



European Platform
tackling undeclared work

The Rise of Teleworking: Improvements in Legislation and Challenges for Tackling Undeclared Work

**Output paper from the
plenary thematic
discussion**

28 March 2023



European Platform
tackling undeclared work



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1. Introduction

The fourteenth plenary meeting of the European Platform tackling undeclared work (henceforth “the Platform”) was held in a hybrid mode on 28-29 March 2023. The first day of the plenary was dedicated to a thematic discussion on the rise of teleworking and related improvements in legislation, as well as challenges for tackling undeclared work in telework.

The meeting enabled the Platform members and observers to explore emerging trends in teleworking, its scope, risks for undeclared work, and recent regulatory efforts to regulate telework and thereby set standards for mitigating undeclared work therein. Given the lack of available evidence and best practices already implemented to tackle undeclared work in telework, the participants had the opportunity to jointly identify forms of teleworking and raise their awareness of the potential risk of undeclared work therein, as well strategies to mitigate this risk.

The thematic day consisted of an introductory session, two plenary sessions and four workshops. The plenary sessions focused (a) on the extent of teleworking in the EU Member States, the working conditions of teleworkers and the EU regulatory context; and (b) on cross-border teleworking. Workshops 1 and 2, run in parallel, offered an even deeper insight into the national regulatory responses to teleworking as a framework for preventing undeclared work. Workshops 3 and 4, run in parallel, discussed the responses of social partners to teleworking as a framework setting up preventative measures to tackle undeclared work in telework.

81 participants from among the Platform members, observers, invited experts and ELA representatives attended the event. This report summarises the presentations and discussions at the thematic day. It also draws upon the input paper prepared for the meeting. The structure of the report covers the following topics that were debated during the thematic day:

- ▶ The extent of teleworking
- ▶ Working conditions of teleworkers
- ▶ Identification of risks of undeclared work
- ▶ Actions taken to regulate teleworking across the EU Member States
- ▶ Measures taken or proposed to ensure that telework is fully declared.

2. Teleworking across the EU

The idea to focus the plenary thematic day on teleworking arose during the October 2021 Platform plenary thematic day on COVID-19’s impact on enforcement authorities’ work and priorities. The [output paper from the plenary thematic discussion](#) states that



“...the workshop discussion highlighted the need for a definition of telework, including the need for a legal definition of teleworking, and a definition of the place of work and the status of a worker. There are also issues for labour inspectorates regarding equality of treatment between teleworkers and non-teleworkers, OSH control, working hours, social security contributions and the controls exercised by companies on the employees and the provision of working equipment.”



The 2023 Platform plenary gathered various presentations and insights to expand on the above issues. The next sections explore the definitions of teleworking, its extent, and relevant issues regarding the working conditions of teleworkers.

2.1 Definition of teleworking

In the need of a cross-border, international definition, Eurofound and the ILO studied teleworking and defined it. **According to Eurofound, telework is a work arrangement in which work is performed outside a default place of work, normally the employer's premises, by means of information and communication technologies (ICT).** The characteristic features of telework are the use of computers and telecommunications to change the usual location of work, the frequency with which the worker is working outside the employer's premises and the number of places where workers work remotely (mobility).

Considering mobility, ICT-based mobile work can be defined as the use of information and communications technologies, such as smartphones, tablets, laptops and/or desktop computers, for work that is performed outside the employer's premises and largely 'location independent'. Mobile work could be considered a variation of telework. When using the term ICT-based mobile work, the emphasis is put on the fact that workers work in a range of locations and use ICT to connect to shared company computer systems.

Different levels of telework/ICT-based mobile (TICTM) work intensity or frequency and range of places at which individuals work may have different consequences for working conditions. For the purpose of this output paper, telework and remote work are used interchangeably, and are distinguished from other forms of home work assignments that are not using ICT-based devices (e.g., piecemeal manual work implemented from a household for an employer).

ILO uses an operational definition of telework similar to Eurofound, emphasizing the use of information and communications technologies (ICTs), such as smartphones, tablets, laptops, and desktop computers, for work that is performed outside the employer's workplace (premise). Full time telework is distinguished from hybrid work, which refers to splitting work schedules, so some days/hours work is done through telework and other days/hours are worked at the employer's premise. However, ILO does not yet have an official definition of telework and stated during the plenary meeting that some of ILO constituents are interested in developing a new international labour standards relevant for teleworking. The ILO does cover homework in its Home Work Convention No. 177 (1996). Homework means work carried out by homeworkers, in their home or other premises of their choice other than the employers' workplace, for remuneration, which results in a product or service specified by the employer. This does not include those who only occasionally perform their work as employees from home. This definition is relevant for full time teleworkers, although telework and homework are not to be used interchangeably. Teleworking has particular specificities that requires, notably dedicated enforcement action.

The nature of telework is specific and therefore may create opportunities for undeclared work. On the one hand, undeclared work may be easier because telework is less subject to supervision. On the other hand, telework can also help to reduce undeclared work. This is because telework can enable workers to carry out their work in a more formal and transparent way. The use of digital technologies may increase e-invoicing and help better monitoring of economic activities beyond the employer's premises through the implementation of digital work monitoring and worker surveillance. The question that remained relevant from the point of view of labour inspectors is how to support and control that telework is fully declared.



2.2 Extent of teleworking

While telework is not a new phenomenon, the COVID-19 pandemic served as an extra-ordinary driver for the rise of telework on a scale unseen before. According to the April 2020 edition of the most extensive real-time survey source in Europe – Eurofound’s [Living, working and COVID-19 e-survey](#)¹ – over **one-third (39 %)** of EU27 employees indicated that they were working from home during the pandemic, compared with 20 % who had been working from home at least ‘several times a month’ pre-pandemic. By **June/July 2020**, the share had increased to **48 %** (34 % working exclusively from home and 14% in conjunction with working from other locations, including the employer’s premises). The experience of working from home appears to have been a positive one for most employees who did so.

It is predicted that there will be a growing demand for teleworking among employees when the crisis abates. Overall, **78 % of employees indicated a preference for working from home** at least occasionally in the absence of COVID-19 restrictions². The return to the workplace has continued across the EU as public health restrictions were lifted with **12 %** (1 in 8) of respondents still working exclusively from home in spring 2022. However, there is a clear preference for teleworking with over 60 % of both women and men expressing their preference to work from home at least several times per month, implying that the return has not been entirely voluntary³.

The presentation from Eurofound at the plenary meeting confirmed these trends. It showed that **in 2021, telework reached 22 %, compared to 13-14 % immediately before the pandemic** (see Figure 1). The actual evolution of telework greatly exceeded the predictions on the rise of telework. According to an estimation based on trends in telework between 2012-2019, the roughly 22 % share of telework was expected to be reached by 2035. Building on the 2019 rate alone, it was estimated that telework would reach about 23 % in 2027.

