



# THE SOCIAL IMPLICATIONS OF TELEWORKING

Teleworking has many faces. It encompasses very different types of work which fall into six broad categories. These include the employment of people on remote sites controlled by employers, the development of telecottages and telecentres and the development of telecommunications links between organizations. Also, entirely home-based teleworking, alternating teleworking, in which home-based work is combined with working time spent on the employer's premises and, finally, mobile work or 'flexispace' work at different locations by groups such as insurance sales agents in which costing and data gathering and transmissions are facilitated by telecommunications.

The economic and social significance of the different forms of teleworking is quite varied. Some teleworkers are dependent employees, others are self-employed. Some self-employed workers are tied exclusively to one company, others work for several companies, some work mainly as teleworkers and others do so only occasionally or temporarily. The only common elements are the use of computers and telecommunications which transport a written text or data to a head office thereby reducing the need to commute to work. Furthermore, advances in technology facilitate the implementation of telework which enables greater flexibility in working patterns for both employers and employees. Teleworking is now an integral part of the fundamental changes characterizing the labour markets of developed post industrial societies.

The European Foundation for the Improvement of Living and Working Conditions in collaboration with the European Commission, set out to establish how aspects of labour law, social security and health and safety affect tele-workplaces in the 15 European Union countries. A series of three reports consolidate the results of these studies. They provide an overview of the existing 'regulatory social framework' — through legislation or collective agreements — regarding the social protection of teleworkers. They also identify the areas where the existing social protection of teleworkers needs to be reviewed in order to remedy insufficiencies or remove obstacles to their wider application.

Telework is not a legal category. As it is a very new phenomenon, there is as yet no source of law in custom and practice. For the purposes of this report and on the basis of the considerations of the national reports, the following (functional) definition of telework (Blanpain 1995) was devised.

*Work performed by a person (employee, self-employed, homeworker) mainly or to a large extent at a location other than the traditional workplace, for an employer or a client, involving the use of advanced technologies.*

**Legal and Contractual Situation of Teleworkers:** *examines whether existing labour law which traditionally divides the world of labour into employees and self-employed is sufficient to deal with the present developments associated with telework.*

**The Social Security Position of Teleworkers:** *analyses the social security questions relating to telework to see how they are being tackled at present, and what directions are envisaged for the future.*

**Health and Safety on Telework:** *identifies whether there are any specific health and safety issues associated with telework, or any situations which telework might aggravate and possible solutions to the problems identified.*

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## LEGAL AND CONTRACTUAL SITUATION OF TELEWORKERS

*This report examines whether existing labour law which traditionally divides the world of labour into employees and self-employed is sufficient to deal with the present developments associated with telework*

### MAIN CONSIDERATIONS

#### Legal status of a teleworker

#### Working conditions

#### Fusion/overlapping of home and the workplace

#### Equal treatment/Collective Rights

#### Transborder issues

#### ■ A new category of worker?

Do teleworkers need to be treated as a specific legal category as far as standards and specific protection are concerned? Are instruments developed for employees engaged in an industrial manufacturing labour market still adequate to govern relationships of teleworkers with their contractors, often in the service sector? Is the conventional status of (traditional) homeworkers or self-employed still appropriate? Several Member States have set up task forces to examine and consider the implications involved and the follow-up necessary.

#### ■ Economic and social efficiency

Is the actual portfolio of labour and contractual law adequate to monitor telework and to exploit its full potential — especially in the area of job creation? At the same time, an adequate balance between economic efficiency and social desirability must be established and maintained.

#### ■ No specific legislation

In most Member States, no specific rules have been developed to monitor telework. When determining the legal status of teleworkers, therefore, one basically has to fall back on

existing and traditional legal categories and the arsenal of rules which go along with their application. Teleworkers are either employees or self-employed, or even a mixture of both.

#### ■ Definition of a teleworker

In certain Member States there is an in-between category, other than employee or self-employed, which is legally recognized as the homeworker. As a homeworker, the teleworker can be an employee, possibly of a specific sort, or can be classified as self-employed, depending on the applicable legislation and case law of the Member State(s) in which the work is performed.

