



# Teleworking

White Paper



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# Introduction

Telework, and for the most part, on a full-time basis, was suddenly thrust upon the world in the context of the Covid-19 pandemic, and firmly established itself.

Many workers found themselves working from home in this way from the very first lockdowns implemented in March 2020. In fact, as many as 40% of all European workers were immediately faced with full-time teleworking and yet, 50% of the employees who started teleworking during the pandemic had had no previous experience of it<sup>(1)</sup>.

As we put telework into place both for our clients and for ourselves, our thoughts led to wondering about telework in other countries: was it a practice that elsewhere had only been moderately used before the pandemic as was the case in France?

What conclusions could be drawn from the practice of telework once the health crisis was over? What was to become of this sudden and considerable recourse to a new way of working?

We therefore decided to write a White Paper on the subject of telework, bringing together our own findings here in France with the experiences of other countries in Europe, and more notably those of our close neighbours Germany, Spain and Italy.

The objective of our White Paper is to present the evolution of telework as a practice in France, Germany, Spain and Italy, both before, during and after the pandemic.

The main finding is that telework has gone from being a forced upon necessity during the health crisis, to being indispensable even in post-Covid times. It is a practice that is now wanted by the main players in the European labour market, be they employees or employers, and where each player has found this new way of work organization to have definite advantages.

The figures speak for themselves concerning the newfound appetite for telework: it is in Germany that it is the most practised with 61% of the working population teleworking, closely followed by Italy with 56% of the working population, against 43% in Spain and only 34% in France<sup>(2)</sup>.

Italy has the highest number of employees teleworking almost full-time on 4-5 days a week (30% of the workforce compared to 11% in France) and teleworking 2 to 3 days a week is again more commonly practised in Italy (17% of the workforce, compared to 14% in France)<sup>(3)</sup>.

We thought it would be interesting to provide an overview of the regulations in force, which are evolving and which in some cases, draw lessons from the situation experienced during the health crisis itself.

The European Council called on Member States to report back on the opportunities and risks of telework and have subsequently drawn conclusions which summarise the main concerns of the different stakeholders in the European labour markets<sup>(4)</sup>.

The European social partners have undertaken to negotiate a directive on telework and the right to disconnect. Discussions and negotiations started on 3 October 2022, and are expected to last around eight months with a view to drafting an agreed-upon directive transposable to the Member States in the two years following.

From being a somewhat marginal practice, telework has now evolved into an almost everyday and widespread work model. The enthusiasm for this way of working is now confirmed and telework has become a real driver in social progress... however, the need to ensure both the well-being of employees and the performance of companies is arguably still strong as both will see inevitable developments in their concept and meaning.

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<sup>1</sup> Source : Joint Research Centre - "Telework in the EU before and after the Covid-19: where we were, where we head to".

<sup>2</sup> Source : Fondation Jean Jaurès - « Pratiques et représentations associées au télétravail en Europe » - 04/01/2022

<sup>3</sup> Source : Ibid.

<sup>4</sup> Source : The European Council has adopted the teleworking conclusions - Opportunities and risks of hybrid work models - 06/2021

# Teleworking

## Before Covid-19

### Was teleworking regulated prior to the Covid-19 health crisis?



#### France

Teleworking was first introduced in France by a National Interprofessional Agreement of 19 July 2005, the provisions of which were subsequently integrated into the Labour Code in 2012.

This legal framework was modified and made more flexible by an ordinance of 22 September 2017 and its resulting ratification. The 2005 National Interprofessional Agreement remained in force however, resulting in the need to combine the different provisions.



#### Germany

Under German law and already prior to the Covid pandemic, the practice of working in a place other than that of the company's office, had been carefully considered, defined and included as a usual mode of working and a difference was made between Telework (Telearbeit), Mobile Work or Flexible Office, and Home Office. Only the concept of Telework has however been defined by statutory law.

Precisions on these different considerations of working outside the office are made below: [ Maybe to go elsewhere]

##### 1. Telework

The term Telework can be found in the German Workplace Ordinance ("Arbeitsstättenverordnung"; "ArbStättV") and defines a place of Telework as that where a specific workstation is permanently set up by the employer in a private area belonging to the employee, and where both a weekly working schedule and an applicable duration are specified by mutual agreement between the employer and the employee. These conditions must be established by the employer in the employment contract or in an additional agreement. Further to such an agreement, the employer has the obligation to provide the employee with all the equipment necessary to ensure the correct performance of Telework, i.e., office furniture, IT devices, access to networks, and that said equipment is installed in the private premises of the employee, either by the employer or by a qualified contractor do so (Sec. 2 para. 7 of the German Workplace Ordinance). The Workplace Ordinance serves to ensure that the health and safety of the employee is respected in the context of Teleworking.

##### 2. Mobile Work or Flexible Office

Unlike Telework, the practice of Mobile Work/Flexible Office is not defined by German law and is characterised by the fact that no agreement is necessarily made between the employer and the employee either in terms of specified working premises or working time schedule. This practice is understood to relate to the performance of work on mobile devices (smartphone, tablet, laptop) outside of the office, as in the case of business trips or at other external locations including the employee's home. The employee can determine independently his/her own place of work and enjoy the associated benefits of such. The German Workplace Ordinance is not applicable in this mode of working and the employer is therefore less liable to the obligations of employee workplace safety as the overseeing of a regularly changing place of work is rendered difficult.