1 <https://www.eurofound.europa.eu/publications/report/2022/fifth-round-of-the-living-working-and-covid-19-e-survey-living-in-a-new-era-of-uncertainty>

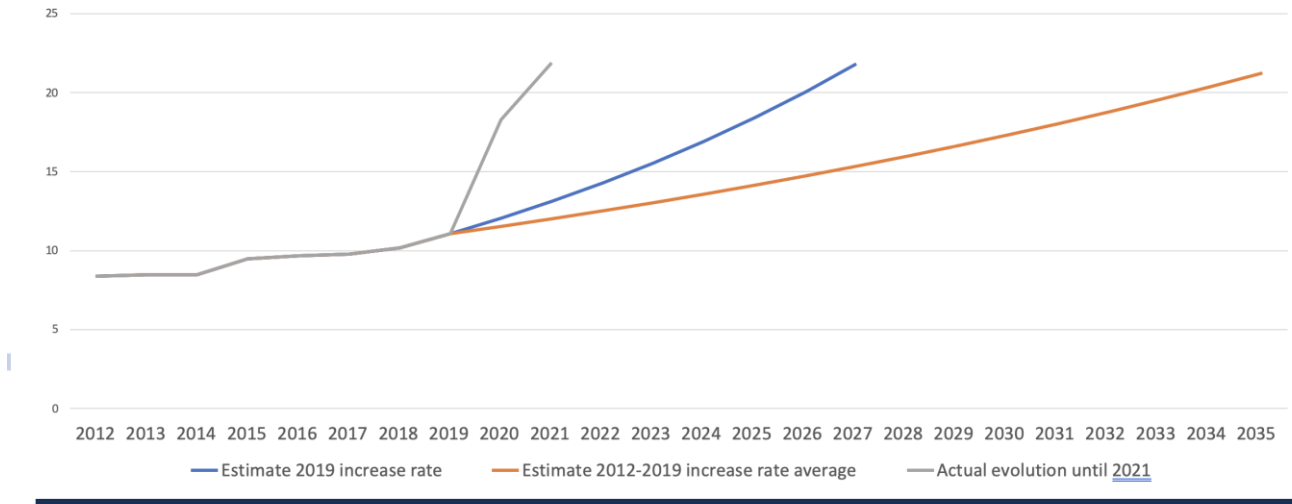
2 <https://www.eurofound.europa.eu/publications/report/2020/living-working-and-covid-19#wp-101862>

3 <https://www.eurofound.europa.eu/publications/article/2021/workers-want-to-telework-but-long-working-hours-isolation-and-inadequate-equipment-must-be-tackled>



Figure 1. Trends in teleworking in Europe

Increasing telework



Source: LFS



Source: Presentation by Eurofound

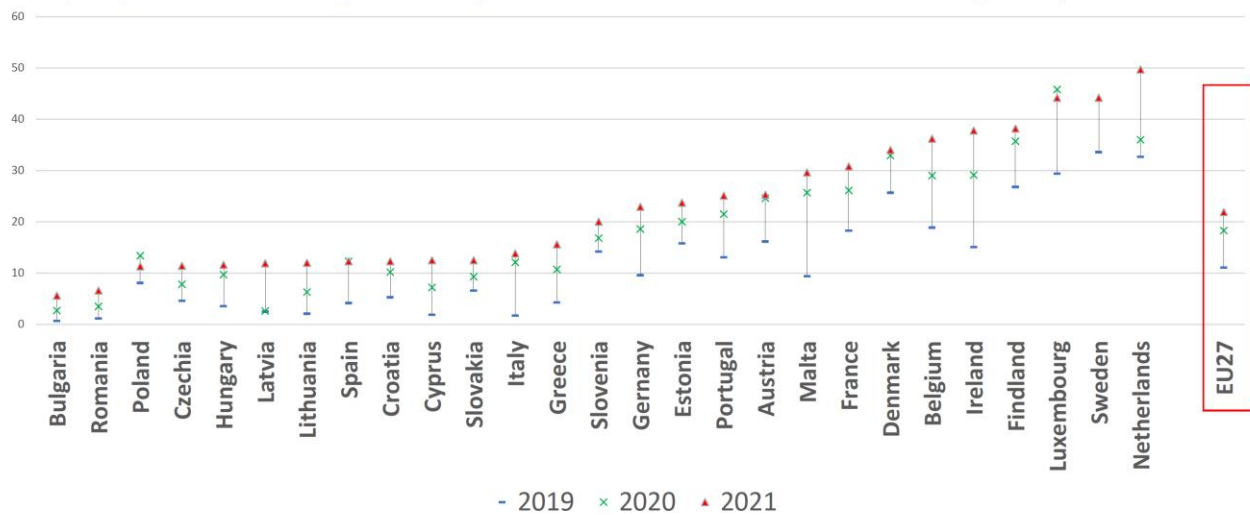
Next to the overall trend, Eurofound offered insights into differences in the incidence of telework across countries, sectors, and frequency of telework. There were massive increases, or even jumps, in teleworking, e.g., in Malta and Ireland, without signs of slowing down significantly after the pandemic. The smallest increase is reported in Bulgaria, Romania and Poland, while in Poland, the extent of teleworking at the outset of the pandemic was already higher than in Bulgaria and Romania. Countries where teleworking was most widespread already before the pandemic include Denmark, Finland, Luxembourg, Sweden and the Netherlands. From among these countries, telework did not increase that significantly in Denmark, in contrast to for example Luxembourg or the Netherlands, where the pandemic pushed teleworking even higher.



Figure 2. Country differences in teleworking and changes since 2019

Are there country differences?

Employees working usually or sometimes from home (LFS)



Source: Labour Force Survey 2019 2020 2021

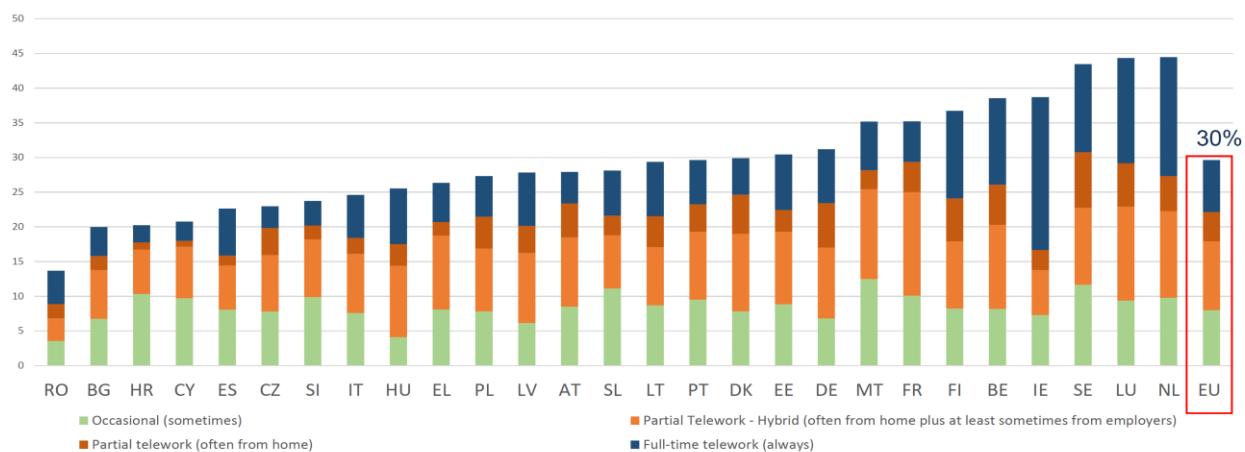


Source: Presentation by Eurofound

Regarding the incidence of teleworking, Eurofound reports an extensive increase of those working fully from home. The example from Spain indicates that the level of employees working regularly from home has increased by roughly 10 % overall since before the pandemic. Yet most workers work partially from home (see Figure 3).

Figure 3. Extent of teleworking across the EU Member States

Employees teleworking (%)



Source: EWCTS 2021



Source: Presentation by Eurofound.