If the work is done ‘in subordination’, i.e. under the command and the control of a contractor, the teleworker will be an employee; if not, he/she will be self-employed. *This is an extremely important distinction.*

In the case of subordination, labour law applies, with a protective umbrella of minimum standards, social protection and specific social security provisions. In the case of self-employment, there is only whatever protection any written or informal agreement contains.

However, the category of ‘self-employed’ is now being widely relied on to determine the legal status of teleworkers. The reason

is simple: a self-employed worker is less expensive from the point of view of social security costs, and much more flexible, as no protective labour standards apply and full contractual freedom prevails. This can be to the economic advantage of either party, depending on their respective market strength.

#### ■ Contractual Situation

By and large, reported studies of teleworkers present a picture of a worker who voluntarily engages in telework, has the right to come back to headquarters and is basically treated as another employee. An increasing number of companies have concluded framework agreements with unions and employee representative bodies (works councils) which embody these principles.

#### ■ Privacy

Many teleworkers perform some or all work from home and consequently there can be a fusion and overlap of work and private life, of working time and leisure time, of work place and home. The right to respect for private and family life is at stake.

Privacy is a fundamental right explicitly recognized in most Member States. It is contained in art. 8 of the European Convention on the Protection of Human

Rights, which has been ratified by most Member States. It fully applies to teleworkers. This means that supervision, in the case of computer-aided control of teleworking, must be relevant and justified, e.g. necessary for the adequate performance of the job or for the protection of the rights of third parties. The teleworker must be informed of and agree with the supervision.

There is also the question of the inviolability of the teleworker's home. The employer has no unilateral right to visit the home of the teleworker, unless this is agreed upon.

### ■ Equal treatment

Where teleworkers are treated as employees, they should enjoy equal treatment with comparable workers at the company's premises. The same is true of homeworkers, if they are regarded to be employees. In this context one should also note that the ILO, in its proposed Convention on Homework, wants homeworker employees to be given equal treatment with other (office-enterprise) employees.

### ■ Transborder issues

In cases of transborder telework, the European Convention on the Law applicable to Contractual Obligations (1980) must be referred to. This has been ratified by most Member States, and it means that freedom of choice of the applicable law is the general rule.

Telework sub-contracted overseas introduces a new dimension to the international division of labour, and certain industrialized countries take advantage of this. Some recent experiences have demonstrated the feasibility of distance work. The emergence of this new organization of work poses a certain number of legal problems at both European and

international level in relation to the black economy, social dumping, etc. The World Trade Organization has started to discuss these matters.

### ■ Collective aspects

Teleworkers/employees should enjoy all collective rights, such as the right to associate, to bargain collectively and to engage in industrial action. In fact few collective agreements deal with telework. This is not surprising, since telework is a prime example of decentralization of employment relations.

### ■ Possible future developments

#### *Homework: equal treatment*

Some movement towards the reorganization and regulation of homework can be glimpsed. Examples are *Belgium*, and the ILO Convention concerning homework. The ILO Convention is important for a number of reasons. First, a lot of telework is done from home. Secondly, the definition of homework is a broad one: it covers work performed anywhere, either at home or in any premises other than the workplace of the employer. Thirdly, the proposals concern only homeworkers who can be considered as employees, leaving the independent self-employed out of reach of labour law or other special social protection. Fourthly, the ideal to be sought is one of equal treatment, between homeworkers and other wage earners.

#### *Labour market and self-employment*

New movement towards the promotion of the legal status of self-employment in telework. This development has been particularly encouraged by recent legislation (1994) in *France*, where a teleworker, if registered as a tradesman or as a commercial agent, is *de jure* looked upon as self-employed,

unless proof of the contrary is given.

There is a new Act (1990) in *Greece* whereby collective agreements are also applicable to independent workers, where it is evident that they are economically and socially dependent. Inter-industry agreements therefore could eventually provide secure conditions for dependent teleworkers.

