

Rules of the European Union on telework

Abstract

This paper provides a review of telework regulations within the European Union (EU), highlighting the critical challenges and emerging considerations in this evolving work arrangement. It explores the fragmented regulatory landscape across EU Member States, the impact of the Framework Agreement on Telework, and the significance of telework in modern labour markets. Key issues, such as work-life balance, employee rights, data security, and cross-border telework, are discussed in the context of existing and upcoming EU directives. The study emphasizes the need for cohesive, flexible, and updated regulatory frameworks that accommodate technological advancements and the shifting nature of work. It calls for harmonization across the EU to ensure adequate protections for teleworkers while addressing gaps in social security and tax systems for cross-border arrangements.

Keywords: Home office, Teleworking, Labor law, ICT

1. Introduction

The rise of telework, defined as work performed remotely through Information and Communication Technologies (ICTs), has emerged as a critical subject in labour law and policy within the European Union (EU). Initially conceived in the 1970s as an alternative to traditional office-based employment, telework has evolved into a mainstream work arrangement, particularly following the COVID-19 pandemic, which accelerated its adoption across various sectors. This shift has necessitated the development of regulatory frameworks at both national and EU levels to address the unique challenges posed by telework, such as work-life balance, data security, employee rights, and health and safety concerns.

Despite the widespread adoption of telework, the EU faces a fragmented regulatory landscape. Member States vary in their definitions, implementation, and regulation of telework, which complicates cross-border telework arrangements and creates legal uncertainty for employers and employees. The EU's Framework Agreement on Telework, adopted in 2002, remains a cornerstone document, offering baseline protections for teleworkers. However, the rapid technological and societal changes of recent years have exposed gaps in this regulatory framework, especially concerning the protection of teleworkers' rights, flexibility in work arrangements, and the need for updated social security coordination.

This article provides a comprehensive overview of telework regulations within the EU, exploring the evolution of telework, its importance for the modern labour market, and the current regulatory challenges. By examining the existing legislative framework and identifying areas for improvement, this paper highlights the need for more cohesive and flexible regulations to accommodate the growing prevalence of telework in an increasingly digital and globalized economy.

2. Definition and evolution of telework

López-Igual (2020)¹ traces the concept of telework back to the 1970s when it was initially described as an alternative work arrangement. Nilles coined the term "telecommuting network" to describe the use of ICTs to replace daily commutes. While there's no universal definition, telework is generally understood as work organized through ICTs². The availability and advancement of ICTs have facilitated the growth and evolution of telework, from home offices to mobile and virtual offices. However, the widespread adoption of telework in advanced economies is not solely dependent on the availability of affordable and efficient ICTs³. For example, Brenke (2016)⁴ found that 40% of German jobs could theoretically be performed remotely, yet the adoption rate was only 12%. This suggests that while ICT access is necessary for telework, it's not sufficient. The rapid expansion of telework during the COVID-19 pandemic indicates that the previous slow adoption was not due to a lack of digital infrastructure.

According to Rosin (2024)⁵, telework is the most prevalent term used in the European Union (EU) to describe work performed outside the employer's premises using information and communication technology (ICT). Defined by the Framework Agreement on Telework as "a form of organizing and/or performing work using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employer's premises, is carried out away from those premises on a regular basis" (2002, 1), telework is characterized by four dimensions: technology, working time flexibility, regularity, and unconventional workplaces. Technological advancements, such as the evolution from personal computers to smartphones, have enabled teleworkers to work from various locations, including home offices, co-working spaces, and even public places.