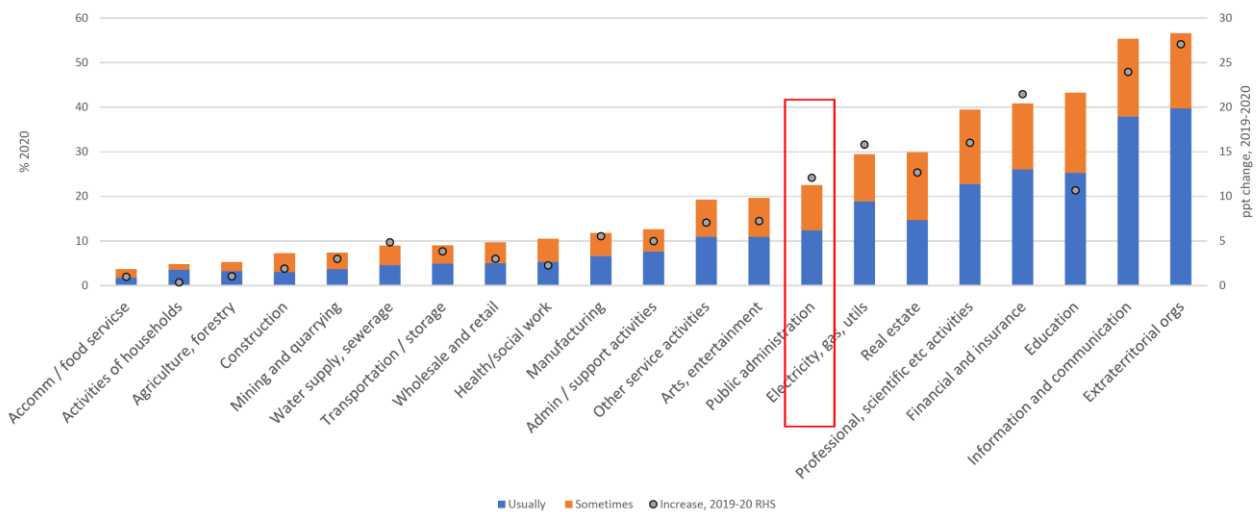


The presentation by Eurofound also showed **variation across the sectoral distribution of teleworking**. Sectors with highest share of telework as regular work include the financial and insurance sector, ICT and work at extraterritorial organisations (see Figure 4). The occasional use of telework has increased especially in the real estate, professional and scientific activities, and in education. Public administration, where enforcement authorities are also included, stands roughly in the middle of the extent of teleworking and also reports its increased use since 2019.

Figure 4. Distribution and increase of telework per economic sectors

Sectoral distribution

Employees working from home % 2020 and ppt change 2019-2020 (LFS)



Source: Labour Force Survey 2019 2020



Source: Presentation by Eurofound.

Finally, referring to the ILO presentation, a survey in 27 countries around the world in 2021 and early 2022 showed that **most people working from home were in occupations requiring a high level of education** (Bloom, et.al., 2023).

In summary, telework mainly concerns people with higher education, in sectors requiring intellectual work, and it increased across the whole EU since the pandemic. Therefore, it is a relevant point of attention to policy makers and enforcement authorities aiming to secure regulation of telework, decent working conditions and avoiding undeclared work.

2.3 Types of teleworkers

The expert presentation by Central European Labour Studies Institute (CELSI) pointed out that for the activities of enforcement authorities it is crucial to understand the different types of teleworking and teleworkers. The expert presented two basic kinds of teleworkers and their characteristics. This distinction is important for developing inspection strategies, because these types show significant differences and require different kinds of enforcement actions. This basic distinction applies to:

- ▶ Regular (declared) employees teleworking for their standard employer



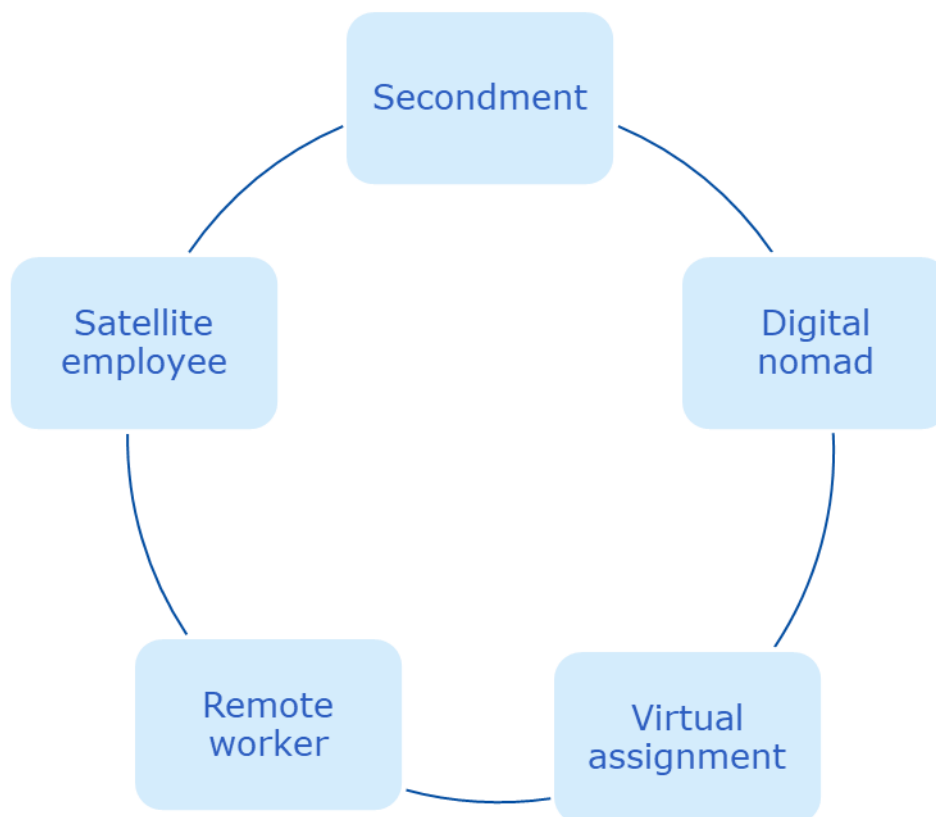
- ▶ New types of teleworkers in atypical work arrangements, often with relationship to multiple employers or clients.

In the case of **regular employees that engage in teleworking**, the issues relevant for enforcement authorities relate to assuring these workers' occupational health and safety, equal treatment to workers not engaged in teleworking (but e.g., working for the same employer). Equal treatment applies among other also to worker surveillance through digital technologies, algorithmic management to control worker activity. The most prominent theme debated in relation to teleworkers in a standard declared employment relationship is the risk of working longer than contractual hours, which can lead to under-declared work (see Section 1.5).

In contrast to the first group of teleworkers, lot less is known on the second group, which is potentially more relevant from the point of view of undeclared work. The typical feature of flexible teleworkers is that they often work as freelancers, or so-called microworkers, serving multiple employers or clients across various countries or in a single country. The worldwide and highly flexible character of this type of teleworking raises various challenges. These are also closely related to particular national regulations of home-based work (if existing), taxation, pension and social security payments. Of course, the issues of occupational health and safety and equal treatment are also important for this second group.

Figure 5 presents some of the new types of teleworkers, where the worker's affiliation to a specific country's legislation is often complex and may offer grounds for development of undeclared work.

Figure 5. New types of teleworkers



Source: European Employment Lawyers Association Conference 2022, in the presentation by Central European Labour Studies Institute (CELSI).