#### *Labour inspection*

Specific needs may relate to the content of contracts, suitability of the workplace, the workload, elementary rest, privacy, income guarantees, among others. However, establishing rules is one issue, but monitoring them is quite another. It may be almost impossible to organise labour inspections as homes increasingly become places of work as well.

## THE SOCIAL SECURITY POSITION OF TELEWORKERS

*This report analyses the social security questions relating to telework to see how they are being tackled at present, and what directions are envisaged for the future.*

### MAIN CONSIDERATIONS

#### Existing regulatory framework

#### Thresholds for admittance to Social Security Schemes

#### Coverage by Social Security benefits

#### Equal treatment

#### Transborder issues

#### “Social Dumping”

#### ■ Existing regulatory framework

Social security systems can define eligibility on the basis of the categories of employees and self-employed, or on the basis of residency. In some countries both types exist alongside each other.

The type of schemes which require that claimants are resident do not need much clarification. Nevertheless, for schemes which protect employees, ascertaining the status of the worker becomes more complicated for the following reasons: (1) Criteria established in law and in case-law to determine whether a person is an employee (subordination, submission to a timetable, etc.) are sometimes difficult to pin down; (2) Some groups of persons seem to be employees because their position is a dependent one: they receive their work from somebody, seemingly an employer. In this case the legal status of the teleworker can depend on the status of the principal; (3) As many teleworkers work from home they can be ruled by the laws for homeworkers, which may or may not be appropriate for the specific features of telework.

In some countries there is uncertainty about the determination of the legal status of an employee who starts to do telework within the same enterprise where he has already been an employee.

#### ■ Thresholds for admission to Social Security schemes

These schemes require the earning of a certain income or a minimum number of hours' work before a person is insured. Although this problem does not concern teleworkers only, telework may lead to many more situations in which persons earn a low income and remain without social security protection. For this reason it may become necessary to limit the thresholds to a minimum figure.

#### ■ Eligibility for coverage under Social Security schemes

##### *Sickness, maternity and invalidity benefits*

Teleworkers will have problems with sickness benefit if they work in insecure employment. As persons in irregular employment, they cannot qualify for benefit for the days they do not work. It seems that this problem can only be solved through labour law.

As regards maternity, the problems concern mainly insecurity of work. Furthermore, whether the claimants are allowed, or can be required, to do telework during receipt of benefit is relevant.

The majority of invalidity schemes cover self-employed in

the same way as employed workers. Some of the schemes have rather high qualifying conditions, which is a problem to workers in insecure employment. On the other hand, as teleworking provides a possibility of employment for disabled people, special regulations may become necessary in these cases so that obstacles are not placed in their way.

##### *Old age benefit*

The old age pension is available to both the employee and self-employed in most schemes. Nevertheless, thresholds sometimes exist which mean that persons in low income employment receive a lower pension. On the other hand, higher benefits are acquired by persons covered by supplementary pension schemes, who are usually employees in long term employment with a specific employer. Trade unions and teleworkers should be encouraged to establish supplementary pension funds, the form of which will depend on the local situation.

##### *Occupational accidents*

The area of occupational accidents and diseases raises particular problems for teleworkers. In the main part these are identical to those for home-workers: when is an accident, which occurs at home or in the neighbourhood of the house of the teleworker, an

occupational accident? In this case an updating of the definition of occupational accident and disease may be needed, and shifting the burden of proof to the principal may be helpful.

### **Unemployment benefit**

Unemployment will often arise for teleworkers, as their work is distinguished by its atypical patterns and 'on call' status. This means that many workers in insecure employment will rarely be able to qualify for benefit. Neither will workers qualify for public assistance in many cases.

Unemployment benefit schemes are limited, and only available in some countries for the self-employed. In other countries it is possible to receive partial unemployment benefit and do telework at the same time.

### **Social assistance**

This is often illusory for teleworkers in insecure employment as they are considered to be always in work, and to be entitled to assistance they would have to terminate their activity.

### **Equal treatment**

Accusations of indirect discrimination occasionally arise, because the majority of teleworkers-homeworkers are women, and benefit conditions and thresholds for social security are more difficult for women to satisfy than for men. In insecure employment, they miss out on benefits which are applicable only to employees working at the principal workplace, and they may not be eligible for training opportunities.