Aceto (2024)⁶ argues, that telework is an activity that can be carried out from any location, including the employer's premises or place of business, and involves using information technology to stay connected to the employer's or business's working environment as well as stakeholders/clients. This definition can be found in Article 1(c)

¹ López-Igual, Purificación, and Paula Rodríguez-Modroño. "Who is teleworking and where from? Exploring the main determinants of telework in Europe." *Sustainability* 12.21 (2020): 8797. P.2

² Nilles, J.M. Telecommunications and Organizational Decentralization. *IEEE Trans. Commun.* 1975, 23, 1142–1147. [CrossRef]

³ Elldér, E. Who is eligible for telework? Exploring the fast-growing acceptance of and ability to telework in Sweden, 2005–2006 to 2011–2014. *Soc. Sci.* 2019, 8, 200. [CrossRef] and Hjorthol, R.J. Teleworking in Some Norwegian Urban Areas—Motives and Transport Effects. *Urban Geogr.* 2006, 27, 610–627. [CrossRef] and Scott, D.M.; Dam, I.; Páez, A.; Wilton, R.D. Investigating the effects of social influence on the choice to telework. *Environ. Plan. A* 2012, 44, 1016–1031. [CrossRef] as cited in López-Igual (2020)

⁴ Brenke, V.K. Home Office: Möglichkeiten werden bei weitem nicht ausgeschöpft. *DIW-Wochenbericht* 2016, 83, 95–105. as cited in López-Igual (2020)

⁵ Rosin, Annika. "Cross-border telework and the applicable labour law: The role of different connecting factors in determining objectively applicable law." *European Labour Law Journal* (2024): 20319525241251435. P.2 cited also Framework Agreement on Telework, 16.07.2002 <<https://www.etuc.org/en/framework-agreement-telework>> accessed 19 February 2024. and Article 2. and Eurofound, *Telework in the EU: Regulatory Frameworks and Recent Updates*, Publications Of ce of the European Union 2022, p. 6.

⁶ Aceto, Fenicia. "Cross-border workers-navigating the challenges of social security coordination rules in the era of telework in the European Union." *European Labour Law Journal* (2024): 20319525241239288. P377

nr. 2 of the Framework Agreement on the application of Article 16(1) of Regulation (EC) No. 883/2004 in cases of habitual cross-border telework.

2.1. Importance of telework in the EU

The European Commission's 1997 policy recommendations and subsequent initiatives, culminating in the Lisbon Summit of 2000, emphasized the importance of telework as a tool for economic growth and modernization within the EU. Following these developments, the Framework Agreement on Telework was established in 2002 to define and regulate the working conditions for teleworkers. This agreement defines telework as a flexible work arrangement that involves the use of ICT to perform work outside of the employer's premises. The employer is responsible for providing the necessary technology and ensuring safe working conditions for teleworkers, who typically work from home but may also utilize other suitable locations⁷.

Marin(2021)⁸ highlights the growing interest in telework due to its potential benefits for employees and organizations. Telework can increase employee attraction, motivation, and retention by offering flexibility, reducing commute times, and potentially improving work-life balance. It can also help alleviate congestion and pollution in urban areas, provide access to the labour market for vulnerable groups, and protect employee health during crises like the COVID-19 pandemic. However, challenges and concerns remain, including potential limitations on professional interactions, isolation, and difficulties in maintaining control and data security. Despite these issues, telework aligns well with the current economic trends of globalization, digitalization, and information sharing. Nevertheless, a clear scientific and legislative distinction between telework and related concepts like remote work and telecommuting is still lacking.

2.2. Challenges and considerations in telework regulation

Marin (2021)⁹ stated that the implementation of telework in the European Union has resulted in a wide range of national approaches, reflecting the diversity of legal and cultural contexts across member states. While some countries have directly incorporated the provisions of the European Framework Agreement on Telework into their national legislation, others have opted for a more flexible approach, relying on collective bargaining agreements or sectoral regulations. Furthermore, there is a lack of consistency in terminology, with some states using the term "telework," while others prefer "remote work" or "work-from-home." This patchwork of national regulations can create challenges for companies operating in multiple EU countries, as they may need to adopt different practices for telework depending on the specific location. To address these inconsistencies, it is essential to clarify the definitions of telework, remote

⁷ Andrei, Dalina. "Telework: bridging the past and present through technological advancements. European Union and Romania's case." (2023). P.4

⁸ Marin, Radu. "Implementation of Telework in the European Union." Journal of Human Resources Management Research 2021 (2021): 8 P.10

⁹ Ibid

work, and work-from-home, and to establish a unified terminology across the European Union. Additionally, telework legislation should be flexible enough to accommodate the evolving nature of work and to facilitate a smooth transition between traditional and remote work arrangements.