The types of teleworkers referred to in Figure 5 can be further characterised as follows:

- ▶ **Secondment:** worker hired in an EU country working temporarily for another entity in a different EU country;
- ▶ **Digital nomad:** worker hired in an EU country, moves and works in several countries (EU or non-EU) remotely, moving frequently while performing microwork remotely for employers/clients across several countries;
- ▶ **Satellite employee:** worker hired in an EU country, habitually working from a country different from the one of the employer; this type of a teleworker may have a stable employer or work for several employers/clients simultaneously;
- ▶ **Remote worker:** worker hired in an EU country working partially in the hiring country and partially from one or more different countries remotely; for a single employer or for multiple employers/clients;
- ▶ **Virtual assignment:** worker hired in an EU country temporarily seconded to another country without physically moving to it.

From the above-identified types of teleworkers, microworkers or freelancers are particularly relevant from the perspective of undeclared work. These workers are highly flexible, work from whatever country and place they prefer, in order to provide digital work like, e.g., text editing, transcriptions, translations, web search and web data collection, promotion on social media, graphical design, thesis writing, teaching and mentoring, counselling, or psychological support online). In the global economy with extensive digitalisation, online work and services are widely available and the geographical location of the work provision loses relevance. For example, coaching, consultancies, physiotherapy, mentoring, and similar types of jobs are often provided online across geographical regions and time zones⁴. Social media further expand the opportunities of global-scale teleworking. For example, promotion of goods and services on social media (e.g., TikTok, Instagram and similar) generates income via collecting 'likes' and 'clicks' by users and spectators worldwide.

2.4 Working conditions of teleworkers

Next to the extent of telework and its rise, the **working conditions of teleworkers increasingly receive attention from enforcement authorities**. The **voluntary basis of telework is its key feature**. Other opportunities that emerge with the particular working conditions of teleworkers include:

- ▶ Flexibility of work schedules and avoiding commuting time
- ▶ Work-life balance
- ▶ Easier access to work for person with disabilities
- ▶ Possibly improved well-being
- ▶ Possibly increased productivity
- ▶ For employers: reduction of premises costs, retention of employees

Among the **challenges associated with working conditions of teleworkers** are often reported isolation, health risks (including mental health and musculoskeletal disorders) and longer working hours. In the latter, commute

⁴ In some cases, the matching of such digital work/services occurs via digital platforms. Some of these platforms operate as multinationals across various EU Member States, while other are local and specific to particular Member States or even smaller geographic regions.



time is replaced by work activities, which blurs the boundaries between paid work and personal life. These challenges were mentioned in the ILO presentation and are also documented in a 2021 Eurofound study⁵.

The ILO noted that data on longer working hours of teleworkers need to be treated with caution: standardized national data on working hours for teleworkers in most countries is either limited or in still in early stages of development (some in labour force surveys and time use surveys have information; this could be a possible area of development by national statistical services in the post-COVID-19 future).

Another relevant issue regarding the working conditions of teleworkers is their digital surveillance, monitoring and right to privacy. Digital monitoring in this context refers to the use of computer software to monitor, record, and track employee activities. The balance in question is between the employer's need to monitor worker performance, protect workers' safety, and protect company assets with the reasonable expectations that workers perform their work with the due protection of their personal data and right to privacy. In addition, digital monitoring allows collecting data for ensuring compliance with national legislation such as the Labour Code.

The **discussion** during the plenary thematic day brought several perspectives emerging from presentations on the extent of telework and working conditions of teleworkers. While the traceability of activities may open a trajectory to reduce undeclared work, the participants highlighted that **assessment of working time and onsite inspections of teleworkers are challenging**. The fundamental issue is that not all countries have adopted regulations on how to do this kind of inspection. The participants mentioned that Portugal and Bulgaria provide some regulation on how to access remote work at home and OSH principles outlined in the regulation. These are however subject to consent by the employee.

The right to disconnect is the most prominent theme of debate that was in place already before the pandemic (see Section 4 on national regulatory responses). Social partners too are increasingly claiming support to the regulation of the right to disconnect.

3. Cross-border teleworking

Given the nature of telework, it is challenging to determine and regulate. Cross-border teleworking is an increasingly common phenomenon. Yet it raises additional issues, e.g., on the challenges of social security coordination and cross-border prevention of undeclared work as well as cross-border cooperation of enforcement authorities regarding inspections.

Two presentations addressed issues related to cross-border teleworking. The representative from Austria assessed the challenges and risks of cross-border telework from a social security perspective. A Belgian representative presented the system on mandatory registration of declared work for posted workers or anyone wishing to come and work or engage in entrepreneurship in Belgium.

From the social security perspective, the general principles that need to be respected include:

- ▶ Only one Member State can be responsible for the teleworkers' social security rights and obligations at a time;
- ▶ *Lex loci laboris*: the principle of the state of employment to refer to social security has to remain the main principle for determining the regulation applicable to the teleworker;

⁵ <https://www.eurofound.europa.eu/publications/article/2021/workers-want-to-telework-but-long-working-hours-isolation-and-inadequate-equipment-must-be-tackled>



- ▶ In case of activities in two or more Member States, the legislation of the Member State of residence of the teleworker needs to apply if a substantial part of the activity is carried out there. This means no less than 25% of the working time, according to art 14 Regulation 987/09. If it is not clear where the workers' residence is, the headquarter location of the employer should be used to determine which legislation is applicable.

These principles derive from EC Regulation No. 883/2004 (Articles 11-16, in particular Article 11 regarding the worker's Member State residence) and No. 987/2009 (Articles 14-21). Yet the pandemic stipulated further special rules in form of a **Guidance Note on telework**, first until 30 June 2022, then prolonged until 30 June 2023 to provide a transition period. The Guidance note defined telework and reiterates the relevant legislation valid in case of telework.

In further efforts to define a framework agreement regulating telework, several risks and challenges were mentioned:

- ▶ Locating the company's or employer's registered office or place of business in the most attractive state in terms of social security contributions;
- ▶ Knowledge of telework is limited for social security institutions;
- ▶ Telework used for forum shopping;
- ▶ Difficulties registering work abroad.

Learning from these challenges, the representative from Austria mentioned that **defining the legal base is crucial**, just like the precise definition of telework. In Austria, legislation is under review within the Administrative Commission to define telework, justify the treatment of teleworkers from the social security perspective compared to other workers, analysis of the possibilities within the current legal framework, and development of proposals for future adjustments in the legal framework.

Authorities need to **scrutinise more closely the centre of interest and substantial activity of the employer** for identifying the Member State where social security rights and obligations emerge. It is also important that the **bureaucratic burden for registering telework is minimised**. To determine social security rights and obligations in cross-border telework, a sustainable solution in the long run is needed using digitalisation in registration and reporting of telework. Finally, Austria called for the emergence of a framework agreement to set a European solution to treating social security when teleworking. A report has been prepared for submission to the Administrative Commission containing an exception for telework where a worker does not face changes to their social security arrangements when working up to 50 % from home. This yields stability to national legal systems, social security and also protection to the person engaged in cross-border teleworking.