##### 3. "Home Office"

«Home Office» is a familiar term that is often used for both forms of work previously described, but which remains limited to the employee's home environment. There is no legal basis for the definition of this term and is essentially considered as a version of Mobile/Flexible Work. According to common usage, Home Office is understood to be occasional or permanent work that is performed in the private premises of the employee.



## Spain

Before the Covid-19 pandemic, teleworking was already regulated by the Spanish Worker's Statute. However, this legislation was insufficient in the extent that it did not cover certain important legal issues relating to the practice of

teleworking, and more particularly in the need to draw up a minimum framework in a telework agreement, and in the covering of expenses incurred when working from home.



## Italy

Prior to Covid-19, teleworking in Italy was already regulated by Law 81/2017. The practice has since become known as «smart working» and its use aims to increase employer competitiveness on the labour market and to enhance the work/life balance of the employee.

Teleworking in Italy was essentially another way of executing the employment relationship through a mutual agreement of both parties without however, any specific conditions or

limitations of time or place of work, or regarding the possible use of the technology tools necessary to carry out the business activity. The work is performed partly inside the company premises and partly outside with no fixed location expressly mentioned, only that it is performed within the statutory limits of the maximum duration of daily and weekly working hours as provided under Italian labour law and the relevant collective bargaining agreements.

# How was this mode of working regulated? Give details on the source and the modalities



## France

The 2017 law on the reinforcement of the social dialogue brings major simplifications to the setting up of telework by a company.

With the application of this law it was no longer necessary to make amendments to the employment contract in order to allow an employee to telework.

Furthermore, telework could be implemented in three different ways: (1) by a simple agreement established with the employee and via any means (oral agreement, email, letter, etc.), (2) by a collective agreement, (3) by a charter drawn up by the employer and after consulting the social and economic committee where one existed.

In the case where the employer refused to allow an employee to telework despite the job position lending itself to this, reasons had to be given to substantiate the decision.

Since the implementation of the 2017 law, the following precisions have all had to be stated in either a collective agreement or company charter:

- the conditions for switching to teleworking, in particular in the case where high pollution levels allow for increased working from home;
- the conditions to be fulfilled for the return to a work contract that does not allow teleworking;
- the conditions of acceptance to be fulfilled by the employee concerning the conditions of telework implementation;
- the modalities of control of the working time or regulation of the workload;
- the determination of the times in the day during which the employer can usually contact the teleworking employee;
- the terms of access to a teleworking organization for disabled workers.



## Germany

As previously mentioned, certain regulations regarding telework were already in place before the Covid crisis under the German Workplace Ordinance. Employers in Germany have essentially had three main duties to ensure:

(1) When assessing the working conditions and the workplace for the first time, the employer must carry out a risk assessment, i.e., identify and eliminate any occupational hazards present in the place of telework (Sec. 3 of the German Workplace Ordinance).

(2) The employer must instruct the employees (Sec. 1 para. 3 no. 2 and Sec. 6 of the German Workplace Ordinance). This means that he must provide employees with sufficient and appropriate information regarding potential occupational hazards present when teleworking at home, and this should be based on a risk assessment.

(3) Annex 6 of the Workplace Ordinance (“Bildschirmarbeitsverordnung”) sets out specific requirements for VDU (“Visible Display Unit”) workstations. As an example, the employer must ensure that the workplace provides sufficient space for the employee to change his/her working postures, that computer screens are positioned to reduce bright light and reflections, and that the work surface in front of the keyboard allows the heel of the hand to rest on it. Laptops, notebooks and tablets may only be operated at workplaces where the devices are used for only short periods of time or where the work tasks cannot be performed with any other display device. If such mobile devices are used permanently at workplaces for no particular reason, separate keyboards and screens must be connected

that comply with the requirements of the VDU Work Ordinance. However, in comparison to workplaces in the employer’s offices these obligations remain considerably smaller in scope. In the practice of mobile work as opposed to telework, «only» the less specific provisions of the German Occupational Health and Safety Act (“Arbeitsschutzgesetz”; “ArbSchG”) are applied, and not the provisions under the German Workplace Ordinance. Pursuant to Sec. 5 para. 1 of the German Occupational Health and Safety Act, the employer must determine which occupational health and safety measures are required by assessing the specific occupational hazards of each employee. Due to the very nature of mobile work where flexibility and the absence of an actual fixed place of work is the norm, there is however, a real need for the occupational risk assessments and resulting instructions to change. As it stands under Sec. 15 para. 1 of the German Occupational Health and Safety Act, it is the employees who bear a large part of the responsibility in ensuring compliance with occupational health and safety regulations as it is they who determine a large part of the nature and circumstances of the work to be performed. Furthermore, the work performed is for the most part done so outside the employer’s own «area of control» although an obligation still falls on the employer to fulfill his duties of protection in taking all the organizational measures necessary as well as giving the employees clear instructions on the correct work methods and approach to apply when mobile working.