2.3. Telework and work-from-home

According to Andrei (2023)¹⁰, work-from-home and telework share similarities in location, work organization, material transportation, and employer control over employee activities. Both can be performed at the employee's home, with work shifts organized by the employee. The employer is responsible for transporting work materials and has the right to monitor employee activities. Additionally, both types of workers retain the same employee rights. However, telework and work from home differ in their regulatory sources, with telework being based on specific ICT-related work contracts. Teleworkers are specifically referred to as such, unlike those working from home, who are limited to their homes. While work-from-home employees set their own schedules, teleworkers must agree on a schedule with their employer. Additionally, working from home often involves traditional tools, whereas telework relies exclusively on ICT. Finally, working from home is typically a permanent arrangement, while telework is considered at least one day per month or more, as agreed upon by the employee and employer.

2.4. Telework and traditional work

Andrei (2023)¹¹ stated, that remote work has become a prominent trend in recent years, driven by technological advancements and the COVID-19 pandemic. While similar to traditional work in terms of location, organization, and employer control, remote work differs significantly in its regulatory framework. Many countries have had to adapt their legislation to address the unique challenges and opportunities presented by this new work arrangement, ensuring suitable working conditions for employees. Studies by Eurofound (2020) reveal a substantial increase in remote work during the pandemic, with varying adoption rates across EU member states. While remote work has led to a decrease in average weekly working hours, it has also brought about a preference for continued remote or hybrid work arrangements among employees. These findings suggest that remote work offers benefits for both employees and employers, provided that appropriate legislative, policy, and technological measures are in place to support its implementation.

2.5. Framework Agreement on Telework

Teleworking initially promoted as a flexible employment tool, has evolved into a common work arrangement within the European Union. However, despite its benefits, telework often remains a precarious form of employment for workers. While

¹⁰ Andrei, Dalina. P.6

¹¹ Ibid P.9

European regulations have focused on the admissibility of telework, they may not adequately address the specific protection needs of teleworkers. For instance, safety and health concerns, unique to teleworking, require tailored legislative provisions. The lack of uniform regulation across EU member states further highlights the precarious situation of teleworkers. While general principles applicable to teleworkers exist, they are often scattered across various secondary normative documents, leaving room for ambiguity and potential gaps in protection¹².

The Framework Agreement on Telework serves as a foundational document in the European legislative landscape of teleworking agreements. It outlines general principles such as equal treatment for teleworkers and standard workers, the reversibility of telework arrangements, and their voluntary nature. However, the agreement is ambiguous in certain areas, particularly regarding the reversibility of telework and the occasional nature of teleworking arrangements. While the agreement provides a baseline for telework regulations, it lacks enforcement power over member states, leading to varying levels of harmonization between general norms and domestic legislations. Many member states have only partially implemented the Framework Agreement's provisions, leaving crucial aspects such as the balance between private and professional life, the right to disconnect, data protection, and safety and health at work unregulated. To address these shortcomings, the Framework Agreement needs to be promptly updated to reflect the increased prevalence of teleworking arrangements in today's context¹³.

2.5.1. The Directive 2003/88/CE, issued on November 4, 2003, establishes general standards for working time and rest periods to safeguard worker safety and health. It sets a maximum weekly working time of 48 hours, including overtime, and a reference period of up to four months (extendable to six months via collective agreements). The directive's provisions apply broadly to all "workers," including teleworkers, regardless of their specific employment arrangements. While teleworkers often work longer hours than traditional employees, the directive's flexibility regarding reference periods allows member states to adapt its standards to their particular needs. However, some argue that this flexibility undermines the directive's protective intent¹⁴.