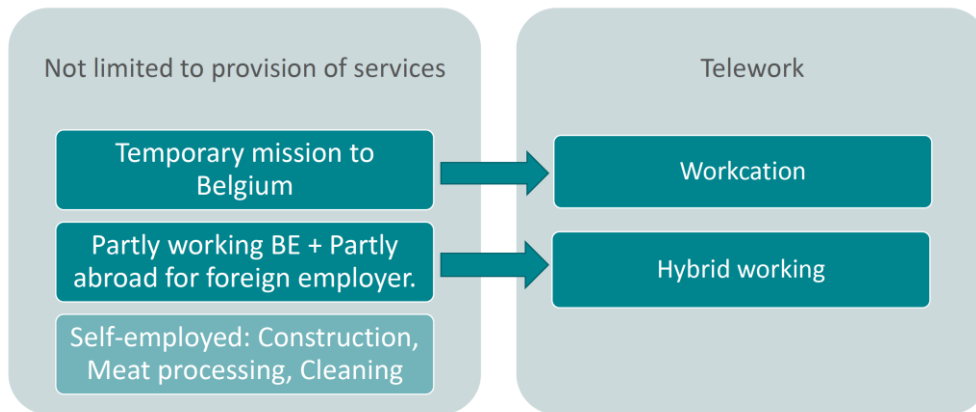
In addition, the Austrian speaker noted that there is a high risk of undeclared work in the cross-border context. Yet cross-border cooperation in this area is only emerging. For example, Austria has bilateral agreements with some of its neighbouring countries Czechia, Slovakia and Germany. While undeclared work in cross-border telework has been recognized as a challenge by the participants, enforcement authorities in Austria did not yet develop specific tools to mitigate such undeclared work and this task is also not among the current priorities of enforcement authorities.

The second presentation by Belgium reported on the use of the LIMOSA system that came through Article 9 of the Enforcement Directive. In force since 2007, it was suspended between March 2020 and June 2022 due to the COVID-19 pandemic. The LIMOSA system requires registration of all kinds of employment in Belgium and incoming to Belgium. Its aim is to identify and regulate all possible work situations, including also so-called



‘workcations’ where someone comes to Belgium to visit family but at the same time engages in remote working while staying at the location (see Figure 5).

Figure 5. Situations addressed via the Belgian LIMOSA system



Source: Presentation by Belgium.

Mandatory registrations via LIMOSA allow the identification of declared work in Belgium as well as the personal characteristics of registered persons. It cooperates with the tax authority, too. Between September 2022 and March 2023, 1 945 unique employees registered, compared to 269 unique self-employed persons. 78 % of registrations were from male teleworkers. The system allows seeing the extent of telework, because this is specifically entered into the scheme (days worked from home vs. days worked from abroad). The registration system also allows the employer to track the employee’s geolocation. The practical experience with this system however shows that many employers seem to misreport their activity. This motivates the enforcement authorities to clarify the terms and conditions for undeclared work and related reporting obligations.

In response to these presentations, a **discussion emerged among the participants** regarding the possibility of inspections/physical controls. In most cases, inspections in the house where telework is occurring are not realistic. Yet, as the Spanish Platform representative noted, the **residence of the teleworker is not important** regarding inspections controls, what matters is the location of the employer, and where the company pays taxes and contributions. A physical check of the teleworker is not necessarily needed, but what is needed is cooperation with labour inspectorates in other Member States.

A Bulgarian representative added that **knowledge on telework regulation in combination with posting workers regulation is highly complex**, but inspection authorities will need to learn how to deal with it as telework is not likely to be a temporary phenomenon.

4. The risk of undeclared work in teleworking

For understanding how telework relates to undeclared work and where undeclared work may emerge, it is important to return to the two basic types of teleworking. First, for workers that are in regular declared employment but work from home or elsewhere, Eurofound (2017) pointed out that teleworking can lead to working beyond normal or contractual working hours, with work and personal life often overlapping. Home-based teleworkers are

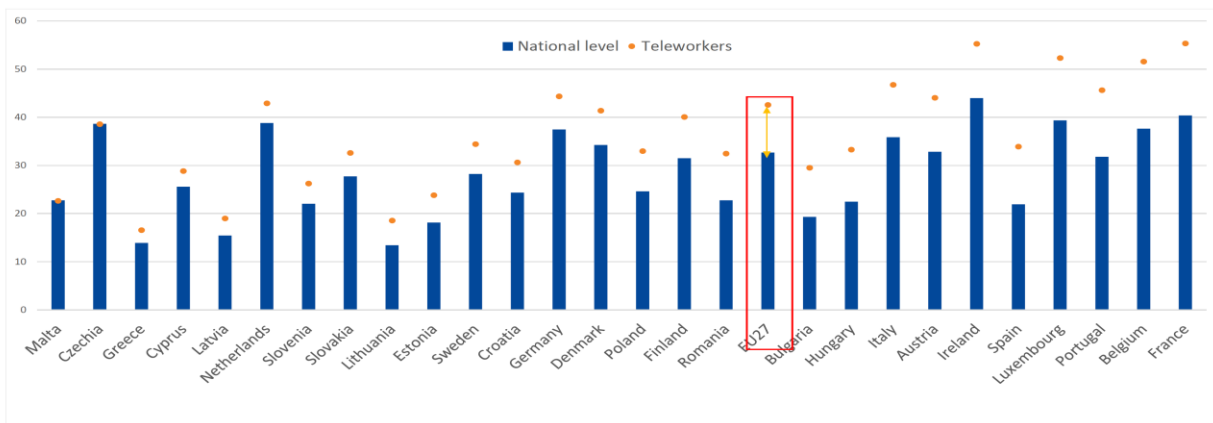


twice as likely to exceed the 48-hour working time limit as workers onsite and are significantly more likely to work in their free time. **Working time regulation is thus a key factor in shaping the potential emergence of under-declared work while teleworking under a declared employment contract.** Figure 6 confirms that across all studied Member States, the risk of working longer hours by teleworkers exceeded the risk of overtime among workers working at employers' premises. Working longer hours is prone to under-declared work on those hours worked overtime.

Figure 6. Risk of under-declared work due to long work hours among teleworkers in a declared employment relationship

Risk of working longer

Employees working overtime: Teleworkers vs. national average (%)



Source: EWCTS 2021



Source: Presentation by Eurofound.

According to Eurofound, the assessment of working time and on-site inspections remains challenging. It is also because not all Member States have developed regulations how to do these assessments and inspections. For example, Portugal and Bulgaria provide some regulation on how to access remote work at home and occupational health and safety principles outlined in the regulation. This is however subject to consent by the employee (as telework is a right, not an obligation of the worker) in various countries. In addition, in some countries, including Romania and the Nordic countries, authorisation by employers is required to inspect health and safety principles of workers working remotely.

Country examples on unpaid overtime reported during the plenary thematic day include Finland, Lithuania and Greece. In Finland, 19 % of teleworkers claimed to have occasionally worked overtime without being paid (*Keyriläinen 2021*). In Lithuania, around a third (32 %) of survey respondents working remotely reported 'regularly' working unpaid overtime, while 36 % reported working unpaid overtime 'sometimes', and around 32 % reported not working unpaid overtime (*Naprys 2021*). In Greece, 52.3 % of private-sector employees reported working longer hours than contracted when teleworking and without being paid for overtime, while only 5.4 % worked more hours than contracted and were paid for it (*Nikos Poulantzas Institute 2021*).

Beyond challenges in controlling working time as a potential risk of under-declared work even in declared employment, other **risks of undeclared work while teleworking emerge among teleworkers serving multiple employers or clients**, without a long-term employment relationship with a single employer. These are workers without a particular link to a single employer. For example, click-work, support to media, search engines, database building, graphical work, text writing and editing, and similar digital work done on a freelancer basis, via online platforms or other channels, may raise challenges for regulatory efforts to control the contractual arrangements of



teleworkers. This **challenge is broad as online teleworking allows taking up tasks for clients located worldwide and beyond the regulatory scope of national enforcement authorities.**

Research on the extent of undeclared work in teleworking, acknowledging the above distinction, is still very limited. The thematic expert presentation by CELSI highlighted several features why teleworking is prone to undeclared work and the lack of inspections/enforcement:

- ▶ Difficult monitoring of certain type of jobs (e.g. online clickwork on a freelancer basis);
- ▶ Microwork is often a second or a third job, serving as a one-time income opportunity;
- ▶ Lack of transparency and/or available information in the complex cross-border and posted work settings;
- ▶ (Lack of) cooperation of enforcement authorities with tax authorities and employment registries.

