, the Framework Agreement defines telework 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.”*

On 22 June 2020, the European Social Partners signed another Framework Agreement on Digitalisation.¹⁰⁴ Such agreement aims, among others, to raise awareness and improve understanding of employers, workers and their representatives of the opportunities and challenges in the world of work resulting from the digital transformation. It outlines a joint dynamic circular process, which takes into account the different roles and responsibilities of the different actors and can be tailored to different national, sectoral and/ or enterprise situations, industrial relations systems, jobs and different digital technologies/tools; and highlights concrete approaches to tackle topics such as skills, work organisation and working conditions.¹⁰⁵

This autonomous agreement has been concluded by the European cross-sectoral social partners and applies to the whole of the EU/EEA.

It is relevant to telework as it acknowledges that the introduction of digital devices/tools in workplaces can provide many new opportunities and possibilities to organise work in a flexible way to the benefit of employers and workers. At the same time, it recognises that it may create risks and challenges around the delineation of work and of personal time both during and beyond working time. Accordingly, it presents a common approach to certain topics touching upon telework, such as safety and health, where it is observed that it is the employer’s duty to secure these in every aspect related to the work and avoid possible negative effects on workers’ health and safety and on the functioning of the enterprise.

It refers to a culture where employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties, and where the principle of prevention is accorded the highest priority. Measures to be considered include:

- Training and awareness raising measures;
- Respect of working time rules and teleworking and mobile work rules;

- Appropriate measures to ensure compliance;
- Providing guidance and information for employers and workers on how to respect working time rules and teleworking and mobile work rules including on how to use digital tools, e.g. emails, including the risks of being overly connected particularly for health and safety;
- Being clear about the policies and/or the agreed rules on the use of digital tools for private purposes during working time;
- Commitment from management to create a culture that avoids out of hours contact;
- Work organisation and workload, including the number of staff, are key aspects which need to be identified and evaluated jointly;
- Achievement of organisational objectives should not require out of hours connection. With full respect for working time legislation and working time provisions in collective agreements and contractual arrangements, for any additional out of hours contacting of workers by employers, the worker is not obliged to be contactable;
- And in respect of the bullet point above, appropriate compensation for any extra time worked, and;
- Alert and support procedures in a no-blame culture to find solutions and to guard against detriment for workers for not being contactable;
- Regular exchanges between managers and workers and/or their representatives on the workload and work processes;
- Alert and support procedures;
- Prevention of isolation at work.

Also, at the European level, the EU Parliament adopted a resolution containing a recommendation to the European Commission on the right to disconnect on 21 January 2021.¹⁰⁶

In this resolution, the European Parliament points out that *“telework has been instrumental in helping to safeguard some employment and business during the COVID-19 crisis, but reiterates that, because of the combination of long working hours and higher demands it can also pose higher risks to workers with a negative impact on the quality of their working time and their work-life balance, as well as their physical and mental health; highlights the fact that particular difficulties arise when work is not tied to a specific place of work, when connectivity to work is constant and when work spills into family and private life”*. It also stresses that *“workers’ right to disconnect is vital to protecting their physical and mental health and well-being and to protecting them from psychological risks; reiterates the importance and benefits of implementing psychosocial risk assessments at private and public company level and reiterates the importance of promoting mental health and preventing mental disorder at the workplace, creating better conditions for both employees and employers; recognises that committees on health and safety established by the social partners can play a positive role in ensuring more frequent and accurate risk assessments.”*

The resolution “calls on the Member States to establish precise and sufficient mechanisms to ensure a minimum standard of protection in accordance with Union law and the enforcement of their right to disconnect for all workers”; “stresses the importance of supporting individual training aiming to improve IT skills for all workers, in particular for persons with disabilities and more senior colleagues, in order to ensure good and efficient performance of their work”; and “calls on the Commission to include the right to disconnect in its New Occupational Safety and Health Strategy, and to explicitly develop new psychosocial measures and actions within the framework of Occupational Safety and Health” among other relevant aspect that have an impact on telework as a working modality entailing the use of digital tools.

Belgium

In March 2017, Belgium enacted the Workable and Flexible Work Act to regulate teleworking, which enables ‘occasional’ teleworking in case of *force majeure*. However, when it comes to non-occasional telework, it is regulated by means of a National Collective Agreement no. 85.¹⁰⁷ According to this agreement, structural teleworking has to be agreed by means of a written annex to the employment contract, so it becomes part of the regular working conditions. Furthermore, this collective agreement provides that employers have to bear some of the costs of teleworking.¹⁰⁸

Since the beginning of the Covid-19 pandemic, almost all governments of the world adopted an obligation or recommendation to telework, whenever the nature of the task allows it.