2.5.2. Directive 89/391/EEC, adopted in 1989, established general principles for worker safety and health protection. It requires employers to assess risks, implement preventative measures, and provide information and training to workers. While the directive broadly defines "workers" to include teleworkers, its applicability to telework arrangements is debated. While the directive's general principles apply to teleworkers, its specific provisions may not fully address the unique challenges of remote work. The rise of digitalization and remote work has led to new types of work accidents and occupational diseases, such as burnout. Some jurisdictions, like Spain, have addressed these challenges through specific legislation, such as the Law 10/2021 on remote work, which guarantees teleworkers the right to digital disconnection¹⁵.

¹² Marica, Mihaela-Emilia. "Considerations on the protection of teleworkers, in light of the current European regulations. Elements of comparative law." *Tribuna Juridică* 12.4 (2022): 509-520. P.511

¹³ Ibid P.512

¹⁴ Ibid P.513

¹⁵ Ibid P.514

2.5.3. The Work-Life Balance Directive (EU) 2019/1158 extends the right to request flexible working arrangements to all working parents with children under eight and to all caregivers. While this directive aims to improve work-life balance, it lacks regulations addressing the potential negative impacts of technology-based work arrangements. These impacts can include increased working hours, blurred boundaries between personal and professional life, and negative effects on overall well-being¹⁶.

2.5.4. The Directive on Transparent and Predictable Working Conditions (EU) 2019/1152 aims to enhance worker protection by promoting transparency and predictability in employment relationships. It requires employers to inform workers about essential aspects of their employment, including the place of work, job description, contract commencement, and duration. The directive also addresses "work patterns," the structure of working hours determined by the employer. For non-standard contracts with irregular hours, the directive mandates that employers specify either the standard working day or week for predictable patterns or the variable nature of the schedule, guaranteed paid hours, reference hours, and minimum notice periods for unpredictable patterns. These provisions significantly improve the work-life balance of employees¹⁷.

Aceto (2024)¹⁸ stated that to comprehend the social security coordination rules within the European Union, it is crucial to initially outline the foundational principles of the Coordination Regulation. This regulation serves as the cornerstone for determining the applicable social security legislation in cross-border scenarios. By elucidating the fundamental rules and the compelling need for action during the COVID-19 pandemic, the necessity for a Framework Agreement becomes more comprehensible. To apply the Coordination Regulation, a cross-border situation must be present. This implies that the circumstances of the situation extend beyond the boundaries of a single Member State. Additionally, the individual involved must fall within the personal scope as defined in Article 2 and meet the criteria outlined in the material scope as described in Article 3 of the Coordination Regulation. Furthermore, the situation should be encompassed within the territorial scope of the Coordination Regulation, which includes the European Union and the European Economic Area (EEA) region.

According to the Coordination Regulation, the general rule for determining applicable social security legislation is the State of employment principle (*lex loci laboris*). This principle applies when an individual works exclusively within one Member State, subjecting them to that state's legislation. However, for cross-border teleworkers working in multiple Member States, Article 13 of the Coordination Regulation determines applicability based on the Member State of residence if a substantial portion (over 25%) of their activity is performed there. Marginal activities, generally considered less than 5% of regular working time or remuneration, are excluded from this consideration. It's important to note that this evaluation is conducted on a case-by-case

¹⁶ Ibid P.515

¹⁷ Ibid P.516

¹⁸ Aceto, Fencica. P.380 cited Case C-153/91 (1992) ECR I-4973, Petit case

basis, meaning occasional work from home, even prior to the COVID-19 pandemic, was not factored into determining applicable legislation¹⁹.

The recent Multilateral Framework Agreement on the application of Article 16 of the Coordination Regulation in cases of habitual cross-border telework, which entered into force on July 1, 2023, represents a significant step towards addressing the challenges posed by the increasing number of employees who work from home across borders. As outlined in Article 16 of the Coordination Regulation, this agreement allows two or more Member States to derogate from the existing coordination rules in order to better accommodate the specific needs of habitual cross-border teleworkers. This innovative framework, proposed by the Administrative Commission for the Coordination of Social Security Systems, aims to provide a more effective solution for employees who work from home part-time while maintaining an employer and office in another Member State. To date, twenty Member States have signed this agreement, demonstrating a growing commitment to addressing the unique challenges associated with cross-border telework²⁰.