## Spain

Article 13 of the Spanish Workers' Statute (in the original version of the text published on 14 October 2015) already contemplated the possibility of concluding a remote working agreement, either from the start of the employment relationship or at a later date. With the exception of certain references to the principle of equality between on-site employees and remote-working employees however, this provision left many aspects unresolved from a practical standpoint.

Many essential issues that should have been covered in a remote-working relationship agreement were omitted and left to the discretion of the parties involved, leading to an unequal and unprotected situation for employees in terms of working

conditions. This was particularly true on the crucial question of who should bear the costs incurred when practising telework.

Until the Covid-19 pandemic, the implementation of telework had only been covered under Article 34.8 of the Spanish Workers' Statute under the practice of flexible working modes for family reasons.

The outcome of this provision has been to allow employees to work from home when they have a justified obligation to give care to a family member. This is just one measure among others that had been put in place under Spanish law with the aim of improving the work-family balance.



## Italy

Generally speaking, teleworking in Italy has been put in place through the signing of an individual agreement between the employer and the employee.

The agreement is drawn up either with a fixed term duration or on a permanent basis, and in the latter, any withdrawal from the agreement requires a minimum notice period of 30 days.

This notice period is lengthened to a minimum of 90 days for disabled employees in order to give them sufficient time to reorganize their work routine and care requirements.

The agreement must provide both for the employer's power of control over the work or service performed by the employee working outside the company premises and for the expected means and approach of the employee performing the work outside the company premises, stipulating the disciplinary sanctions to be applied where necessary.

In addition to the above, such individual agreements must also provide details of the split between the work actually performed in the company premises, and that performed outside of the usual place of work. The right to disconnection must also be stipulated in the agreement, and the employer must provide the employee with information on health and safety in the workplace and the points of attention related to this when working from home.

A company which puts telework into practice has the obligation to notify the Ministry of Labour of the situation and to electronically file certain information on the employees concerned by it.

No information or official communication are required concerning the social security and insurance organisations.



# Practically speaking, was teleworking actually practised before Covid, and if so, by which type of companies/ employees and in which conditions?



## France

Prior to the Covid-19 health crisis, teleworking only took place in a handful of cases in France, with only 7% of all employees having recourse to this practice. This was further broken down into only 3% being regular teleworkers and 4% occasionally teleworking.

The use of teleworking varied more by occupation and socio-professional category than by sector. In France, 61% of regular teleworkers were in managerial positions. In terms of occupation, sales executives and computer engineers were the most likely professionals to practise it. Needless to say, occupations in certain activities such as agriculture,

construction work, hotels and restaurants, and the provision of personal domestic services, were not suitable for teleworking. It is considered that only 37% of workers in France are actually able to telework on a full-time basis, although other professionals could do it on a part-time basis.

No disparity was observed between women and men, although employees with children under three years of age were more likely to telework. Teleworking was more «used» in the metropolitan Île-de-France area than in the regions of France, and more specifically by those living in the suburbs with long commutes.



## Germany

Teleworking / Home Office was frequently used for practical reasons and more notably in the example of sales representatives who worked in an area far from their

company's head office, or in cases where the employer had only a few employees in Germany and no physical work premises in the country.



## Spain

Companies in Spain had generally been reluctant to implement teleworking arrangements and given the lack of regulation in place before the Covid-19 pandemic, employees were usually required to bear all the costs associated with teleworking. Furthermore, most companies in Spain were simply not prepared for the practical implications that teleworking could entail (e.g., IT problem-solving processes, material resources etc). It should be noted that although working from home had not been a reality for employees in Spain prior to Covid, some

companies (mostly start-ups) had already been considering the implementation of flexible working policies and hybrid models of work.

A certain integration of teleworking into working practices had emerged as a way of offering a conciliation of family and work needs (Article 34.8 of the Spanish Worker's Statute) allowing employees to adopt a more flexible and hybrid way of working (on-site and remotely).



## Italy

In Italy, teleworking prior to Covid-19 was only implemented by companies when their employees had actual tasks that had to be carried out outside the usual place of work through a

business trip and this concerned more particularly white-collar workers, managers and executives.

# During the Health crisis itself

## Did the use of teleworking increase/evolve during the Covid-19 crisis?



### France

During the health crisis, the use of telework increased significantly, with, according to the studies released, an increase of between 25% and 44% of employees being concerned as a result of lockdowns. Differences were observed according to the different socio-professional categories and the sectors of activity. Teleworking was more commonly practised in large companies (29%) than in small companies

(18%) and was particularly high in the information and communication sectors (63% of employees), as well as in the financial and insurance sectors (55%).

It was naturally less prevalent in the accommodation and food services (6% of employees), construction (12%), food processing (12%) and transport (13%) sectors.



### Germany

During the pandemic, recourse to all methods of working remotely from the office was adopted and increased significantly.



### Spain

The Covid-19 crisis was undeniably a huge factor in an acceleration of this method of working.

Article 5 of the Royal Decree, Law 8/2020, on the urgent measures to put in place as a response to the Covid-19 pandemic, established that where possible, companies should do the necessary to ensure that teleworking was implemented by their employees; a measure that meant a large number of

employees began working remotely and from home during the crisis.

