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CONSULTATION DOCUMENT

**First-phase consultation of social partners under Article 154 TFEU on possible EU
action in the area of telework and workers' right to disconnect**

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1. INTRODUCTION

This consultation is part of the follow-up to the European Parliament's resolution under Article 225 of the Treaty on the Functioning of the European Union (TFEU) on the right to disconnect adopted on 21 January 2021¹.

The resolution called upon the Commission to present 'a proposal for a Union directive on minimum standards and conditions' for the right to disconnect. The resolution also called for 'a legislative framework with a view to establishing minimum requirements for remote work across the Union, ensuring that teleworking does not affect the employment conditions of teleworkers'.

The Commission, in its response to the European Parliament of 25 March 2021, committed to follow up with a legislative act in full respect of proportionality, subsidiarity and better law-making principles, in line with President von der Leyen's political guidelines regarding Article 225 TFEU resolutions.²

In line with the European Parliament's resolution, as a first step, the Commission invited social partners to find commonly agreed solutions to address the challenges brought by telework, digitalisation and the right to disconnect.

The **European Pillar of Social Rights action plan**³ of 4 March 2021 also included the Commission's commitment to ensure an appropriate follow-up to the European Parliament's resolution on the right to disconnect and encouraged social partners to follow-up on their Autonomous Framework Agreement on Digitalisation of June 2020.⁴

Subsequently, the **Council Conclusions on telework**⁵, adopted on 14 June 2021, while recognising the opportunities offered by telework for workers, called on the Commission to analyse telework and its implications in the EU and the extent to which current social and labour law in the EU ensures decent working conditions for teleworkers, including the right to disconnect.

The Commission and the European Parliament organised a **conference to explore the challenges and opportunities of the right to disconnect and telework**. The event took place on 15 March 2022 and involved Members of the European Parliament, social partners, national governments, the Commission and EU agencies.

The report on the final outcome of the discussions held at the Conference on the Future of Europe⁶ calls on the EU to ensure the right to disconnect and assess the implications of remote work on health, working time and companies' performance.

¹ Available [online](#).

² Available [online](#).

³ Available [online](#).

⁴ Available [online](#).

⁵ Available [online](#).

⁶ Available [online](#).

The **Commission's 2023 Communication on a comprehensive approach to mental health**⁷ also mentions the importance of addressing the right to disconnect as an integral part of reducing work-related stress and promoting a better work-life balance.

For what concerns **EU cross-industry social partners**, their 2022-24 work programme was signed on 28 June 2022 by ETUC, BusinessEurope, SGI Europe and SMEunited. It provides for the review and update of the 2002 Framework Agreement on Telework to be put forward for adoption in the form of a legally binding agreement implemented via a directive, in accordance with Article 155(2) TFEU.⁸

Following a fact-finding seminar in September 2022, the signatories of the work programme began negotiations on 4 October 2022. During the negotiations, the Commission provided, upon request, technical and legal advice to social partners in full respect of their autonomy. On 17 November 2023, the cross-industry social partners informed the Commission that their negotiations had concluded without reaching an agreement on a text and that they therefore considered that the issue would now be addressed by the Commission.

As regards the **sectoral social partners**, representatives in the European Social Dialogue Committee for Central Government Administrations, EUPAE and TUNED (composed of the trade union organisations EPSU and CESI), signed the Sectoral Agreement on Digitalisation on 6 October 2022. The agreement includes provisions on teleworking, health and safety, skills development, training and qualifications, data management and protection, artificial intelligence (AI), access for users, outsourcing, job protection and agile work.

The signatory organisations requested, in accordance with Article 155(2) TFEU, that the Commission submits a proposal for a Council decision to formalise their agreement into EU law. On 28 October 2022, the Commission informed the signatory organisations that it would assess the sectoral agreement after the conclusion of the negotiations between the EU cross-industry social partners on the right to disconnect and telework in order to identify potential complementarities and/or inconsistencies with any outcome from the (then ongoing) negotiations and to determine whether the implementation of their agreement would be appropriate in light of political, economic and social considerations.

Following the aforementioned inconclusive negotiations between European cross-industry social partners, and against the backdrop of the ongoing work on the right to disconnect and telework, the Commission is conducting the assessment of the sectoral agreement in parallel. In this context, a meeting between the sectoral organisations and the Commission took place on 19 February 2024. In a letter dated 19 March 2024 to the sectoral organisations the Commission shared a preliminary legal assessment of the agreement.

The purpose of this document is to consult the social partners in line with Article 154(2) TFEU and obtain their views on the possible direction of EU action to introduce a right to disconnect and ensure adequate working conditions in telework.

⁷ Available [online](#).

⁸ This action relies on the procedure outlined in Article 155 (2) of the Treaty on the Functioning of the European Union (TFEU), which clarifies in paragraph 2 provides that “[...]Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 153, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission [...]”.

2. BACKGROUND

2.1 Digitalisation and the risk of an ‘always-on’ work culture

The increasing digitalisation of the world of work in recent years and the possibility to work remotely and at any time have opened up new opportunities for workers and businesses and reshaped many jobs. New working arrangements enabled by Information and Communication Technologies (ICT), such as telework, can enhance workers’ flexibility and autonomy, can contribute to a better reconciliation of work with private and family lives, and lead to an overall improvement of work-life balance. In some instances, it can also lower the entry-barrier to the labour market, particularly for people with care responsibilities, disabilities or living in areas with lower business density. For employers, it may generate cost savings while allowing them to attract and retain talent, even in geographically remote areas. It can contribute to furthering the Single Market by facilitating the free movement of workers in the context of cross-border telework.