Despite recent legislative efforts, the European Union's current Coordination Regulation remains ill-suited to the modern realities of telework. While the Framework Agreement offers some improvements, it is limited in scope and fails to fully address the challenges faced by cross-border teleworkers. Ongoing dialogues to amend the Coordination Regulation have been unsuccessful due to disagreements over posting rules and the aggregation of unemployment benefits. The lack of a comprehensive and flexible social security system for teleworkers highlights the urgent need for reform to accommodate the evolving nature of work within the European Union²¹.

3. Challenges and Considerations:

Telework, a form of labour involving remote work using information and communication technology, has been a subject of extensive research and debate among academics, policymakers, and industry stakeholders. The concept has gained significant traction due to its potential benefits, such as increased employee satisfaction, work-life balance, and cost reduction. However, its implementation has faced challenges stemming from concerns about employee isolation, data security, and organizational control. While telework aligns well with the current digital economy, there remains a lack of clear consensus regarding its precise definition and its relationship to related terms like remote work and telecommuting²².

Rosin (2024)²³ argues, that when parties agree to perform cross-border telework, the applicable law becomes a crucial consideration. Telework contracts are

¹⁹ Aceto, Fenicia. P.380 cited Administrative Commission, 'Practical guide on the applicable legislation in the EU, EEA and Switzerland' (2013) 27/53. and Case C-570/15 (2017) ECLI:EU:C:2017:674, X v Staatssecretaris van Financiën, para 28 and 29.

²⁰ Aceto, Fenicia. P.382

²¹ Ibid P.387

²² Marin, Radu. P.10

²³ Rosin, Annika. P.4 cited A. van Hoek, 'Private international law rules for transnational employment: Reflections from the European Union', in Research Handbook on Transnational Labour Law, Edward Elgar Publishing 2015, p. 438–454.

not subject to specific employment categories, falling under the general rules governing individual employment contracts. Under Rome I, parties have the autonomy to choose the governing law, which need not be tied to their connected countries. However, this autonomy is limited if the contract is primarily EU-related. In such cases, Article 3(3) of Rome I stipulates that if all relevant elements are situated in a different country than the chosen law, mandatory provisions of that country's law cannot be derogated through agreement. Additionally, Article 3(4) ensures that mandatory provisions of Community law are not overridden by the parties' chosen law if all relevant elements are located within one or more EU member states.

Rosin (2024)²⁴ also stated, that the parties to an individual employment contract have the initial right to choose the applicable law. However, Rome I includes specific limitations on this autonomy to safeguard the employee's interests as a weaker party in the contract. A specific protection mechanism ensures that the employee can only benefit from choosing the law. Article 8(1) of Rome I stipulates that the chosen law cannot offer the employee less protection than they would have received under the objectively applicable law, which would apply in the absence of a choice. As a result, the chosen law cannot diminish the employee's protection.

The application of Article 8(1) can lead to different outcomes. First, it is possible that the law chosen by the parties fully applies to the relationship if it guarantees the employee the same or better protection than the objectively applicable law. Second, it is possible that part of the chosen law is applied if it provides better protection, and for the rest, the objectively applicable law is applied. Finally, if the chosen law does not provide for any beneficial protection to the employee compared to the objectively applicable law, the latter could be fully applied²⁵.

According to Directive 2019/1152, employers must inform employees about their place of work at the outset of the employment relationship. For teleworkers, this information may be more complex due to the variety of potential work locations. The parties can agree on a fixed or main place of work, multiple work locations, or allow the employee to freely determine their work location. This flexibility can present challenges for determining the habitual place of work, which is crucial for applying choice-of-law rules in cross-border telework situations²⁶.