There are various ways of tackling indirect discrimination towards women who are based in low paid, part-time work. These are: (1) decreasing thresholds to such a level that the low paid have better access to benefits; (2) legislation which stipulates that the place of work does not constitute a material difference,

and that off site workers should receive the same as on site workers; (3) promotion and establishment of more child care facilities so that women actually have a choice on when and how to work.

### **Transborder issues**

#### ***Within the EU***

In the case of cross-border work within the European Union, Regulation 1408 applies. If a teleworker is working under a contract of employment, as an assimilated worker, or as self-employed, s/he is under the personal scope of Regulation 1408 and the benefits described above (except for social assistance and occupational pensions) are within the material scope of the Regulation. This defines the applicable legislation as being that of the state of employment. As a consequence: 1. The employer is responsible for employers' contributions on behalf of workers such as teleworkers working in another country, and also has to pay contributions to the social security institutions of his/her own state. 2. Employees are covered under the system of the state where the employer resides. This is not very practical for the workers and should therefore be open to discussion.

Nevertheless, where teleworkers accept work from several employers in one or more countries, the social security system of the state where the person works applies. As a consequence, employers have to pay contributions to the social security administration of the country of the teleworker. This rule is not very practical when the teleworker has to obtain benefits directly from the employer, i.e. sickness payments. Such actions across borders will be difficult and costly.

Concerning pension rights, a problem may be that the sum of all the pension rights acquired in the various tasks for multiple

employers will not lead to a sizeable income; national rules sometimes hinder the accumulation of rights. Another problem is that in the case of supplementary pensions there are as yet no coordination rules, and persons with short employment records may lose their rights. For all these reasons, insurance companies should be encouraged to design new types of policy to cover teleworking for more than one employer, or for customers in one country or several countries.

#### ***Outside the EU***

If work is transferred to workers outside the EU, Regulation 1408 does not apply, and the EU and its the Member States are not responsible for the social protection of these workers. It must be decided whether such outsourcing should be regulated. It is, however, important as part of a general policy that customers and teleworkers are required to register themselves and their work, in order to prevent black market economies from increasing to such an extent that negative effects appear.

Outsourcing of the workforce to parts of the world outside the EU further increases the problem of social security payments, as there will be no direct contributions from employers and employees to the national system. An option for action here could include the payment of a fixed tax for each worker outsourced by an employer. Although the principle may be a valid one, problems are likely to emerge in the area of monitoring and regulating such a system.

### **The problem of social dumping**

Working with telecommunications means that distance no longer matters, and also that it is very easy to accept work across borders. It is also possible to accept work from more than one employer, or to work during sickness, disability, old age or maternity. We have



seen in the preceding sections that this might lead to difficulties; a more important problem is that it will be, in general, very hard to check when a person works and for whom.

In addition there is the problem that Regulation 1408 may insist that the law of the state of employment is the law applicable, but employers who

offer irregular work to teleworkers will often not notify the benefit administration in the relevant Member State, nor will the worker present himself or herself either. The present rule may also encourage employers to seek 'cheap employees'.

Community law can be a possible help. The EU could investigate whether it is more appropriate

that employers should pay the social security contributions of the scheme of the country in which they operate. After all, teleworkers are already covered by the schemes of the country in which they work. Apart from the difficulty of checking whether telework is done, so that contributions may be collected, this rule may prevent social dumping.

## HEALTH AND SAFETY IN TELEWORK

*This report identifies if there are any specific health and safety issues associated to telework or any situations which telework might aggravate and what are the possible answers to the problems identified.*

### MAIN CONSIDERATIONS

**Lack of research on the health impact of telework;**

**Difficulties for employers and control bodies to check compliance with health and safety standard in the case of tele-homeworking because of the right to privacy at home;**

**Risk of inadequate workplaces in the case of limited housing space;**

**Problems with the definitions of occupational accidents when accidents occur in the home;**

**The risks connected to working in isolation (i.e. overtime, stress, lack of training, lack of consultation etc.);**

**Need to set up new control mechanisms adaptable to a widespread workforce.**

The main issue is to decide whether telework is a new form of work and teleworkers a new category of workers. In which case telework should be covered by specific regulations. Or whether it is a new form of work organisation, in which case it could be covered by simply extending existing regulations, in particular, those concerning occupational health and safety protection.