However, these new opportunities come with new challenges that should be addressed. The extended use of digital tools, particularly ICT tools, has led to a significant increase in the ‘extended availability’ of workers – that is, receiving and acting on work-related requests during rest time –, thereby sometimes fostering an ‘always-on’ culture. This **concerns all workers, albeit with different intensity**.

The COVID-19 pandemic accelerated the already ongoing digital transition in the world of work. **Evidence from before the pandemic shows that extended availability varied greatly between countries and across occupations and was closely connected to flexible work schedules and teleworking**. According to Eurostat data from the EU Labour Force Survey (LFS) in 2019, 14% of workers (except the self-employed) in the EU reported being contacted several times for work-related purposes outside working hours, while 22% were contacted occasionally.⁹ Based on a 2022 survey by Eurofound¹⁰ carried out in Belgium, France, Italy and Spain, over 80% of respondents reported being contacted for work-related purposes outside their contractual working hours, with nine out of ten of them responding to such contacts.

Although workers’ preferences point to the benefits of telework, including in terms of work-life balance¹¹ the existing evidence on overtime work points to **a higher risk of an ‘always-on’ work culture among teleworkers** than among on-site workers. According to the 2021 European Working Conditions Survey (EWCS), 44% of teleworkers¹² worked overtime, which is 14% higher than that of on-site workers in occupations that allow for some degree of teleworkability.

The spread of teleworking and flexible working arrangements after the COVID-19 pandemic highlighted gendered patterns. On the one hand, men could appear to be more exposed to the risk of an ‘always-on’ work culture. However, since women still carry out most unpaid domestic labour and in particular care work, the mental load of care responsibilities might increase their stress when coinciding with longer working hours and delivery deadlines

⁹ Eurostat, ad-hoc module 2019 of the Labour Force survey on ‘Work organization and working time arrangements’ (dataset: *lfsa_19fxwt14*, employees aged 15 to 74).

¹⁰ Right to disconnect: Implementation and impact at company level. Available [online](#);

¹¹ See Section 2.2

¹² Teleworkers include employees in three teleworking arrangements: full-time telework, hybrid telework and occasional telework. These arrangements are defined by Eurofound according to the proportion of time spent teleworking. With regard to working time patterns, differences between these arrangements are not prominent. 2021 EWCS is available [online](#).

related to a job partially or entirely (tele)worked from home.¹³ Therefore, there is a risk that, if not properly designed and used by both men and women, teleworking and flexible working arrangements could reinforce traditional gender roles by further inducing women to carry out care work on top of their paid-for job.¹⁴

More broadly, the use of digital technologies in the workplace can have a negative **impact on work intensity and mental health at work**. Findings from EU-OSHA's 2022 OSH pulse survey¹⁵ show that 52% of respondents reported that digital technologies determined the speed or pace of their work, and 33% said such technologies increased their workload. Notably, 46% of respondents reported being exposed to severe time pressure or work overload, which they considered attributable to the use of digital technologies, and 26% reported experiencing poor communication or cooperation in their organisation related to the use of digital technologies.

In summary, digital technologies are transforming the way work is done. Although they bring many advantages and opportunities, they can also create risks for, and pose a number of challenges to workers, which are presented in more detail in the following sections. Against this background, there is a growing demand at national and EU level **for a framework of rules on fair telework and for a right to disconnect**.¹⁶

2.2 The prevalence of telework

While teleworking has been practised for decades, its use was modest before the outbreak of the COVID-19 pandemic. Based on EU Labour Force Survey data from Eurostat, in 2019 only 11% of employees in the EU worked from home at least some of the time, up from less than 8% in 2008.¹⁷ Telework was mostly concentrated among a group of highly skilled professionals and managers and was only done occasionally.

The COVID-19 pandemic accelerated the already ongoing digital transition in the world of work and changed the profile of teleworkers. Telework became the norm for all jobs for which it was technically feasible. According to a Eurofound survey¹⁸, **at the peak of the pandemic (July 2020), nearly half of employees (48%) worked from home for at least part of their working time**, of which over a third (34%) reported working from home all the time.

Additionally, according to an employers' survey conducted in the EU-27 under the framework of the Commission's 2022 exploratory study on telework and the right to disconnect, 70% of the respondents either had a telework policy agreed at organisational level, or one agreed between managers and workers bilaterally, or one implemented through a cross-sectoral or sectoral social partner agreement.¹⁹

Since the lifting of social distancing restrictions, a significant share of workers has continued to partly work from home. **Eurostat data from the EU labour force survey show a**

¹³ Eurofound and ILO (2019). *Working conditions in a global perspective*. Available [online](#); López-Igual, P. and Rodríguez-Modroño, P. (2020). *Who is Teleworking and Where from? Exploring the Main Determinants of Telework in Europe*. Sustainability 2020, 12(21), 8797.

¹⁴ Chung, H. (2022). *The Flexibility Paradox. Why Flexible Working Leads to (Self-)Exploitation*. Bristol University Press. Available [online](#).

¹⁵ Available [online](#).

¹⁶ For more information on national legislation on the right to disconnect, see Section 6.1.