This legislation was finally extended over a period of almost one year, establishing a precedent in Spanish legislation that pushed many companies to reconsider their traditional and rigid working models that had prevailed up to that moment.



### Italy

The use of teleworking increased substantially in Italy during the crisis.

During the pandemic, the Legislator gave employers the possibility to put teleworking in place without the need to amend the individual employment agreement, and the sole

obligation on the employer was to provide employees with the necessary information on health and safety in the workplace.

The employer also had the obligation to submit certain information to the Ministry of Labour regarding the company's recourse to teleworking.

# Has this move been positive / Was this move to teleworking easily accepted by employers?



## France

In France, employers were required as part of their health and safety obligations under Article L. 4121-1 of the Labour Code, to take all appropriate preventive measures with regards to the risk of contamination of their employees by Covid-19.

The government therefore strongly encouraged, even required the use of teleworking during the Covid-19 health crisis on the basis of Article L. 1222-11 of the Labour Code, which stipulates that: «in the event of exceptional circumstances, in particular the threat of an epidemic, or in the event of force majeure, the implementation of telework may be considered as an adaptation of the workstation made necessary to allow the continuity of the activity of the company and to guarantee the protection of the employees”.

Only in certain cases where teleworking was impossible could the company be eligible to emergency measures such as partial activity (furlough), the deferral of social security and fiscal contributions, derogatory sickness allowance schemes...).

In addition, and according to the Ministry of Labour, the risk of an epidemic from the very beginning of the Covid outbreaks justified the use of teleworking without any requirement by the employer to amend the employment agreement. The implementation of remote working in such a context required no specific formalism from a Labour law perspective.



## Germany

From the very beginning of the pandemic, many employers in Germany spontaneously offered their employees the possibility to mobile work or work in home office. In 2020, the German government amended the German Infection Protection Act (“Infektionsschutzgesetz”; “IfSG”) and included a new regulation in Sec. 28 lit. b para. 7 according to which employers had the obligation to offer working from home (essentially the same as mobile work but limited to the employee’s home) whenever possible. Initially this obligation

ended in July 2021 when the crisis seemed to be ending. This obligation was however renewed when the Covid crisis worsened again, and as from 24 November 2021 to 19 March 2022 (Sec. 28 lit. b para. 4 of the German Infection Protection Act) employers had to allow their employees to work from home. At this moment there is no (more) statutory entitlement for employees to work from home – yet a lot of employers offer it as a benefit.



## Spain

On 14 March 2020, a state of emergency was officially declared in Spain with an ensuing long-term lockdown at home. During these months, the only solution possible to maintain the activity of many companies was for the majority of them to adopt telework.

From a legal perspective, Article 5 of the Royal Decree-Law 8/2020 established the so-called “teleworking preference”, as follows: “Organizational systems that permit the maintenance of the activity by alternative mechanisms and processes shall be implemented, particularly by means of teleworking, and, if it is technically and reasonably possible, the company shall adopt the appropriate and proportional measures necessary in order for the results to be delivered. These alternative measures, and particularly that of remote working, must be prioritized over the temporary cessation or reduction of the business activity.”



## Italy

In order to avoid the spread of the virus, companies encouraged and used the practice of telework as much as possible and gave additional rights to teleworking for employees who were parents of children under the age of 14 and following schooling remotely.

In Italy, as in other countries, the Legislator provided for the possibility of employers to put telework in place without

In short, although the legislation had never directly nor expressly imposed teleworking, most companies decided to follow the recommendations of the approved legislation in the context of Covid-19 (Royal Decree- Law 8/2020 and its extensions), which clearly called for teleworking during difficult times.

Once the state of lockdown was brought to an end and on-site activity progressively resumed, many companies opted to maintain teleworking as a continued preventive health and safety measure for their employees. Others decided on a progressive return to the workplace. More importantly, some companies considered the possibility of maintaining teleworking on a permanent basis.

having to amend the individual employment agreement, and only having the obligation to inform the employee about the relevant health and safety measures to be taken in the workplace.

The administration’s only condition on the employer was the communication of teleworking to the Ministry of Labour.

# Today

## Did the (legal) rules change as a result of the Covid-19 crisis?



### France

On 26 November 2020, the different social partners drew up a national interprofessional agreement on telework from the findings and lessons learnt during the forced general recourse to working from home. In its preamble, it recalls that its principle aim is to be a «tool to help social dialogue» and a «support to negotiation» in order to allow a concerted implementation of teleworking. This agreement neither establishes new rights or obligations nor calls into question the previous agreement of 2005. It is rather a proposal in the form of a user's guide to the practice of telework.

If the national interprofessional agreement of 26 November 2020 constitutes a useful reference framework the rules for the implementation of telework have evolved on a regular basis according to the health crisis and the resulting health measures and guidelines.

These measures and guidelines consist of hygiene or organizational rules for companies to apply in order to protect employees' health in light of the constantly evolving Covid-19 pandemic. Published for the first time on 3 May 2020 by the Ministry of Labour, these guidelines have been regularly updated to mitigate the risks associated with the changing nature and scale of the virus.

The legal framework applicable to teleworking in France is now governed by a combination of many texts which does not make the reading of the applicable rules easy to understand for many employers.