From the point of view of enforcement authorities, questions emerging related to the risk of undeclared work in teleworking are summarised in Figure 7. These are questions related to the formalities of the employment contract and national social security affiliation, as well as questions related to the implementation of inspections and ways of collecting evidence on undeclared work in telework.

Figure 7. Challenges of teleworking for enforcement authorities



Source: Presentation by CELSI.

The **discussion among the participants** provides a few useful insights into their perspectives on emerging and tackling undeclared work in teleworking. First, the Norwegian representative claimed that a challenge that will follow will have to do with the quality of the office working conditions given the increased extent of teleworking. Second, participants admitted that **doing inspections at home is highly contested** in most Member States. The Spanish representative focused on the key elements of a successful inspection of the company office and the means of evidence that can be obtained to control undeclared telework (e.g. inventory of the hardware, devices, mobile phones, list of phone calls and video conference meetings, information about connection time of each, lists of workers authorised to use the licensed software, etc.) and also admitted that the inspectors have to be realistic in what work can really be inspected. The Latvian participant noted that indeed **undeclared work in telework is a grey area and one challenging to grasp by enforcement authorities whose rights are defined in national legislation.** Resulting from this lack of knowledge and strategies, the focus of inspectors is not teleworking, even



if it is a growing 'sector' in itself. In Italy, there is no particular need to run inspections in the IT sector, but the inspectors need to be ready for new forms of inspections possibly in the future. The Finnish participant called for more data on understanding the extent of cross-border telework, and addressed this request to Eurofound to implement in their next studies on telework and its impact on productivity and risks to undeclared work. In addition, the Finnish representative mentioned the right allocation of social security benefits, which is an issue in cross-border telework (beyond the situation when workers are posted to work abroad).

Finally, a representative from Croatia shared that legislation has been changed in his country, although implementing inspections on overtime in telework is problematic for inspectors. There is a new law which stipulates the workers' right to work from home (they need to ask the employer for working from home). Inspections are still a few steps behind this kind of work. The complication with inspections also relates to the fact that inspectors often act upon complaints, and many participants reported that the **labour inspectorates did not receive complaints regarding undeclared work in telework (or under-declared work due to overtime). Their action is thus limited and strategies how to tackle undeclared work in telework are currently emerging.** Several speakers (e.g., from Bulgaria, Norway or Spain), highlighted **that inspecting the software and the digital traces of work should be the way forward**, instead of inspection in forms of entering premises where teleworkers work. Some speakers went into further details on possible ways of doing so, e.g., when using digital registers of working time available to inspectors.

5. National regulatory responses to teleworking

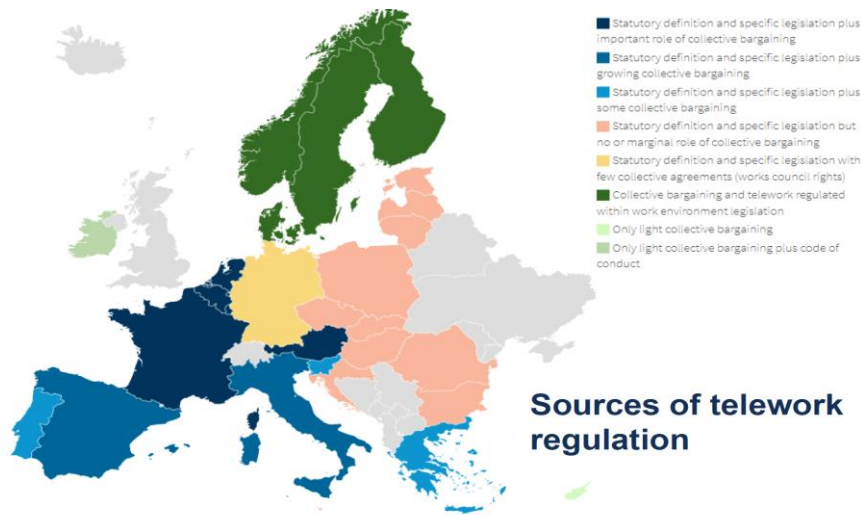
Legal regulation is a relevant foundation for uncovering and tackling undeclared work in telework. Even more so in the case of tackling undeclared work in telework, especially among teleworkers with various employers or serving various clients in cross-border settings. The little available evidence on approaches to tackling undeclared work in this highly challenging telework arrangements leads to pointing out that **before understanding what exactly undeclared work in telework is, it is important to establish a legal framework and benchmarks defining declared work in telework.**

2.5 Overview of the regulatory context and emerging initiatives related to telework

While legal initiatives are not present in all Member States, there are several relevant legislative efforts that help the enforcement authorities. The Eurofound presentation showed that most countries did have some kind of regulation on teleworking prior to the pandemic. However, labour law has been undeveloped in relation to clarifying the responsibilities of employers and rights of employees in relation to teleworking. In result, in many countries there has been recognition of the need to update legislation and regulations to make clearer the responsibilities of employers and rights of workers in relation to teleworking. This step ensures that labour law is clear on this matter and violations can be detected. 13 Member States have updated or passed new national legislation (or an agreement) on telework since the outbreak of the pandemic (ES, PT, FR, LU, BE, NL, IE, AT, SK, LV, EL, RO, PL). Figure 8 shows the sources that are used across the EU to establish telework regulation. The focus is first on the statutory regulation and second on the role of collective bargaining. Collective bargaining as a regulatory mechanism is used most extensively in the Scandinavian countries. In contrast, Central and Eastern European Member States attempt at adopting statutory definitions and legislation, but the role of collective bargaining (with the exception of Slovenia) remains marginal.



Figure 8. Sources of telework regulation: legislation vs. collective bargaining



Source: Presentation by Eurofound.

From among the legal regulation, the right to disconnect received the widest attention⁶. Figure 9 shows the countries with a right to disconnect legislation and their stipulations. While this right does not directly address undeclared work, it is relevant especially for the first group of teleworkers – those in a stable employment relationship but in risk of working longer hours and thus risk of under-declared work. The actual extent of such under-declared work is not known. For the second group of teleworkers (freelancers serving multiple clients or employers), the right to disconnect legislation is relevant indirectly because setting broad benchmarks for decent work and the fact that even telework needs regulation.

Figure 9. Countries with right to disconnect regulation in national legislation



Source: Eurofound.

⁶ <https://www.eurofound.europa.eu/publications/report/2021/right-to-disconnect-exploring-company-practices>
<https://www.eurofound.europa.eu/publications/blog/does-the-new-telework-generation-need-a-right-to-disconnect>



In addition to the right to disconnect, which was established in most countries prior to the pandemic (see Figure 9), the pandemic brought also other topics that were covered in national legislative amendments. These are shown in Figure 10: the most common topics included stipulations regarding the overall telework regime, as well as pay and costs related to teleworking.