¹⁷ Source: Eurostat, dataset: *lfsa_ehomp*, employees aged 15 to 74.

¹⁸ Eurofound (2022). *Fifth round of the Living, working and COVID-19 e-survey Living in a new era of uncertainty*. Available [online](#).

¹⁹ European Commission. *Exploratory study on telework and the right to disconnect* (Research conducted in 2022). Available [online](#).

substantial increase in the prevalence of working from home usually and sometimes in the EU (from 11.1% in 2019 to 20% in 2022), mainly driven by a rise in the number of those who usually work from home (from 3.2% to 8.7%).²⁰

Existing research confirms that telework is here to stay. According to the aforementioned Commission's study²¹, while **the prevalence of telework has fallen**, compared to the levels seen at the peak of the pandemic, **it is still expected to remain above pre-COVID-19 levels and to continue to grow** in the medium and long term.²² This is due to a shift in teleworking behaviour. During the pandemic, (tele)workers worked predominantly away from their employer's premises. However, following the return to the 'new normal', teleworking is often combined with working at the employer's premises, resulting in hybrid working arrangements.

The latest edition of the 'Living, working and COVID-19' survey by Eurofound²³, conducted in 2022, confirmed that **the preference to work from home, at least partially, remains very strong** among over 60% of respondents. Evidence from the surveys of employers and workers conducted as part of the Commission's exploratory study found that 48% of employers surveyed intend to provide more freedom to their employees to telework, while 52% of employees surveyed would like greater freedom to telework. It also shows that the majority of employers (66%) offer telework because workers enjoy a better work-life balance. From the workers' perspective, preferences point to having more freedom to set their own working schedule (53%) and to work from anywhere (52%).²⁴

The prevalence of working from home varies according to four main factors:

- occupation,
- sector,
- size of the business, and
- type of area (urban/rural).

In 2020, the share of employees working from home for at least part of their working time was over 40% for managers and professionals, around 20% for technicians and clerical support workers, almost 5% for service and sales workers and practically 0% for blue-collar workers.

In sectors that rely mainly on jobs that cannot be performed remotely (such as those in the agriculture, hospitality, construction and health sectors), the share of employees who worked from home was very low in 2019 and saw a modest increase in 2020. In sectors with a high share of jobs that can be carried out remotely (see section 2.3), working from home increased sharply after the outbreak of the pandemic.

Working from home also differs by the size of the business: nearly 25% of workers in firms with 50 or more employees worked from home in 2020, more than 10 percentage points higher than that for micro-businesses (0-10 employees). The increase in teleworking for small and medium-sized businesses was less pronounced than for larger ones, probably due to both the

²⁰ 'Source: idem. "Usually" is defined as working from home for at least half of the days within a reference period of 4 weeks preceding the end of the reference week; "sometimes" is defined as working from home less than half of the days worked, but at least 1 hour during the 4-week reference period. Figures for 2022 are based on labour force survey data collected under the revised EU legislation: Regulation (EU) 2019/1700 establishing a common framework for European statistics relating to persons and households.

²¹ Available [online](#). (research conducted in 2022).

²² Estimates from the US based on employer surveys suggest a four-fold increase in hours worked remotely post-crisis (Barrero et al, 2021).

²³ Available [online](#).

²⁴ Available [online](#)

availability of technological infrastructure and more prevalent, pre-existing teleworking possibilities in larger businesses.

In 2019, the prevalence of working from home was significantly higher in cities than in rural and other areas due to a higher share of service employment in urban areas, a gap which increased between 2019 and 2020.²⁵ This trend could be also influenced by the territorial availability of high-speed broadband connection and access to high-capacity networks, as existing urban-rural disparities and gaps between more and less developed regions and in regions in talent-development traps persist.²⁶

Lastly, teleworking patterns can also vary depending on characteristics such as gender and age. A 2023 report from Eurofound, using EU-LFS data as well as data from Eurofound's own 'Living, working and COVID-19 e-survey' and 'European Working Conditions Survey' (EWCS), found that women were slightly more likely to telework than men and that working from home was most common among workers over 65 years of age and lowest among young people under 25 years of age. Teleworkers were also more likely to have a tertiary or post-tertiary level of education.²⁷

2.3 Teleworkability

A job is 'teleworkable' when its remote performance is technically feasible and there is not a significant loss of quality due to telework. A teleworkability conceptual framework²⁸ proposed by the Commission's Joint Research Centre distinguishes three main types of occupations:

- **Highly teleworkable occupations**, i.e. jobs that involve intellectual tasks and little social interaction (examples include finance professionals, ICT professionals and office clerks).
- **Occupations that are teleworkable, but with a loss of quality** due to a greater need for social interaction. Typical examples are managers and teachers.
- **Non-teleworkable occupations**, i.e. occupations that require the physical presence of workers at the workplace, such as nurses, manufacturing workers or drivers.

Based on this framework, **the overall prevalence of telework in the EU is well below the share of jobs that are teleworkable, which is estimated to be around 37%**. Research has also shown that the countries reporting higher proportions of teleworkers are those with the highest shares of employment in knowledge and ICT-intensive services.

Sizeable differences exist between Member States in the share of teleworkers in the same sector, partly due to differences in the types of jobs in different countries. Even in the same occupation, the prevalence of telework varies significantly across countries. In addition, larger businesses are more prone to adopting teleworking than smaller ones, partly due to small businesses' tendency to have more limited resources that cater to a remote or hybrid work environment.