Other texts were introduced namely by the French Administration to determine the social security treatment of teleworking expenses and indemnities.



### Germany

With the exception of the aforementioned obligation for employers to offer working from home where possible pursuant to the regulation in the German Infection Protection Act, which is

no longer in force, no changes have been made to social law in Germany to date.



## Spain

The Covid-19 health crisis and the need to grant greater flexibility to employees generated a major social debate during the pandemic which resulted in the publication on 22 September 2020 of the Royal Decree-Law 28/2020 on remote working. Subsequent to this, the regulation was adapted to the new Legislation 10/2021 of 9 July 2021 on remote working.

The rules provided for under this new legislation are only applicable to employees who telework for at least 30% of their ordinary working time and in a reference period of 3 months (or the equivalent proportional percentage according to the term of the employment contract). For employees who work remotely less than the said percentage, the rules applicable prior to the pandemic remain in place. The Legislation 10/2021 on remote working establishes the following main principles:

- There must be a written agreement between the employer and the employee.
- Equality of treatment and opportunities, and a non-discrimination must be ensured between on-site employees and teleworkers. Teleworking cannot result in any loss of labour, economic or union rights.
- Telework is voluntary and “reversible”, so either party can decide to return to work on-site at any time and is dependent on giving the agreed prior notice).

Even though certain aspects are left to the collective bargaining negotiation (e.g., calculation of amounts of expenses to be covered), the new legislation provides for a series of reciprocal rights and obligations that both parties must assume.

This new legislation also provides the minimum content that should be included in the written agreement as follows:

- A comprehensive detailing of the means, equipment and tools required for teleworking, including consumables and movable elements, as well as the useful life or maximum period for the renewal of these. (e.g., table, chair, computer, keyboard...).



## Italy

Employment legislation in Italy remains that as provided by Law no. 81/2017.

The only specific change was the possibility during the pandemic as from March 2020 to have recourse to teleworking without amending the individual employment agreement, and where the sole responsibility of the employer was to inform employees of the health and safety measures to respect in the workplace.

- A list of the expenses that the employees may incur as a result of providing remote services (e.g. additional costs of electricity and internet connection), as well as the calculation method used in order for the company to pay compensation, as well as the corresponding payment terms and methods.
- Working hours of the employees, and where appropriate, rules specific to hours of availability.
- Percentage and distribution between presential work and teleworking, if applicable.
- The company's central place of work to which the teleworking employee is assigned and where, if applicable, he/she will carry out the presential work.
- The place chosen by the employee to telework.
- Notice periods to apply for any reversibility of the arrangement.
- The means through which the company can control the work activity of the employees.
- The procedures to be followed in the event of technical difficulties which prevent the normal performance of telework from being carried out by the employee.
- The details of instructions issued by the company in terms of data protection, specifically applicable in the context of remote working.
- Instructions issued by the company on information security, specifically applicable to teleworking.
- Duration of the agreement.

The rules provided for under this new legislation are only applicable to employees who telework for at least 30% of their ordinary working time and in a reference period of 3 months (or the equivalent proportional percentage according to the term of the employment contract). For employees who work remotely less than the said percentage, the rules applicable prior to the pandemic remain in place.

Employers had to communicate information on the company's recourse to telework to the Ministry of Labour.

Law no. 81/2017 has recently changed and where prior to the pandemic, the employer had an obligation to file an individual employment agreement for teleworking to the Ministry of Labour, this is no longer the case today and has been so since 1 September 2022.

# In the Future

## How is the practice of teleworking expected to evolve in your country?



### France

Telework has already become a longer-term trend with a hybrid approach to the organisation of work combining telework and on-premises activity. There are several strong indications that this organization will continue to develop.

Firstly, telework remains strongly recommended by the public authorities, since it actively contributes to the prevention of any risk of infection from Covid-19, greatly reducing social interactions both in the vicinity of the workplace itself, and in the commute on public transport.

Secondly, with 4 out of 10 jobs in France being in the private sector (i.e., 8 million workers in total) many posts are considered

compatible with telework.

Last but not least, a large part of both employers (e.g., Google, Facebook, Peugeot, Microsoft...) as well as employees (even if positions can be contrasted), have found many advantages to the practice of teleworking.

Although remote work has become a firm fixture in many companies' organisation of work in France, we cannot exclude the fact that in a context of growing economic uncertainties, we may on the contrary, see some companies more reluctant to apply it for fear of decreasing levels of productivity from their workforce.



### Germany

It is expected that a large part of employers in Germany will keep the current mobile work/home office mode in place as it has proven to work well for many companies and overall employees consider the possibility to do so as a real benefit. This model of working

has also reflected a growing desire by the employer to save on workplace/office space either completely or through a reduction strategy of so-called «desk sharing» where several employees share one workstation in the office.



### Spain

The new regulations in place in Spain are being seen as a significant step forward in reconciling a more flexible approach to work and an improved work/life balance. However, there are still many questions to be answered from a material point of view and these will have to be dealt with in the different collective bargaining agreements before being included in the individual teleworking agreements. More specifically, this would involve companies budgeting for the provision of resources and services to facilitate telework and determining the calculation methods to be applied when considering expenses incurred by the employee.