The complexity of potential telework locations significantly influences the choice-of-law process in cross-border telework arrangements. The habitual place of work is the primary factor in determining the objectively applicable law. However, if determining the habitual place of work proves impossible, the second connecting factor, the engaging place of business, becomes more relevant. Additionally, the escape clause must be considered. Therefore, it is essential to analyze the extent to which the first connecting factor can be applied in cross-border telework scenarios²⁷.

According to European Union law, the applicable law for cross-border telework is primarily determined by the employee's habitual place of work. However, this can be challenging to ascertain, especially when teleworkers work in multiple

²⁴ Rosin, Annika. P.4 cited Rome I (n 14) Article 8 (1).

²⁵ Ibid. P.5

²⁶ Ibid. P.6

²⁷ Ibid. P.7

countries or have flexible working hours. If the habitual place of work cannot be determined, the engaging place of business of the employer becomes relevant. The escape clause offers a further possibility to determine applicable law if the relationship is more closely connected to another country. While the engaging place of business can be less protective for employees, the escape clause can be beneficial for teleworkers who work in multiple locations or have flexible schedules²⁸.

Hurbean and Florea (2021)²⁹ argues, that when a teleworker or employee working from home uses a building owned by their employer, the property is considered to have a mixed-use. To determine the tax advantage offered to the employee, the personal use of the property is compared to similar residential areas owned by the state. The employee's benefit is calculated based on the square footage used for personal purposes or the number of hours spent using the property personally. In terms of utility expenses, teleworkers and employees working from home can generally benefit from tax-free amounts received from their employer to compensate for these costs, provided they worked for the employer's benefit during that time. Employees who can justify higher utility expenses than the legal limit may also be eligible for tax exemptions. The authors recommend that labour legislation be amended to require individual employment contracts for work-from-home employees to include clauses specifying the employer's responsibility for related expenses. Additionally, the Tax Code should be updated to clearly include utility expense compensation for work-from-home employees as tax-exempt benefits. Furthermore, the Tax Code should explicitly state that amounts exceeding the legal limit for utility expense compensation are not considered salary benefits and are exempt from income tax if the employee can provide documentation of increased utility consumption due to work-related activities.

The special nature of telework and work-from-home contracts lies in their deviation from the standard practice of working at the employer's designated location. When employers cover the rent for teleworkers or those establishing a home office, these expenses should be treated similarly to other employee benefits. Taxing employees on only the portion of rent allocated for personal use would create an unfair disparity compared to traditional office workers who pay income tax on the entire amount. This disparity arises because rent is typically calculated on a monthly basis rather than per-use basis, unlike traditional office spaces that are not used outside of work hours³⁰.

4. Conclusion

The increasing prevalence of telework in the European Union has highlighted both its potential benefits and the regulatory challenges it poses. Telework offers employees greater flexibility, improves work-life balance, and supports broader EU goals such as digitalization, environmental sustainability, and economic modernization. However, the fragmented regulatory landscape across member states, along with the

²⁸ Ibid. P.17-18

²⁹ Hurbean, Ada, and Bogdan Florea. "Working from home and teleworking from a fiscal perspective." *European Journal of Social Law/Revue Européenne du Droit Social* 52.3 (2021). P.67

³⁰ Ibid. P.66

rapid evolution of ICTs, has revealed gaps in the current legal framework. The EU's 2002 Framework Agreement on Telework, while foundational, no longer fully addresses the complexities of modern telework, especially in areas such as cross-border employment, data protection, employee rights, and social security coordination.

As telework becomes a permanent fixture in the EU labor market, there is an urgent need for updated and harmonized regulations. Addressing the inconsistencies between national laws, ensuring clarity in terminology, and strengthening protections for teleworkers—particularly regarding safety, health, and the right to disconnect—are essential to support both employees and employers in this evolving work environment. Moreover, social security and tax frameworks must be adapted to accommodate cross-border teleworkers, reflecting the increasingly global nature of employment.

Moving forward, a more comprehensive and flexible legislative approach is necessary to ensure that telework aligns with the future of work while safeguarding the rights and well-being of all teleworkers in the European Union.

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