This data is consistent with general assumptions that the implementation of telework is not simply a matter of teleworkability. Other factors play an important role, such as the broader

²⁵ Eurofound (2022). *Telework and teleworkability during COVID: An analysis using labour force survey data*. Working paper. Available [online](#).

²⁶ Inforegio - Ninth Report on Economic, Social and Territorial Cohesion (europa.eu). Available [online](#).

²⁷ Eurofound (2023). *The future of telework and hybrid work*. Available [online](#).

²⁸ Teleworkability and the COVID-19 crisis: a new digital divide? Available [online](#).

regulatory framework, the availability of digital infrastructure and broadband connection required for telework²⁹, collective bargaining, managerial culture and practices, workers' preferences and socio-economic status, possible teleworker 'stigma' (i.e. the fear that telework might be perceived as a lack of commitment or hinder learning and development opportunities), and gender stereotypes. Furthermore, shifting from the traditional workplace to a telework arrangement also depends on the needs of businesses to organise work efficiently, as well as their ability to re-define jobs and tasks for teleworking environments.

3. OPPORTUNITIES

3.1. The right to disconnect

The digitalisation of work and the possibility to work remotely and at any time bring many opportunities. They pave the way for more flexible working arrangements in which workers enjoy more **autonomy** over when and where they work. This, in turn, can lead to a better reconciliation of work with private and family life and an overall better **work-life balance** with all the benefits that this brings to workers' well-being and productivity. These advantages explain why many workers prefer to telework, at least part of their working time.³⁰ For employers, associated advantages may include increased productivity and the ability to attract and retain talent.

Introducing a **right to disconnect** can be a positive step for workers, especially for those who work primarily using digital tools. In particular, it can help ensure the protection of workers' **health and safety and adequate working conditions** and help them strike a better work-life balance. Businesses also stand to benefit from lower risks to workers' physical and psychosocial health, higher job satisfaction and a more performant and productive workforce.

Based on a 2022 Eurofound survey carried out among private companies, employees in companies with a right to disconnect policy report a **better work-life balance** than those in companies without such a policy: over 70% of workers in companies with a right to disconnect policy found its impact very or somewhat positive, suggesting that such a policy could make a company more attractive for workers, as could be expected.³¹ When rating the overall impact of the right to disconnect policies, three-quarters of men and 68% of women considered the impact to be either 'very' or 'somewhat' positive. The survey also shows that right to disconnect policies also come with associated benefits related to autonomy and flexibility as well as an increased likelihood to be compensated for working overtime.

The results of the survey among private businesses found that those businesses that had a right to disconnect policy in place were also more likely to have other measures aimed at limiting the number of hours worked overtime. These included checks to ensure that the workload is in line with working hours, implementing processes to ensure smooth collaboration between different teams, and training to ensure that workers can perform their work effectively.

The Commission's exploratory study on telework and the right to disconnect also illustrated existing policies in public sector organisations. Common features of right to disconnect policies in public bodies include official statements indicating that workers are not obliged to respond when being contacted outside working hours and that there should be no repercussions for not

²⁹ For example, high speed broadband is more commonly available in cities than in remote rural regions.

³⁰ Eurofound (2022). *Fifth round of the Living, working and COVID-19 e-survey Living in a new era of uncertainty*. Available [online](#).

³¹ Eurofound (2023). *Working conditions and sustainable work: Right to disconnect: Implementation and impact at company level*. Available [online](#).

responding. These policies result in, among other things, a greater respect for the worker's personal and family life and less risk of work-related stress.

3.2. Fair telework

Working away from the employer's premises may help workers to **better concentrate on work** with fewer disturbances and interruptions. Findings³² show workers may also: (i) show greater discipline in formal meetings; (ii) have an improved ability to carry out certain tasks that require particular concentration; (iii) be more productive; (iv) manage their work and rest time more effectively and flexibly; (v) have the option of working more flexible working hours; (vi) have a sense of empowerment/trust in making work-related decisions; and (vii) make savings thanks to reduced commuting and food expenses not covered by the employer.

When properly implemented, telework can benefit workers' health and safety. Increased flexibility in working time and location may lead to **improved well-being and health**. In addition, smart digital monitoring systems may, if well designed and implemented with the participation of workers, help monitor working time and certain occupational safety and health parameters remotely (such as ergonomic and well-being data) to improve the protection of workers.³³

Flexible working arrangements and teleworking, when properly designed and promoted, can also be particularly beneficial for the **reconciliation of work with care responsibilities**, which can also contribute to a more equal sharing of responsibilities within households. The possibility to work remotely with digital tools can make labour markets more inclusive, for instance, for people providing care, who are often women, for people with disabilities and for people with a minority, racial or ethnic background.

Although studies have not yet looked into the potential correlation between the rise in telework and increased labour market participation among disadvantaged groups, anecdotal evidence points in this direction. For example, remote and flexible working arrangements could enable the **integration of some groups of workers**, including people with disabilities, provided that equipment/tools needed for remote/hybrid work are adapted to their needs. Telework could also be an effective way for employers to provide 'reasonable accommodation' to certain workers with disabilities as required by EU non-discrimination law.³⁴

Creating an inclusive and diverse workforce where workers have the possibility to telework can also **benefit employers**. Research from Eurofound suggests that telework can help **improve worker performance and productivity**, which can result in win-win situations for employers and workers, as mentioned above.³⁵ Employers interviewed as part of the Commission's exploratory study on telework and the right to disconnect highlighted the positive contribution of teleworking arrangements to reducing the costs associated with maintaining office space and attracting international talent.