For the time being many companies are offering adhesion agreements, where the terms and conditions for teleworking are agreed to and signed in advance by those employees that wish to continue telework even after the Covid-19 pandemic.

In this regard, the Spanish Courts have already upheld the practice and have established that nothing prevents the employer from pre-determining the employment conditions under which the Company may exercise a right to the use of telework.

As of today, it is generally expected that Spanish Case Law will provide greater clarity on some of the controversial aspects that have arisen as a result of this new regulation being enforced.



### Italy

Telework is expected to evolve in Italy with greater flexibility being offered to the employee not only in terms of the workplace itself,

but also in terms of the duration of working time.

# Is a new legislation to be discussed/implemented?



## France

A recent law of 26 December 2021, aimed at accelerating economic and professional equality requires that the collective agreement or failing that, the employer's charter setting up telework must now specify the terms of access to telework for pregnant employees.

The question of access to telework for pregnant women is thus left to the social partners, however in practice, the employee in such cases could benefit from the possibility to telework from the very beginning of her pregnancy until the end of her maternity leave.



## Germany

Mobile work and how to implement it in the future has already been discussed in Germany, and a draft for a new law on this question was submitted ("Entwurf eines Gesetzes zur mobilen Arbeit [Mobile Arbeit-Gesetz - MAG]") in January 2021. How-

ever, in the end the law has not come into force by now and the topic has become less relevant as a lot of employers offer working from other places than the office voluntarily as a benefit for their employees.



## Spain

From a practical perspective, the standardization of telework is yet to be addressed in Spain. After the publication of the legislation on remote working, many questions have been raised and the need for clear answers both from the Spanish legislator and from case-law is obvious. New legislations and

communications from the Official Labour Authorities are set to be made in an attempt to clarify the situation and reduce ambiguities that have resulted from the new regulations on telework.



## Italy

The applicable legislation remains that as provided by Law no. 81/2017.

The only specific change refers to the individual agreement

where prior to Covid the company had to submit an individual agreement for telework to the Ministry of Labour, and where since 1st September 2022, this obligation no longer exists.



# Specific Points of Alert in the Practice of Telework

Did the use of teleworking evolve during the crisis?  
What particular situations did your clients encounter?  
What were the main issues faced? Which points  
required specific attention? What were the most  
significant areas / points of satisfaction for both the  
employer and the employees?



After almost two years of a continuing health crisis, the employee's relationship to work and the conditions of their commitment have come to the forefront of attention and questions. More particularly, the many and diverse issues concerning the mental health of employees at work have come to the forefront of discussion. As a result, companies have had to adapt and change their working method notably by allowing employees to telework.

As a practical case example, a client of ours in France was reluctant to implement telework within his company before the pandemic. As for many employers, he was concerned that employees would work less efficiently and be more dispersed. He was also concerned about the lack of social interaction between employees and the negative impact this could have them and consequently on the company.

Finally, after having experienced this mode of work during the Covid-19 crisis, the same client decided to set up a telework charter within the company and even went as far as to make the charter extremely flexible as telework is now a firm fixture within the company and is frequently carried out, only prior consent is required by the employer for an employee to be able to work from home.

Practically speaking, some companies are reluctant to pay employees for the incurred costs of working from home giving rise to discussions and problems. Indeed, companies in France have an obligation to pay for the specific expenses incurred by the employee in the course of carrying out their professional

activity at home, including the costs of installing the necessary office and computer equipment.

A further point of attention is the employer's obligation to ensure the health and safety of the teleworking employee. Indeed, the employee in France has a right to disconnect outside working hours and as such no reproaches can be made if they do not respond to their employer made outside these usual working hours. The employer must therefore set clear working hours. This is a fundamental right which presupposes proper use of IT tools with a view to the necessary respect for rest periods and holidays, as well as for the balance between private, family life and professional life.

In addition, the criteria of eligibility to telework must be based on objective elements and are justified by the particular working conditions related to telework. Indeed, care must be taken not to discriminate against certain employees in relation to others.

In short, the introduction of telework is more than ever a central question to occupational health policies, which involves positive action concerning the organization of work, and where an approach to health and wellbeing is clearly promoted. In a labour market context where attractiveness is a major challenge for companies and where employee recruitment and retention can sometimes be a real challenge, employment and working conditions are factors on which employers can act.



## Germany

### **Specific situations, problems or areas for attention that our clients have encountered include:**

- IT-equipment that was issued for use at the office and which was neither mobile nor suitable for use at home
- Poor suitability of homes as a place of work; bad internet connection, no possibility to separate office space from home space, lack of a “healthy” working environment, e.g., no ergonomic chairs etc.
- Small, restricted living areas at home
- Inability of employees to work in a focused way with family or flatmates also working alongside them in a confined space
- Professional confidentiality issues for the same reason
- management of regulations regarding costs incurred by home office working (electricity, heating costs etc), agreements on that had to be set-up
- Company insurance coverage of accidents provoked by working from
- The ability to reach employees, a notable lack of responsiveness from some
- The difficulty to ensure that statutory breaks were taken in a day, as well as the 11-hour break between two working days being met; the borders between working time and private time were hard to respect