#### ■ Lack of research

Data is very limited and in many countries totally lacking with regard to occupational health and safety issues in telework, especially when it concerns self-

employed workers and nomadic staff. Long term studies are lacking in particular on the consequences of work in isolation. Little is known about other forms of telework beside tele-homework.

#### ■ No specific regulations governing telework

There are no specific regulations governing telework. Telework situations, at least for employees, are covered by two types of regulations:

- those governing homeworking;
- those governing VDU's.

#### ■ Accessibility of workplaces

Accessibility of workplaces is a key issue, particularly in the case of tele-homeworking. In most countries citizens have the right to the inviolability of their home. Therefore two problems arise:

- in the case of employees, how can employers be responsible for complying with OSH regulations if they cannot access the workplace? How can they implement their work assessment obligation?
- the same applies to control bodies if they cannot enter private homes, although there are exceptions. For example in

the Netherlands, labour inspectors are authorised to enter private homes.

### ■ The case of self-employed workers

The case of OSH of self-employed teleworkers is particularly difficult to address. In fact at present they are free to organise their work and to set up their work stations the way they want. With the exception of Ireland, they are not covered by Work Environment Acts.

### ■ Health consequences of telework

Health consequences will be very difficult whether the tasks performed are low-skilled or high-skilled, whether workers have control over their work and their rhythms or not. A high-level professional or manager will most likely have more control over his job than a person processing data on a piece rate basis. Repetitive work, especially work involving keyboard use, might lead to repetitive strain injury.

### ■ The workplace

There are many regulations governing the design of workplaces, as well as ergonomic standards. The problem is how to ensure that telework stations, particularly in private homes, are adequate workplaces in terms of space, ventilation, lighting, noise, equipment etc.

In some countries where housing space is scarce this might be a main factor impeding the development of tele-homework or could have consequences for the health of workers.

### ■ Social and family status

Although telework offers big potential for people to work who

could not work before, for reasons of disability or family duties for example, it also creates problems of its own. In particular the interaction between work and social and family issues.

Teleworkers can be put under a lot of strain if they have no possibility to avail of a quiet environment to carry out their work. Social and family factors together with the physical setting can thus play a big role in the quality of their working life. The gender dimension is important as female workers still bear the main responsibility of caring for the children.

### ■ Working time and work rhythms

Duration of work, especially where there are legal limitations for employers, is difficult to control. Long working hours might have adverse health consequences especially in a badly designed workplace and when performing repetitive tasks.

The conjunction of time duration and telework also raises the issue of the definition of occupational accidents and diseases: did they occur at work? Did they occur because of work? These are key issues still to be addressed.

The pattern of working rhythms can lead to musculo-skeletal disorders particularly with regards to repetitive tasks (bad design of work stations) and to stress (if lack of control of work). This is accentuated in cases of long working hours.

### ■ Working in isolation

Isolation (both physical and social) is certainly one of the biggest problems in telework. Physical isolation of teleworkers might lead to a risk of marginalisation from the work collectively. Collective work relations might be substituted by individual work relations and leave teleworkers in a more

difficult position to negotiate, to be informed and to be consulted. This is all the more a risk in a time when “team work” is the key word. Support from the organisation and colleagues might be more difficult to get. Finally training is an issue which needs to be seriously addressed.