³² Bloom et al., 2015; CCCP, 2020; FAOS, 2020; Swedbank, 2020; Capital Media, 2021; Grossmann et al., 2021; KPMG, 2021; MPSV, 2021.

³³ EU-OSHA (2022). *Smart digital monitoring systems for occupational safety and health: uses and challenges*. Available [online](#).

³⁴ Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).

³⁵ Eurofound (2022). *The rise in telework: Impact on working conditions and regulations*. Available [online](#).

Moreover, new digital technologies offer opportunities for more **efficient monitoring** of flexible working arrangements and telework.³⁶ However, the impact of Artificial Intelligence (AI) and algorithmic checks on telework needs further research to ensure that such tools are used to benefit both employers and workers. The challenges related to the use of new technologies and monitoring and existing legislation are discussed in the following sections.

In addition, work remotely and at any time holds great potential for contributing to **territorial and socio-economic cohesion** within a country and across Member States. Not being tied to a specific workplace gives workers living in less developed regions, regions in a talent development trap or at risk of falling into one, as well as rural and remote areas, greater access to the labour market. This, in turn, could help **counter-balance demographic challenges**, such as the depopulation of rural, peripheral, outermost areas and regions affected by the industrial transition and **contribute to the development and attractiveness of such areas**.

If accompanied by a set of tailored reforms and investments to stimulate both the supply and demand of skilled workers, **teleworking possibilities could consequently contribute to territorial cohesion**.³⁷ Furthermore, as the number of teleworkers increases, we can expect to see a growth in regional and local economies and communities because teleworkers are more likely to spend their time and money closer to home.³⁸ Further research may be required to understand better the specific impact of teleworking on employers, workers and public authorities at regional and local level. Lastly, teleworking can have a positive impact on **traffic congestion and pollution** with both short- and long-term benefits for all.³⁹

4. CHALLENGES

The Commission's exploratory study on telework and the right to disconnect during and beyond the pandemic identified a number of challenges in the following areas:

1. employment and working conditions, working time and work-life balance;
2. occupational safety and health, including mental and physical health;
3. worker performance, including telework monitoring;
4. equal treatment and non-discrimination, including gender equality aspects and the impact on different groups at risk of discrimination (based on disability, age, sexual orientation, ethnicity/race and religion);
5. geographical mobility and cross-border telework.

As COVID-19 eased, the partial return to working at the employer's premises helped reduce the impact of certain challenges linked to physical and psychosocial risks, such as isolation, lack of personal contact and inadequate infrastructure. It may have also helped address organisational challenges, such as managing and motivating fully remote teams and limited access to training and information. However, there are still other challenges that are not directly linked to the frequency of teleworking and which persist in the post-pandemic 'new normal'.

³⁶ European Commission (2022). *Exploratory study on telework and the right to disconnect*. Available [online](#).

³⁷ European Commission, *Communication on Harnessing talent in Europe's regions* (COM (2023) 32 final). Available [online](#).

³⁸ European Commission. *Exploratory study on telework and the right to disconnect*. Available [online](#). (research conducted in 2022).

³⁹ International Energy Agency (2020). *Working from home can save energy and reduce emissions. But how much?* Available [online](#).

4.1. Employment and working conditions, working time and work-life balance

As already mentioned, telework has the potential to strengthen workers' **autonomy** in how they organise their working time according to their preferences and needs.⁴⁰ However, where implemented poorly, telework can increase the risk of overtime work, encroach on family life and exacerbate existing gender-based inequalities (e.g. with women carrying out more unpaid domestic work than men, when both are teleworking).⁴¹ Autonomy in balancing work and private life may sometimes require a learning curve for workers, compared to traditional work patterns at the employers' premises. It can also be undermined by organisational practices that expect workers to take work home and be available outside regular working hours. Such issues concern all telework arrangements.

Companies also have an interest in **ensuring business continuity**, legal certainty and simplicity and minimising administrative and reporting burden. Operational constraints and the need to efficiently organise work, including the need for in-person interactions among co-workers and/or with clients or suppliers, may also limit the scope for telework and its associated potential for more autonomy.

Autonomy, therefore, can also lead to a state of permanent connectivity ('always-on' work culture) or what has also been coined the '**autonomy paradox**'. A study looking into the use of email on mobile devices by knowledge professionals showed that these tools, while offering flexibility and control, also contributed to a norm of continual connectivity and accessibility. This, in turn, has intensified collective expectations of availability and led to an escalating collective engagement of workers.⁴² As a result, even though workers' mobile devices improve their ability to work remotely and at any time, these devices also make it more difficult for them to disconnect.

In addition, **work culture, work organisation and economic conditions** play a major role in working time and work-life balance. Economic conditions, job insecurity, work culture and ethics all influence workers' availability.⁴³ An 'always-on' work culture can be particularly detrimental to work-life balance, in particular for workers who need to reconcile other obligations, such as parents and other carers.