Figure 10. Main topics addressed in legislative reforms during the COVID-19 pandemic (2020-2021)

	Austria	Spain	Greece	Latvia	Portugal	Romania	Slovakia
Telework regime	Dark Blue	Dark Blue	Dark Blue	White	Dark Blue	Dark Blue	Dark Blue
Definitions	Dark Blue	Dark Blue	Dark Blue	White	Dark Blue	Dark Blue	Dark Blue
Organisation of work and working time	White	Light Blue	Light Blue	White	Light Blue	Light Blue	Light Blue
Right to disconnect	White	Light Blue	Light Blue	White	Light Blue	White	Light Blue
Pay and costs coverage	Dark Blue	Dark Blue	White	Dark Blue	Dark Blue	Dark Blue	Dark Blue
Equal treatment	White	Light Blue	White	White	Light Blue	White	White
OSH	Light Blue	Light Blue	White	White	Light Blue	White	White
Data protection and privacy	White	Light Blue	White	White	Light Blue	White	Light Blue
Collective rights	White	Light Blue	White	White	Light Blue	White	White
Training access	White	Light Blue	White	White	White	White	Light Blue

Notes: *New national level collective agreements: France and Luxembourg*

Legislation under discussion: Germany, Greece, Ireland, Luxembourg, the Netherlands

In Greece, the Law No. 4808 was issued in June 2021, addressing several issues on telework: pay and cost coverage, equal treatment, occupational health and safety, collective rights, and data protection and privacy.

Source: *Presentation by Eurofound, updated by the authors and Platform members.*

2.6 Country examples of emerging legislation

During the meeting, four country presentations showed particular cases of national legislative initiatives and challenges when inspections take place. These include Czechia, Greece, Portugal and Spain. In addition, France is often recognised as a pioneer country on stipulating the right to disconnect for teleworkers.

Box 1. Member State examples of legislative initiatives

In **France**, as early as 2013, a national cross-sectoral agreement on quality of life at work encouraged businesses to avoid any intrusion on employees' private lives by specifying periods when devices should be switched off. This right was subsequently made law on 8 August 2016 and is now regulated by Article L.2242-17 of the Labour Code⁷. France's approach has gone some way towards inspiring other EU countries⁸.

In **Czechia**, new legislation is planned for 2024, partly following the transposition of EU Directives. The legislation aims to recognize telework as dependent work performed on behalf of the employer and according to employer instructions. It also aims at clearly defining compensation of costs for performing work from home. Furthermore, it also refers to the implementation of inspections by labour inspection bodies while respecting the

⁷ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000043893940

⁸ <https://www.eurofound.europa.eu/fr/publications/article/2014/france-a-legal-right-to-switch-off-from-work>



Article 12 of the Charter of Human Rights that grants protection to individuals. According to the legislative proposal, the inspector is authorized to enter the dwelling only if used for business or other economic activity. In cases of doubts, the inspection is authorized to enter the dwelling to check if it is used for these purposes if the inspection cannot be implemented in a different way. According to the Czech presentation during the event, however, control currently carried out are de facto only 'on paper' and refer to checking whether the employee has been familiarized with health and safety regulation.

Although the Czech legislative proposal does not directly address tackling undeclared work, it is relevant for this purpose in two ways. First, it established overall regulation of telework and the rights and obligations of workers as well as employers. This is an important signal, that can, upon further action to motivate freelance teleworkers to work in a declared way, extend the regulation also to these forms of telework. Second, the legislation calls for trust between employers and employees, and that is also a signal for avoiding undeclared work and under-declared work.

In **Greece**, telework is regulated by law by Law 4807/2021 (Government Gazette A96) for public sector employees and by the provision of Article 67 of Law 4808/2021 (Government Gazette A101) for private sector employees. The scope of regulation is similar to Czechia – establishing that telework is voluntary, upon the worker's agreement, and setting conditions for employer responsibility and the implementation of inspections. The Greek presentation also acknowledged that teleworking is de facto challenging **for the protection of privacy**, personal data and the right to privacy that the national legislator aims to address by introducing an obligation for the employer to monitor employee performance in a way that respects privacy and is in line with the protection of personal data. Moreover, there is a difficulty to determine **compliance with working hours** that is expected to be resolved with the issuance of a Presidential Degree that will give access to the Labour Inspectorate to the data and metadata of the communication between employer and employee. This legislation can be extended to freelance teleworkers, because it establishes rules to combat bogus self-employment, including the reverse burden of proof of declared work. It also creates the foundations for establishing mutual trust in understanding the responsibilities of employers and workers in teleworking.

In **Portugal**, the legislation sees teleworking as an instrument to reconciled professional, family and private life. The adopted teleworking regime, introduced in the Portuguese presentation, sets how work controls by employers are implemented (preferably by means of ICT, but using procedures known to the worker and compatible with respect for privacy). The right to disconnect is grounded in the Portuguese legislation, next to equal treatment of teleworkers compared to regular workers. Dedicated inspection methodologies are introduced, including the definition of territorial competencies of the labour inspectorate. While this can be a useful tool in tackling undeclared and under-declared telework, in case of microworkers, often working from abroad, it is difficult to implement territorial responsibility for enforcement authorities. To address this challenge, the Portuguese speaker highlighted the importance of training inspectors in working with software and programs that can reveal real working time and decide if under-reporting has occurred.

In **Spain**, the regulation on telework provides a definition of teleworking. The Spanish presentation highlighted that the most common types of undeclared work related to telework are part-time teleworkers working full time, with non-declared overtime, workers unfairly receiving unemployment benefits, and bogus self-employed.

The stages of an inspection for possible undeclared work in teleworking are the preparation of the visit, the visit to the workplace (not to the private household), the means of evidence that can be obtained, and the checks after the visit. Depending on whether it is a complaint or a planned action, different data must be analysed in order to make the visit effective; during the visit, it is good practice to ask for the presence of workers' representatives and to ask managers about the "project management system" and the software, as well as



about the licences and users of the programmes. If undeclared work is detected during an inspection, measures are specified according to the type of infringements:

- ▶ Cross-cutting infringement: employers may regularize the social security situation of the worker upon the inspector's request and settle the relevant debt with a surplus of 20 %
- ▶ Partial undeclared work: sanction in working time and settlement of contributions with a surplus of 20 %
- ▶ Unfair unemployment benefit: sanction and return of the benefit
- ▶ Undeclared overtime: sanction in working time and settlement of contributions for the undeclared overtime with a surplus of 20 %
- ▶ Bogus self-employment: sanction and settlement of contributions with a surplus of 20 %

In addition to the above national regulatory examples, a code of practice or a new legislation related to the right to disconnect was also mentioned for Slovakia and Luxembourg. However, the conceptualization of the right to disconnect differs across countries; and its implementation is left to social partners' agreements.

The above examples of national regulations may be relevant especially for teleworkers with a long-term attachment to a single employer, while the impact of this regulation on freelancers teleworking and delivering smaller tasks to various clients worldwide is less clear. As an exception, **Italy has passed relevant legislation in 2017 that helps regulate the working conditions of freelance teleworkers without a stable employment relationship** (see Box 2). This regulation serves as inspiration to other Member States to monitor that freelance telework is fully declared.

Box 2. Legislative approach from Italy

On 10 May 2017 the Italian Parliament approved Act No. 81/2017. The Act introduced novel stipulations regarding entitlements of non-entrepreneurial self-employed workers. It also addresses employment conditions applying to 'ICT-mobile based work'. The Act targets two types of workers⁹:

- ▶ **'Professionals' and 'those performing activities coordinated by the client'**, comprising workers with a VAT number who perform intellectual tasks. As a rule, registration for a VAT number is compulsory for all those who carry out autonomous work (work performed outside the direction of an employer) on a regular basis. These workers are directly responsible for their income tax and social security contributions, and fall outside the scope of social protection granted to employees. Their social security needs are covered by the funds of their professional associations, such as those for lawyers or architects, or by the National Institute of Social Security (INPS) if there is no professional association for their specific category (such as designers and translators).
- ▶ **Self-employed people who have an employment contract entailing coordination by their client for 'continuous activity'**, although workers are autonomous in their work organisation. This category of self-employment is also defined in international literature as 'dependent self-employment' and is partly covered by labour rights due to a worker's weaker position in relation to that of the client.