### ■ New control mechanisms

As mentioned previously control is made difficult because of the inviolability of private homes. But should access be possible, control would still be a problem for practical reasons. Not all personal work-stations can be controlled and inspected directly, especially telework places. This is why new control mechanisms should be set up:

- In Scandinavia, especially in Norway and Sweden, “systems control” mechanisms are set up. The aim is to make sure that the right management procedures are set up to ensure that health and working conditions issues are being correctly covered, and from the outset.
- Experiences in telework show that in many cases, “teleworking” is creeping in and developing by addition of individual cases. There is no formal policy and agreement on the subject and the implications of telework on the work organisation and its consequences for health and working conditions are not openly discussed and negotiated, whereas very often structures such as work councils should or could be consulted. Telework agreements (such as the IBM agreement) are the exception.

It would be advisable that the introduction or extension of telework is more formally and openly discussed in companies which avail of it, especially where consultation bodies, such as workers’ councils, have been set up.

**TELEWORK REPORTS and WORKING PAPERS**  
*published by the Foundation between 1985 and 1995*

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**Telework: Women and Environments** – (WP/88/14/EN)

**Telework: The Views and Standpoints of the Social Partners and the Workforce and the Potential for Decentralised Electronic Working in the European Office** – (WP/88/15/EN and DE)

**The Electronic Home: Social Impact of Telemedicine at Home** – (WP/93/12/EN)

**The Electronic Home – Social and Spatial Aspects – A Scoping Report** – (WP/93/22/EN)

**The Electronic Home – Interactive Telecommunications for the Future** – (WP/93/56/EN)

**Telematics in Medicine: Reconnecting Health (The Role of Telehealth and Telemedicine in the Electronic Home)** – (EF/94/14/EN)

**Telematics for Health – The Role of Telehealth and Telemedicine in Homes and Communities**

*(Publication available from the Office for Official Publications of the European Communities – ISBN 1 -85775-023-3)*

**L'impact de la domotique sur les fonctions urbaines** – (EF/93/24/FR)

**Telelifestyles and the Flexicity** – (EF/93/24/EN)

**Telework: A Practical Guide** – (EF/94/32/EN) *available in all Community languages*

**Flexispace/Mobility of Work** – (WP/95/29/DE and EN)

**Fallstudie Teleheimarbeit: Empirische Untersuchung der Bedingungen und Auswirkungen von Teleheimarbeit or Telehomework Case Study: Empirical**

**Study on the Conditions and Effects of Telehomework** – (WP/95/58/DE and EN)

**Eberhard Köhler**, co-ordinator of the thematic group Work Organisation/Industrial Relations, is the research manager responsible for telework projects together with **Pascal Paoli**, and **Timo Kauppinen**.

For further information please contact:

**Camilla Galli da Bino**, Information Liaison Officer, Work Organisation/Industrial Relations, or **Dimitrios Politis**, Information Liaison Officer, Health & Well-Being

**European Foundation for the Improvement of Living and Working Conditions**, Wyattville Road, Loughlinstown, Co. Dublin, Ireland.

**Tel:** ++ 353 1 2043100; **Fax:** ++ 353 1 2826456/2824209; **E-mail:** [camilla.gallidabino@eurofound.ie](mailto:camilla.gallidabino@eurofound.ie) / [dimitrios.politis@eurofound.ie](mailto:dimitrios.politis@eurofound.ie)

**Health and Safety in the Member States of the European Union** – *Consolidated Report by Pekka Huuhtanen, Helsinki, Finland (WP/97/29/EN)*

**National Reports**

**Austria:** P. Kolm, I. Reifinger, C. Kral-Bast.

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**The Social Security Position of Teleworkers in the Member States of the European Union** –

*Consolidated Report by Frans Pennings, Tilburg, The Netherlands (WP/97/27/EN)*

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**Netherlands:** Frans Pennings and Trudy Dijkman. **U.K.:** Sarah Podro.

**The Legal and Contractual Situation of Teleworkers in the Member States of the European Union** – *General Report by Roger Blanpain, Leuven, Belgium (WP/97/28/EN)*

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**European Foundation for the Improvement of Living and Working Conditions,**

Wyattville Road, Loughlinstown, Co. Dublin, Ireland.

**Tel:** ++ 353 1 2043100

**Fax:** ++ 353 1 2826456/2824209;

**E-mail :** [postmaster@eurofound.ie](mailto:postmaster@eurofound.ie)



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