Telework can also influence other aspects of employment and working conditions, such as access to training and equipment. While remote trainings have the capacity to increase participation and reach more workers, high-intensity telework is also found to harm access to opportunities for professional training, though research on this topic is particularly scarce. Eurofound's 2015 European Working Conditions Survey⁴⁴ found that teleworkers reported greater participation in formal training than workers who were always at their employer's premises. However, regular teleworkers are less likely to be offered training than those who telework only occasionally. Whether teleworking or not, highly skilled professionals have more access to professional training opportunities than clerical workers. Such disparities can be detrimental to telework, which requires developing new skill sets to deal with higher levels of autonomy, use digital technologies and applications and manage an increasingly dispersed

⁴⁰ Available [online](#).

⁴¹ European Commission. *Exploratory study on telework and the right to disconnect*. Available [online](#).

⁴² Mazmanian, M., Orliowski, W., & Yates, J. (2016). *The autonomy paradox: the implications of mobile email devices for knowledge professionals*. *Organisation Science*, 24(5), pp. 1337-1357.

⁴³ Available [online](#).

⁴⁴ Available [online](#).

workforce. In turn, teleworkers and managers may also benefit from specific training on the benefits of telework, on managing its risks and on getting the best out of telework.

Teleworking costs and equipment are also significant factors impacting employment and working conditions. This includes providing ICT and office equipment and compensating teleworkers for possible extra costs that they may incur when working from home, such as energy use. The surveys carried out in the context of the Commission's exploratory study show that **compensating costs is one of the biggest areas that needs improvement for a large share of workers (62%) and employers (46%)**. According to the survey of workers part of the same study, 12% of respondents who did not telework cited poor conditions at home as a reason for not teleworking.

4.2. Occupational safety and health

Despite potential opportunities discussed in Section 3, occupational safety and health is one of the main areas of concern in relation to telework and the right to disconnect. Teleworking arrangements are also linked to certain psychosocial and physical health risks as shown in research from Eurofound and EU-OSHA.⁴⁵

Psychosocial risks stem from the way in which work is designed, organised and managed as well as from the economic and social situation of the work and the worker. These can result in increased levels of stress, which in turn can lead to mental and physical impairment. The main factors that can increase or reduce workers' stress are:

- job content;
- work autonomy;
- work intensity;
- working time and work-life balance;
- social environment;
- job security.

Psychosocial risks, including higher levels of anxiety and isolation, emerge in the context of the ability to work flexibly and remotely using digital tools. Results from the 2021 EWCS show that **full-time teleworkers report higher levels of anxiety (36%) than those who work remotely only partially (33%) or occasionally (31%)**.

Empirical research⁴⁶ shows that the most significant drivers causing stress and affecting health and well-being in telework settings are economic conditions that lead to intensified work (including extended availability) and isolation. These drivers align with those discussed in relation to working time and work-life balance. Research also shows growing attention to emerging risks linked to non-verbal and information overload associated with digital work environments. Moreover, workers, and amongst them managers, face pressure to adapt to new organisational practices that involve more autonomy, more work processes without real-time coordination and less face-to-face interaction. In the survey of employers conducted under the Commission's 2022 exploratory study, 24% of the respondents reported difficulties in maintaining organisational culture and workers' buy-in.

Furthermore, feelings of isolation can result from a worker's **reduced access to formal and informal communication and information exchanges at the workplace** and less social and

⁴⁵ EU-OSHA (2021). *Telework and health risks in the context of the COVID-19 pandemic: evidence from the field and policy implications*. Available [online](#); Eurofound (2020). *Telework and ICT-based mobile work: Flexible working in the digital age*. Available [online](#).

⁴⁶ EU-OSHA (2021). Available [online](#).

emotional support from supervisors and colleagues. In this regard, research findings show⁴⁷ that isolation and reduced exchanges with co-workers and supervisors can increase feelings of work overload, spur a sense of insecurity about one's role in an organisation and cause work-related stress. This is also affected by how businesses address the issue of communication and information exchanges in telework settings. Hybrid working arrangements, which have emerged as the prevailing post-pandemic telework trend, can also reduce social interaction at work because workers are not in the office at the same time. This can contribute to a sense of isolation from other colleagues working from home or at the employer's premises.⁴⁸

Physical health risks, in contrast to psychosocial risks, in the context of telework, have received less attention. Despite mixed evidence about the impact of telework on physical health, research suggests that **ergonomic risks are higher for teleworkers** than for on-site workers in similar occupations. First, working from home complicates any risk assessment or enforcement of health and safety rules either by the company or by workers' representatives.⁴⁹ Second, telework often entails working longer hours and a continued use of IT equipment.⁵⁰ During the pandemic, a substantial number of teleworkers reported that their workspace and equipment at home were inadequate. However, the results from this survey may have in part been influenced by the pandemic's specific impacts, such as the urgent shift to telework and lockdown rules, leading to overcrowding at home and difficulties in getting office equipment.⁵¹ The potential inadequacy of some home telework spaces may raise concerns when implementing occupational safety and health legislation (for example, in determining the employer's responsibility in the event of a work-related accident).

Research suggests that **the most common physical health problems resulting from telework are musculoskeletal disorders, headaches, and eyestrain**. According to the 2022 company-level survey conducted by Eurofound⁵², headaches followed by backaches and overall fatigue were among the top health issues described by respondents working remotely.