This obliged enterprises to quickly adapt their organisation of work and human resources practices.

In Belgium, telework is compulsory as per the various Ministerial Decrees adopted since March 2020 but it lacked a proper implementation framework.

On 26 January 2021, employers’ and workers’ organisations within the National Work Council (“*Conseil National du Travail*”) signed a collective agreement (CA [No. 149](#)) providing the missing legislative framework to telework practices introduced after the abovementioned Ministerial Decrees in response to Covid-19 crisis.¹⁰⁹ The agreement has a duration of one year, until the end of 2021.

This collective agreement excludes from its scope of application enterprises having already implemented a telework regime before 1 January 2021, in line with Law of 5 March 2017 and Collective agreement No. 85 of 9 November 2005.

Since CA No.149 is a framework agreement, it leaves room to conclude company level collective agreements or company-employee individual agreements that set rules in line with the company’s specificities.

This framework agreement contains provisions on working conditions as well as on occupational health and safety for employees working from remotely. It requires employers and employees to conclude agreements on:

- working tools, such as a laptop, and technical assistance;
- Contribution for expenses incurred with working tools pertain to the employees;
- Contribution for internet connection costs;
- Working time and workload setting;
- Working supervision;
- Facilities to maintain the communication between workers' representatives and employees
- Well-being at work.

The Federation of Belgian Enterprises in Belgium (*Fédération des Entreprises de Belgique – FEB*) commented that they were *“delighted that the social partners have reached an agreement after difficult negotiations. This framework must contribute to the best possible conditions of "compulsory" teleworking, so that it is beneficial to both parties. Indeed, it tries to optimize as much as possible the obligation to telework in order to enhance the performance and productivity of employees and to support their well-being. With this aim, it is essential to conclude specific agreements. It should also be borne in mind that the main lever of enthusiasm and productivity of (tele) workers is and remains confidence. Not an infantile and naive confidence, but a confidence which rests on good agreements and a clear framework.”*

France

On 26 November 2020, social partners in France concluded a national interprofessional agreement on telework, which provides a framework clarifying the rules and modalities of remote working. It has received support from 4 trade unions (CFDT, FO, CFE CGC, CFTC). The decision-making bodies of the CFDT, FO and CFTC have already formally announced their signature. It is therefore, with the signature of MEDEF, the CPME and U2P, (apart from the CGT) the agreement will almost reach unanimous approval.

The agreement concluded act as a tool to help social dialogue, and support negotiation at the company level, and, where applicable, the professional branch to set up telework while reconciling the social and economic performance of the company.

It identifies the inherent issues in the implementation of teleworking, brings readability of the legal and contractual framework in force, and proposes a number of levers that can be mobilized at company level, or even in the professional sector, to a successful implementation of telework.

The agreement is structured around seven fundamental points regarding the implementation of telework, in any situation, in the company:

1. Telework in the company;
2. Telework implementation;
3. Telework organization;
4. Support for employees and managers;
5. Preservation of the working relationship with the employee;
6. Local social dialogue continuity; and
7. Telework implementation in exceptional circumstances (such as the Covid crisis).

The agreement encourages social dialogue at the company and sectoral levels and in professional branches, in line with the social and economic situations of the company, to determine matters such as the equipment and tools to be used when working remotely; the working time including the right to disconnect; and workload assessment; telework related expenses; health and safety rules when working remotely; the access to training. It also distinguishes between telework and remote working in time of crisis. In such situation, it contains measures to ensure business continuity, social dialogue and continuous exchange of information with employees, as well as providing at the employees' disposal the necessary work equipment.

Furthermore, it provides real progress for companies as it provides clear restatement of the employer's power to organize, and more specifically to identify which activities can be "teleworked": the scope of those activities may be the subject of discussions with employees and their representatives, but it is above all up to the employer to identify them, depending on the characteristics and constraints of the company.

Moreover, it clarifies the modalities for switching to "forced" teleworking, subject to a unilateral decision by the employer, in the event of exceptional circumstances: the social and economic committee, where it exists, can be consulted after the decision to use generalized teleworking. It also adopts a pragmatic approach to the employer's responsibility for employee health and safety in case of teleworking. It does not allow the manager to avoid his or her legal obligations, but to simply take into account the fact that he or she does not fully control the work environment of the teleworking employee and particularly when this takes place at the employee's home.