⁹ <https://www.eurofound.europa.eu/publications/article/2017/italy-new-rules-to-protect-self-employed-workers-and-regulate-ict-based-mobile-work>



During the discussion, various Platform representatives noted that in cases where **inspectors act only upon incoming complaints, there are in fact very few or virtually no actions because of lacking complaints regarding telework**. This is recognized as a barrier for inspectorate's activities in tackling undeclared work in teleworking.

A representative of ELA suggested in the discussion that indeed there is progress in the legislation on teleworking in several countries, but the remaining challenge is to develop particular practices or measures to deal with the peculiarities of this emerging form of work, including access to households. Perhaps, entering the field of **digital inspections** might be the solution.

6. Social partners' responses to teleworking

The **European framework agreement on telework**, signed by the EU-level social partners in 2002, defines telework and sets up a general framework at European level for the working conditions of teleworkers. The 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 employer's premises, is carried out away from those premises on a regular basis. It aims at reconciling the needs for flexibility and security shared by employers and workers. Since then, technological developments have contributed to expanding this work arrangement and paving the way for a higher level of mobility of workers to work remotely.

In June 2020, the EU-level social partners signed a framework agreement on digitalisation, which outlines relevant provisions on the 'modalities of connecting and disconnecting', to be implemented at national level in accordance with the procedures and practices specific to management and labour in the Member States.

In January 2021, the European Parliament adopted a **resolution on the right to disconnect** calling on the European Commission to propose a law that enables those who work digitally to disconnect outside their working hours. It should also establish minimum requirements for remote working and clarify working conditions, hours and rest periods.

In June 2021, the Council of the European Union adopted **conclusions on telework** that refer the issue of regulating telework to Member States. Member States are invited to establish 'national action plans or national strategies addressing the opportunities and risks related to telework'. They should consider 'amending their policies regulating telework or issuing guidance where appropriate', regarding such considerations as health and safety, the organisation and monitoring of working time, effective checks by labour inspectorates and allowances to cover the costs of teleworking. The social partners are asked to promote and raise awareness about 'the importance of having adequate sectoral and company-level regulation and of respecting the applicable rules on working time for teleworkers to allow them to effectively disconnect'.

In its EU strategic framework on health and safety at work 2021–2027, the European Commission announced that revisions of the directives affected by digitalisation and the recourse to teleworking (Council Directive 89/654/EEC of 30 November 1989 and Council Directive 90/270/EEC of 29 May 1990) will be carried out by 2023.

Next to enforcement authorities, social partners may play an important role in assuring a tailored regulatory response to the emergence of undeclared work in teleworking, in monitoring the implementation of regulation, and also directly contributing to regulation via collective bargaining and cooperation with enforcement authorities. Despite their relevant role, systematic knowledge on how social partners can enforce existing teleworking



legislation is limited. At the EU-level social partners are increasingly acting on behalf of regulation of telework. The most important initiative in this regard is **the joint work programme for 2022-2024**, signed by EU-level social partners ETUC, Business Europe, SGI Europe and SMEUnited in 2022. The work programme defines six joint actions, one of them being negotiations leading towards an update of the 2002 Autonomous Agreement on Telework that would then be implemented in a legally binding form.¹⁰ The new agreement would be implemented in the form of a European directive that introduces the right to disconnect, in line with previous recommendations of the European Parliament made in early 2021.¹¹

The negotiations focus on establishing minimum standards and equal treatment of teleworkers, including the right to disconnect and protection of health and employment conditions.¹² This joint action signals the relevant role and responsibility of EU-level social partners in addressing key questions of the future of European labour markets.

From among the presentations, the examples of Spain and Belgium showed the connection between the regulation of telework and collective bargaining.

- ▶ Spain: Collective bargaining agreements may provide appropriate means and regulation for an effective exercise of the right to disconnect. This is stipulated by Article 18 of the Act 10/2021 on remote work. Such stipulations exist e.g. in the collective agreements of the AXA group, the collective agreement of the Telefónica company, in the higher-level collective agreement applicable to banks and financial institutions and the collective agreement for the office sector;
- ▶ Belgium: the cross-industry collective agreement on telework (Collective Bargaining Agreement No. 149 from 2020) stipulates conditions for the use of teleworking. The agreement is valid for employers that have not developed their own scheme of telework upon the applicable Collective Bargaining Agreement No 85. Since teleworking was mandatory as a protection measure during the first phases of the pandemic, the above collective agreement helped implementing such wide-scale teleworking. Rules for enforcement authorities were also defined, although not directly related to tackling undeclared work in telework.

In sum, the current role of social partners is twofold: First, they engage in shaping legislative regulation relevant for telework both at the European and national levels. Second, their role in collective bargaining is creating additional regulation for the right to disconnect and telework stipulation. The latter is applicable presumably for teleworkers in a stable employment relationship and with bargaining coverage.

7. Conclusions and learning points

The conclusions from the event underline the importance of awareness raising about the phenomenon of teleworking, trends therein, the risk of undeclared work that relate to teleworking, and coping strategies of enforcement authorities and social partners. The following key messages can be formulated from the event's presentation and discussions:

- ▶ Telework has increased during the COVID-19 pandemic and offers a great extent of flexibility for the workers and for the employer;

¹⁰ <https://www.euractiv.com/section/economy-jobs/news/european-social-partners-to-negotiate-right-to-disconnect/>, <https://www.businessseurope.eu/publications/european-unions-and-employers-sign-historic-deal>

¹¹ <https://www.etui.org/news/european-social-partners-signed-joint-work-programme-including-negotiations-right-disconnect>

¹² <https://www.eurofound.europa.eu/publications/blog/as-member-states-take-different-approaches-to-regulating-telework-will-the-eu-bring-them-into-line>



- ▶ The rise of telework called for regulatory action; and the ‘right to disconnect’ has dominated the regulatory efforts both at the national and the EU levels.
- ▶ The legislation is relevant also because it establishes **standards in teleworking** – and these standards can be further used as a benchmark for declared vs. undeclared work.
- ▶ Most regulation to date has focused on teleworkers working with a stable employment relationship, while teleworkers that work as freelancers for several clients/employers globally are more exposed/prone to undeclared work.
- ▶ The role of enforcement authorities regarding telework is currently limited for various reasons. First, different kinds of teleworkers require different kinds of prevention and deterrence activities. Second, in many EU Member States inspectors may act only upon a complaint; and the number of complaints regarding telework is currently marginal or non-existent. Third, enforcement authorities have not yet developed strategies to prevent and control teleworking freelancers that may earn an income for their online presence, promotion, services and performed work. Fourth, the challenge of national legislation vs. the global character of teleworking prevents inspectors from developing effective control strategies. Fifth, home inspections can be controversial in most Member States, while digital inspection tools without the need of personal inspections are emerging but not yet widespread.
- ▶ **Opportunities for social partners** and their cooperation with enforcement authorities emerged mainly in the regulation of telework, in particular, the right to disconnect. At the European level, the interest in regulating telework as an emerging but sustainable labour market phenomenon motivated strategic cooperation between the social partners with the outlook to produce EU-level regulation in form of Directives in the future.



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