4.3. Worker performance and monitoring

Although recent studies and interviews with employers show there is a positive link between telework and performance, previous research has also highlighted the complexity of determining a causal relationship between the two. For example, empirical studies use aspects such as perceived autonomy, quality of supervisory relationships or job satisfaction as performance indicators, which may not be entirely adequate. Furthermore, risks such as work intensification and overtime can also affect performance. Workers who work from home may simply put more hours into work, either because they have more time than office-based workers

⁴⁷ Weinert, C., Maier, C., & Laumer, S. (2015). 'Why are teleworkers stressed? An empirical analysis of the causes of telework-enabled stress'. In: Thomas, O., & Teuteberg, F. (Eds.): Proceedings der 12. Internationalen Tagung Wirtschaftsinformatik (WI 2015), Osnabrück, S. pp. 1407-1421.

⁴⁸ Available [online](#).

⁴⁹ EU-OSHA (2021). *Regulating telework in a post-COVID-19 Europe*. Available [online](#); Eurofound (2022). *The rise in telework: Impact on working conditions and regulations*. Available [online](#).

⁵⁰ Telework - OSHwiki | European Agency for Safety and Health at Work (europa.eu). [Available online](#).

⁵¹ Carillo, K., Cachat-Rosset, G., Marsan, J., Saba, T., & Klarsfeld, A. (2020). *Adjusting to epidemic-induced telework: empirical insights from teleworkers in France*. European Journal of Information Systems, pp. 1-20, pp. 69-88; COVID-HAB (2020). *Confinamiento, Vivienda y Habitabilidad*. Available [online](#); Davis, K.G., Kotowski, S.E., Daniel, D., Gerding, T., Naylor, J., & Syck, M. (2020). *The home office: ergonomic lessons from the new normal*. Ergonomics in Design, 28(4), pp. 4-10.

⁵² Available [online](#).

(as they do not commute) or because they feel compelled to work harder in return for the flexibility granted by the company.⁵³

Research suggests that telework may be detrimental to individual and team performance when it leads to reduced face-to-face interaction with co-workers and supervisors and less frequent performance feedback.⁵⁴ This impact can be more pronounced for jobs with higher levels of task interdependence and that benefit from more frequent offline social interaction.

Digital technologies and work-related software, which have become even more widespread as part of telework (e.g., team messaging and project management applications, inter-personal communication programmes), provide employers with **tools to monitor workers remotely**. These differ substantially from traditional monitoring practices on which contemporary labour legislation is based.⁵⁵ Initial data collected in Spain and Germany shows that digital monitoring is already significant in the EU. Anecdotal evidence points to emerging risks associated with the increased monitoring capabilities enabled by the expansion of telework, including: (i) tracking attitudes (such as facial expressions linked to certain emotions); (ii) monitoring movement and location of vehicles or devices; (iii) observing how work is carried out and the amount of work completed (including behaviour and output); and (iv) assessing relationships and reputation (such as customer and peer ratings or social network monitoring).

Digital surveillance technologies may pose risks to **workers' right to privacy and the protection of their personal data as well as working conditions and overall well-being**. A 2022 research study⁵⁶ found that the very presence of digital monitoring systems in a work context can be associated with increased levels of stress regardless of the systems' specific characteristics. In particular, the results point to a strong link between perceptions of privacy invasion and negative or counterproductive behaviour. Nevertheless, the study finds a **positive impact of transparency in mitigating the adverse effects of digital monitoring**: individuals may have a more favourable view of monitoring systems when their organisations clearly communicate the reasons for collecting personal information and when they have some control over that information.

4.4. Equal treatment and non-discrimination

In the context of telework, equal treatment and non-discrimination entail eliminating **inequalities between teleworkers and workers at the employers' premises** as well as those based on, for example, gender, racial or ethnic origin, disability, age, and sexual orientation. It also involves addressing inequalities in accessing teleworking and other flexible working arrangements between workers in comparable occupations and/or in the same or similar sectors.

⁵³ Kelliher, C., & Anderson, D. (2010). *Doing more with less? Flexible working practices and the intensification of work*. *Human Relations*, 63(1), pp. 83-106. Available [online](#).

⁵⁴ Golden, T.D., & Gajendran, R.S. (2019). *Unpacking the role of a telecommuters' job in their performance: examining job complexity, problem solving, interdependence, and social support*. *Journal of Business and Psychology*, 34(1), pp. 55-69; Gibbs, M., Mengel, F., & Siemroth, C. (2021). *Work from home and productivity: Evidence from personnel and analytics data on IT professionals*. Becker Friedman Institute for Economics Working Paper (2021-56), University of Chicago; van der Lippe, T., & Lippényi, Z. (2019). *Co-workers working from home and individual and team performance*. *New Technology, Work and Employment*, 35(1), pp. 60-79.

⁵⁵ Ball, K. (2021), *Electronic Monitoring and Surveillance in the Workplace. Literature review and policy recommendations*. Publications Office of the European Union, Luxembourg.

⁵⁶ Ravid, D.M., White, J.C., Tomczak, D.L., Miles, A.F., & Behrend, T.S., (2022). "A meta-analysis of the effects of electronic performance monitoring on work outcomes." *Personnel Psychology*, drawing on a research meta-analysis covering more than 23 000 workers from 94 independent samples. Available [online](#).