Germany

In Germany, telework requires either an individual agreement between employer and employee or a company agreement with the works council, which has a co-determination right when home office is introduced. Thus, teleworking is regulated by works agreements in private sector and staff agreements in the public sector. Where telework takes place, the requirements of employee protection in principle remain unchanged.

However, as a consequence of the Covid-19 pandemic, Federal Labour Minister announced major reform on employment regulation, including the 'Mobile Working Act' which regulates remote work. The draft regulation currently provides for a duty of consideration for the employer with the aim of concluding an agreement on mobile working at the request of the employee. If this is not possible, the employer must justify his refusal.

Ireland

On 15 January 2020, the Irish government published its "Making Remote Work – National Remote Working Strategy", which provides an indicative roadmap and guidance for both employers and employees on the future of remote working in the country.¹¹⁰ The Government intends to give all Irish employees the right to request to be allowed to work remotely. It also appears that employees will have the right to seek the intervention of the Workplace Relations Commission if an employer refuses without good reason.

The Government also announced its intention to take action in relation to the "Right to Disconnect" from work. It is intended that a Code of Practice will be introduced on this issue. A Code of Practice is not law, but it can be relied upon in the Workplace Relations Commission.

On 1st July, the Department of Enterprise, Trade and Employment of Ireland published a Guidance for Working Remotely, as a resource for employers adopting remote working. It includes a "Checklist for working Remotely"¹¹¹, covering employment conditions, working time, health and safety, mental health, equality issues, training, and data protection.

The government also announced its intention to introduce legislation in the third quarter of 2021.¹¹²

Italy

In order to increase competitiveness and facilitate work-life balance, Italy introduced Law no. 81/2017 which defines "remote working" as "*a way to perform the employment contract*".¹¹³

Remote working is freely agreed by the two parties and presupposes: i) the absence of rigid working time or working place limitations, in compliance with the maximum daily and weekly working time; ii)

the likely use of technological devices and tools; iii) the performance of the working activity both inside and outside the employer's premises.

Remote workers have the statutory right to an economic and regulatory treatment not lower than the one applied to workers who perform the same duties exclusively within the company's premises.

In the context of the Covid-19 pandemic, in order to prevent the spread of the virus and to ensure distancing of people, who are confined to their homes, remote working has proved to be a solution to reconcile the limitations due to the lockdown with the need to ensure business continuity.

Law Decree No. 6/2020 introduced a special type of "remote working" specifically addressed to workers located in a "red zone" and therefore confined to their homes.¹¹⁴ After that, the Decree of the President of the Council of Ministers dated 1 March 2020 extended this type of remote working in the whole country for the whole duration of the emergency period. Further subsequent Decrees have been enacted to extend the remote working applied in the emergency period. The current one expires on 30 April 2021.

Notably, in a merely preventive perspective, the Italian Legislator establishes that companies can introduce this kind of remote working for their employees even in the absence of the individual agreement that is required by Law No. 81/2017. This measure has been strongly recommended by the Legislator both in the private and in public sectors.¹¹⁵

On 14 March 2020, Confindustria, with the most representative social partners at national level, signed the *"Shared Protocol for the regulation of measures to combat and contain the spread of the Covid-19 virus in the workplace"*, which content was supplemented on 24 April 2020. Through a Decree of the President of the Council of Ministers, the Government has consequently set, for all companies entitled to operate, the implementation of the measures established by the Protocol as a condition for business continuity.

The Protocol provided a framework with general safety guidelines for the operating companies. It regulated different situations and matters, including logistical aspects, such as access to buildings, organisation of work to avoid contact among employees and with external people, personal hygiene precautions, meetings and trainings, and medical control of employees.

It should be noted that the remote working experience during the lockdown and the emergency period cannot be considered as the ordinary form of remote working.

Ordinary remote working (according to Law no. 81/2017) is, in fact, characterized by the substantial freedom of the employee to plan the timing and places of his/her work performance, as well as by the fact that the activity must be evaluated on the basis of the achievement of performances/objectives,

agreed with the employer, and not simply by making the worker available during office hours or by requiring 8 working hours per day.¹¹⁶

According to a report from the Italian National Institute of Statistics, 90% of large enterprises and 73% of medium-sized enterprises have introduced or extended the possibility for their employees to engage in remote working during the emergency period.

Netherlands

In the Netherlands, the Flexible Work Act 2016 (*Wet flexibel werken*) makes it possible for employees of companies with more than 10 employees employed for at least six months to request their employer to change, increase, or decrease in their working hours, as well as the ability to work from another location.¹¹⁷ The employer is free to refuse such a request but does have a 'duty to consider' and must substantiate the refusal in writing.