- Keeping personal contact with the team – not losing the team spirit
- Psychological isolation of a person living alone and forced to work from home with no real contact with colleagues (resulting in loss of motivation)
- Getting employees back to the office once restrictions were lifted
- Equal treatment of all employees as some positions inevitably required higher employee presence in the office

### **The most significant elements of employer and employee satisfaction include:**

- Improvement of work-live balance due to greater flexibility and thus higher employee satisfaction and higher motivation
- Improvement of base of trust between employees and employer
- Less daily travel from home to work, saving time and money for employees
- Possibilities for employers to minimize rented office spaces by implementing “shared desks”



## Spain

The entry into force of the new Remote Working Regulation in Spain has raised several questions as to its practical enforcement notably concerning factors such as who bears the costs incurred by telework.

Many employers in Spain have had to deal with legal issues related to legislation which requires employers to compensate the employee for expenses incurred by teleworking expenses. Employers have also had to face the legal obligation to provide the employee with the resources and means in order for the work to be performed from home.

Typical questions arising from the new mode of working included the question of whether the employer had to provide a company computer or could the employee perform his/her work duties from a personal computer. If this were the case, how would this impact the company in terms of business control over the employee's activity?

Despite the legal uncertainties, many companies managed to put teleworking policies into place through collective agreements established with the legal representatives of workers. It has been a case of "needs must" and the result is that many employers have now endorsed considerable improvements in the new regulations governing remote working compared with the previously limited conditions provided. These improvements and clarifications have resulted in the establishment of a clearer regime, where previously there was only controversy in the negotiation process.

Other points of concern have been raised when employers try to comply with certain obligations which are rendered more complex in the context of teleworking.

Firstly, compliance with the established working day and working hours from the employees' side is to some extent blurred when performing telework. On this subject, Article 18 of the Remote Working Regulation establishes that the duty of the company to guarantee the employee's digital disconnection "entails a limitation on the use of the technological means of business communication and work during rest periods, as well as respect for the maximum duration of the working day and any limits and precautions regarding the working day that may be established by the applicable legal or conventional regulations." It also establishes the obligation of the company to hear the legal representatives of workers where they exist and develop an internal policy defining the modalities for exercising the right to digital disconnection and implementing different training sessions to raise employees' awareness on the risk of being too connected and potential computer fatigue. There is therefore, an immediate obligation for companies to establish a digital disconnection policy and ensure its compliance.

Secondly, there is some uncertainty as to how to employers can comply with their occupational risk prevention obligations, when remote work is by definition carried out in a place outside the company's own premises.

Subsequent to the approval of the new Remote Working

Regulation, companies in Spain must ensure by means of a risk assessment that the place designated for the performance of remote work is deemed to be in accordance with the safety and health of the employee (Article 16). It is essential, that employers put adequate and sufficient measures in place to be able to correctly assess the designated place of telework from an occupational risk prevention point of view, as well as for the detection of any additional related risks.

Finally, another aspect of telework that raises questions is that of the ability of the employer to exercise business controls over the employee's and actual performance of work and any disciplinary action that may be required.

To the extent that the company must provide remote employees with computer equipment or tools, Article 22 of the new Remote Working Regulation authorizes the company to adopt the measures it deems most appropriate for the monitoring and controlling of the employee's respect of labour obligations and duties. These measures may include the use of telematic/electronic systems, considering where appropriate, the capacity of disabled persons to perform such tasks and duties with due regard for their dignity.

As provided for Article 17 however, the use of telematic systems and any controlling of the employee's work via devices, must also assure the employee's right to privacy and comply with data protection rights.

Therefore, companies have an obligation to establish criteria for the use of digital devices, respecting in all cases the minimum standards for the protection of privacy as are legally and constitutionally recognized in the framework of Spanish law. In addition, it should be noted that the Legal Representatives of Workers must be involved in the drafting of these policies.

In short, the employee must be fully informed and aware of both the existing and potential corporate control an employer has through the working tools provided, and of the possible consequences should the employer detect any non-compliance of the employee with his/her labour duties.

These issues aside, there are undeniable advantages for both parties in entering into a hybrid or full teleworking agreement. It goes without saying that from the employee's perspective, the greatest benefit is a flexibility of time management and a more balanced organisation between work and personal life. This in turn, may also lead to increased job satisfaction and motivation and consequently, an increase in productivity.

From the employer's perspective, the most significant factor is a potential reduction in recurrent company expenses once the initial costs of implementing teleworking have been absorbed. Moreover, those companies whose business activity lends itself to hybrid or full teleworking have been able to modernize their modus operandi, giving them considerable added value as a company and employer.



Teleworking was formally recognised in Italy in 2017, when the Legislator introduced a measure with the aim of conciliating employees' working time and personal lives.

Before the pandemic, few employers were aware of the concept of teleworking and consequently it was barely used by companies.

Companies in Italy did not have recourse to teleworking as we know it today, perhaps due to the fact that a flexible approach to performing work was already in place in the country. The practice and term of "telecommuting" had in fact already been recognised and regulated by an Inter-confederal agreement within the European Commission's framework agreement on telecommuting concluded 16 July 2002.