The employer is responsible for the workplace at home, which includes the design of the workstation, the working method and providing tools. The employer must ensure that the employee has an ergonomic chair and a desk at home and is responsible for their costs, as well as ensure that there is enough artificial light at the workplace. Since the employer is responsible for the workplace at home, there should be an onsite visit by the employer or a health and safety expert to assess whether the workplace complies with rules and obligations as set out in the legislation. If this is not feasible, it is also possible to ask the employee to send photos and videos of the workplace at home. The employer is responsible for the costs of making the workplace ergonomically sound and safe. Rules on monitoring employees should also be laid down in a teleworking policy.¹¹⁸

Norway

Norway's applicable regulation is laid down in the Working Environment Act of 2005 (WEA).¹¹⁹ The law provides for the right to flexible working hours "*if this may be arranged without major inconvenience to the undertaking*". However, there is no generally recognised definition of telework in the legal framework in Norway.

It has more been in the context of collective agreements that rules for telework have been stipulated. Major social partner confederations in Norway have agreed on guidelines for telework published in February 2006. The definition of telework set out in these guidelines is practically the same as in the EU-level framework agreement. They define telework as a form of organising and/or performing work with the following characteristics: use of information technology; the work is carried out in the context of an employment contract/relationship; the work could be performed at the employer's premises; and the work is carried out away from those premises on a regular basis.¹²⁰

Poland

In August 2007, the Polish Labour Code¹²¹ was amended in order to introduce telework into the Polish legal framework for the first time. The Code provides for a chapter on 'Employment in the form of telework'. Article 67/5 defines telework as *"Work [that] can be performed away from the premises of an employer on a regular basis using means of electronic communications [...]"*.¹²²

Under the Polish Labour Code, the employer is responsible for OSH conditions, as well as for providing the employee with all the necessary equipment, unless the employee has agreed to use their own equipment in exchange for a cash payment and technical support. The employer also bears the costs of maintaining and operating the equipment. The employer determines the principles of protection for the data transferred to the teleworker and if necessary, carries out training in this area. The employee must confirm in writing that they have become familiar with the data protection principles.

Also, Poland recently introduced the concept of "remote work" under the Act of 2 March 2020 on Combating COVID-19, and further developed it on 20 May 2020 by the "Anti-Crisis Shield 4.0" Bill.¹²³ Remote work is introduced in the form of an ordinary unilateral official order on the part of the employer, without the need to amend the employment contract or obtain the employee's consent.¹²⁴

Pursuant to the bill, the employer will be able to tell an employee to switch to remote working if i) the employee has the skills, technical capabilities and space at home to perform such work, and ii) the type of works performed enable the worker to do so.

The employer must provide the means of work (eg. computer, hardware, software), materials and logistical support required to work remotely. Workers may use devices not provided by the employer when working remotely, only if they can ensure the protection of confidential information, business secrets and personal data.

The employer may require the employee to keep records of his/her activities in writing or electronically. The bill also allows the employer the right to withdraw the order to work remotely at any time.¹²⁵

Romania

On 28 February 2018, the Romanian Parliament adopted a new piece of legislation regulating the telework.¹²⁶ The Telework Law defines telework as a form of organization of the work where the employee regularly (at least one day per month) and voluntarily exercises his/her duties in a different place other than the one organized by the employer using communication and information technology.

Telework can be performed in any place agreed by the parties and not limited to the domicile of the employee and is only applicable in those domains where the work can be performed through communication and information technology.

Individual employment agreements of the employees performing telework will have to reflect the requirements of the Telework Law. These shall include specific clauses such as: (i) the period in which the employee teleworks; (ii) the place where telework is going to be performed; (iii) the timekeeping scheme; (iv) the schedule for the employer's inspection as well as the way the inspection is going to be performed; (v) responsibilities of the parties, including in relation to labour health and safety; (vi) the measures taken by the employer in order to avoid the isolation of the employee; (vii) the obligation of the employer to transport the materials used by the employee; (viii) the obligation of the employer to inform the employee in relation to data protection matters; and (ix) conditions in which the employer covers the costs related to the telework.

Also, extra hours can be agreed between the employer and full-time teleworkers, but the agreement must be made in writing.

The Telework Law also establishes certain specific obligations of the employer and the employee in relation to OSH. Moreover, it grants inspection rights, where the employer, the labour authorities and the worker representatives are entitled to regularly check the activity of the employee, and to verify the working conditions of the teleworker.

The Telework Law also provides for the application of fines should the employer fails to comply with the obligations laid down in the provisions.

Serbia

On 18 January 2021, the Serbian Ministry of Labour published the Guide for Safe and Healthy Work from Home.¹²⁷ The Guide defines work from home as work which involves the use of information and communication technologies enabling remote work. It also suggests that where telework is to be used on an exceptional basis, it requires the conclusion of an agreement by the worker and the employer, by means of an annex to the employment contract, amending the terms of work.

However, it is worth noting that the Serbian Labour act also provides the basis for an ordinary agreement on occasional work from home. Moreover, Article 50 of the Serbian Labour Act allows for the possibility of an agreement between the employer and the worker to work a certain number of hours from home. While the employer must seek the consent of the employee in this regard, the agreement between the employer and the employee on remote work does not necessarily have to be in the form of an amendment to the employment agreement.

Article 42 establishes employment relationship for performing work outside the employer's premises, in the form of teleworking and working from home. It provides for mandatory elements of such employment contracts and stipulates that the basic salary cannot be determined in a smaller amount than the salary of an employee who works on the same jobs but in the premises of the employer. These employment contracts are also subject to provisions on schedule of working hours, overtime, redistribution of working hours, holidays and leave, etc. unless otherwise provided by a general act or employment contract.

Furthermore, Article 44 of the Labour Law states that the employer can contract jobs outside its premises that are not dangerous or harmful to the health of the employee and other persons and do not endanger the environment.

Thus, it is for the employer to regulate the period during which the employee will work remotely; how the employee will be supervised; aspects concerning the equipment and work tools to be used, its maintenance and whether there would be any compensation for the use of personal equipment, or other related costs.¹²⁸

Slovakia

On 4 April 2021, an amendment to the Slovakian Labour Code (Act No. 311/2001 Coll.) was partially triggered by the Covid-19 pandemic and entering into force on 1 March 2021, including rules on remote work, among other provisions.¹²⁹

The Code establishes the rights and obligations of the employee and the employer, and requires mutual agreement, as well as some ordinary planning for this modality of work (as opposed to an exceptional basis) and working time organisation. The new provisions of the Code oblige the employers to reimburse the employee for increased costs related to remote work such as expenses for material and tools. Any issues related to internet connectivity or technical equipment that negatively impact the work performance shall be immediately communicated to the employer.

The Code introduces also the right to disconnect during the weekly rest and at the end of the workday, unless overtime has been ordered or agreed, as well as during holidays and public holidays.

Spain

On 22 September 2020, Spain adopted a new legislation on remote working through Royal Decree-Law 28/2020.¹³⁰ The legislation requires employers and employees to sign an agreement for remote working when this is the working in any place agreed for more than 30% of the week within a period of three months. The employer is also obliged to pay or compensate the expenses the employee may

have to face for equipment and tools needed to perform his work. Articles 11 and 12 provide that further details may be foreseen by collective agreements. Health and safety are also a priority to be taken care of by the employers during remote working, especially relating to psychosocial, ergonomic and organizational factors.

Remote working is voluntary for the worker and the employer and may be changed during the course of the employment contract, upon signature of a specific agreement. The Decree refers to these elements as well as the principle of reversibility as key considerations of individual agreements on remote work.

It introduces the right to disconnect, which provides that *“the business duty to guarantee disconnection entails a limitation of the use of technological means of business and work communication during rest periods, as well as respect for the maximum duration of the working day and any limits and precautions in terms of working hours provided for in the regulation or agreement applicable. The company, after hearing the legal representation of the workers, will develop an internal policy aimed at workers, including those who occupy managerial positions, in which they will define the modalities of exercise of the right to disconnection and training actions and to sensitize staff on a reasonable use of technological tools to avoid the risk of computer fatigue.”*

Article 22 is also relevant as it refers to the employers’ supervision, by stating that *“the company may adopt the measures it deems most appropriate of surveillance and control to verify compliance by the worker with the work obligations and duties, including the use of telematic means, by having due consideration to their dignity and taking into account, where appropriate, the real capacity of workers with disabilities”*.¹³¹

The Decree strengthens collective bargaining and individual agreements, where the parties can agree on the mechanisms and criteria for reversibility and preferences for it; the provision and maintenance of means to telework, equipment and tools; the compensation of expenses linked to the development of distance work; flexibility in working hours and the time recording system.

Other aspects such as the terms of personal use of the computer equipment made available by the company, as well as measures to guarantee the effective exercise of the right to disconnection are also among the aspects that agreements can cover.¹³²

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