Telecommuting as for teleworking, is a work organization method where the fulfilment of work duties can be carried out with the use of information technologies both on the company's premises, or outside the premises of the company, and typically at the employee's home.

The main difference between telework and telecommuting relates to the place of work: where telework is the activity of carrying out work duties in part at the company premises and in part outside the premises in a non-specified place, the activity of telecommuting specifies the actual place of work as being the employee's home or another named place from which the employee has decided to perform their work duties.

With the arrival of the Covid-19 pandemic, it was crucial that companies found a method where the working activity continued on the one hand, and where the protection of employees' health and safety was formally maintained on the other.

The only type of flexibility that is resulted for the situation was the telework because it gave the possibility to the companies and employees to continue with the working activity without specific fulfilments in charge of the company in terms of the activation (telecommuting provides different fulfilments related to safety in the working place), establishing also the access to the telework without the signing of the individual agreement.

In this context, the introduction of telework provided companies with a solution as flexible working practices could be instantly implemented without the need to amend individual employment agreements, and without additional obligations to be fulfilled by the employer. With telecommuting previously, the employer had additional and specific health and safety obligations to fulfil.

In terms of problems faced by our clients in Italy, perhaps the main one was that of the field of application; indeed, not all

client companies were able to implement teleworking due to the nature of the tasks to be performed by employees and where the company's activity was incompatible with teleworking.

Nevertheless, the recourse to telework increased during the pandemic period for the following reasons:

- **Safety:** Employees who could work from home had increased protection from the risk of contamination
- **Savings:** Employees saw considerable savings in terms of personal transport costs (train and / or fuel), and were less tired in terms of commuting time and stress
- **Work/life balance:** Employees were able to reconcile their working time and personal life more easily
- **Business continuity:** Work continued to be performed and certain business lines were even able to evolve in spite of the global pandemic
- Companies themselves saw significant savings in terms of energy costs

Concerning the overriding elements of satisfaction for both the employer and the employees., we have noted the following:

- In 2022, teleworking continues to be regularly practised, albeit to a lesser extent than 2021. Remote workers today total around 3.6 million, so 500,000 less than in 2021
- A decrease in telework is noted more particularly in the Public Administration and in SMEs
- There is a slight but constant growth in teleworking in large companies, where 1.84 million teleworkers account for approximately half of the total teleworkers in Italy.
- A slight increase to 3.63 million teleworkers is expected for 2023, thanks to an overall consolidation of teleworking models in large companies, as well as an expected increase of its use in the public sector.

Telework is now present in 91% of large Italian companies as opposed to 81% in 2021, with an average 9.5 days of remote work per month.. An opposite trend has been observed in SMEs, where telework has decreased from 53% to 48% and represents an average of 4.5 days a month. This is explained by a culture in smaller organisations that favours the actual presence of employees, and which considers teleworking as an emergency solution only. Figures for the Public Administration also show a decline in the use of telework from 67% to 57%, and an average of 8 days of teleworking carried out per month. This particular case can be explained by the provisions of the previous government in Italy which pushed for higher productivity and presence at work. However, with the voting in of a new political party in October 2022, a new increase in telework is expected for the future in Italy.

# Conclusion

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There can be no doubt whatsoever that telework if not in legal terms, then at least in its practical implementation, has evolved as a result of the pandemic.

It is now a determining factor both in the recruitment process and in the career development of employees. A considerable attraction for telework has developed and more particularly for a hybrid mode of work where the proportion of telework and work at a company's premises is typically defined between employer and employee.

Many questions can be and are raised when telework is implemented, particularly regarding the eligibility of the different employee populations, the duration and distribution of working time or even the reversibility of a telework agreement.

Underpinning the very implementation of telework is the necessary evolution in management styles and practice: the key words in this new management are flexibility and agility, where autonomy is granted and embedded, and where mutual trust is the essential factor in the success of the work style.

Particular attention has to be paid to the quality of life and the health of workers, and in this context, a close management of social relations and the prevention of psycho-social risks is fundamental.

The employer must ensure that the use of telework does not generate additional stress factors for the worker and that a remote mode of work does not mean isolation.

The work/life balance must be preserved as this may in fact be more difficult to watch over in remote work than in face-to-face work. The teleworker should not be subjected to an increased mental load as a result of professional duties taking over the home and personal space. The right to disconnect should be strictly recalled and the employer has an obligation to ensure that this is respected.

While the right to disconnect is already enshrined in the legislation of some countries such as France, Spain and Italy, it is important that it be respected. In its adoption of a legislative initiative report in December 2020, the European Parliament's Committee on Employment and Social Affairs called on the European Commission to propose an EU directive setting minimum requirements for the right to disconnect. Work carried out on the right to disconnect should lead to the drafting of a directive to be transposed by the Member States. MEPs state that EU countries must effectively guarantee the right to disconnect for workers as this right is essential in the protection of workers' health and well-being.

Telework has now established itself as a key factor in the organization of work.

A more detailed framework for telework still needs to be provided particularly in defining safeguards such as the aforementioned right to disconnect, but its rapid implementation and uptake is proof of its success and has received support and applause from players in the European labour market.

It is a recent and current affair which will be followed up...

# Appendix

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