A substantial share of both employers and workers surveyed as part of the Commission's exploratory study on telework and the right to disconnect expressed concerns on discrimination potentially arising from teleworking. **The protection of teleworkers from discriminatory treatment is also considered one of the three main areas for future improvement** by 25% of employers and 29% of workers who responded to the survey. Such discrimination, for example, between teleworkers and workers at the employer's premises, can present itself with respect to inclusion, adequate working conditions and work equipment, access to information and training. It can also be linked to gender equality aspects as explained below.

Nearly a quarter of organisations surveyed in the same study that use telework rely exclusively on **informal agreements between supervisors and workers** (23% according to the employer survey). In a similar vein, around 20% of organisations rely solely on informal agreements to implement the right to disconnect. These informal agreements can bring a lot of flexibility but can also be a potential source of unequal treatment and bias, compared with formal arrangements at company level (i.e. company policies and agreements signed with workers' representatives).

In addition, around one third of respondents who teleworked were requested to do so by their employers. These are indications that **the voluntary aspect of teleworking may sometimes be at stake**, which could discriminate between those workers who can successfully request telework and those who cannot. Discrimination can also arise between workers in occupations where most tasks are teleworkable and those which are not, thereby creating a divide in access to telework.

Gender is another major factor that drives equal treatment in teleworking. The potential benefits of telework in terms of improved work-life balance are greater for workers with care or family responsibilities, provided they have the means to engage in telework. To the extent that such responsibilities continue to fall disproportionately on women, **telework may boost women's access to employment and, in certain cases, career opportunities**, especially when also combined with other policies such as childcare.⁵⁷ Telework on its own, on the other hand, carries the risk of exacerbating existing gender inequalities in the distribution of care and household responsibilities.

Data also suggests that women who are teleworking experience greater stress in managing their work-life balance, due to housework demands and interruptions.⁵⁸ For example, EWCS data from 2021 points towards a clear gender divide in performing household tasks: 74% of women at EU-level were found to be doing daily housework and cooking, compared to 42% of men. Given these circumstances, while some stakeholders emphasise the need for maintaining flexibility, others underline that policies should not exacerbate gender inequalities. Also, the gendered assumptions around men's and women's roles in our societies mean that not only are mothers less likely to access flexible working arrangements, but they are also more likely to experience career penalties when working flexibly. This is because managers and co-workers may assume that women will prioritise housework/childcare when working from home while fathers, perceived as 'breadwinners', will prioritise work.⁵⁹

⁵⁷ OECD (2023). *Teleworking through the gender looking glass*. Available [online](#).

⁵⁸ EIGE (2022). *The COVID-19 pandemic reinforced gender inequalities as women took on more of the intensified informal care and housework demands*. Available [online](#).

⁵⁹ Chung, H. (2022). *The Flexibility Paradox. Why Flexible Working Leads to (Self-)Exploitation*, Bristol University Press. Available [online](#).

The **prevailing work culture in a business** is crucial in explaining differences in the way telework and flexible working arrangements are implemented and the subsequent impact these have on working time, work-life balance and well-being. In some businesses, where flexible working arrangements are not genuinely embraced as part of a more flexible work culture catering to workers and their work-life balance needs, teleworking can actually result in stigma, discrimination and low uptake, especially among women.⁶⁰

4.5. Geographical mobility and cross-border telework

The rise of telework during the COVID-19 pandemic crisis also increased the prevalence of cross-border teleworking. This refers to situations where workers use ICT to work while residing in a different Member State from their employer.

Cross-border telework can encompass diverse situations and arrangements. It can include occasional forms of cross-border telework (for example, due to temporary care responsibilities) to optimise holiday schedules or to work from a second residence for a limited time.

Furthermore, cross-border telework can also apply to situations where workers living in a country other than where their employer is based alternate, on a regular basis, between working at the office and home-based work in their country of residence. Lastly, it also covers the case of people who work from multiple locations. This includes ‘digital nomads’, often self-employed and/or freelance workers in an increasingly digital labour market.

Currently there is no specific legal status for workers who work remotely from a different Member State. In relation to social security, existing rules on workers pursuing activities in two or more Member States apply to teleworkers as well. This means that cross-border teleworkers’ legal status depends on the number of days spent in a country and the specific nature of their working arrangements. These factors may pose challenges to workers and employers. Member States’ public administrations may also encounter difficulties when determining employers’ and workers’ rights and obligations in terms of social security, taxes and labour law⁶¹. Lastly, cross-border telework presents several organisational challenges, including on insurance and possible responsibility for health and safety.

5. EXISTING EU LAW AND INSTRUMENTS

There is no legislation at EU level that specifically regulates telework or the right to disconnect. However, the existing EU legal and policy framework covers various aspects that are relevant to both. These include working time and conditions, work-life balance, occupational safety and health, privacy and equal treatment.

Working time and conditions

Article 31 of the **Charter of Fundamental Rights of the European Union** lays down the right to working conditions that respect the worker’s health, safety and dignity as well as the right to

⁶⁰ Williams, J., Blair-Loy, M., & Berdahl, J.L. (2013). *Cultural schemas, social class, and the flexibility stigma*. Journal of Social Issues, 69(2), 209-234. Available [online](#).

⁶¹ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security system (OJ L 166, 30.4.2004, p. 1) provides rules for workers who pursue their working activity in a Member State other than the one in which their employer is located and/or in more than one Member State. No EU-wide rules exist that regulate the taxation of workers who work in multiple countries, apart from a network of Double Taxation Treaties concluded bilaterally between Member States.

a limitation on maximum working hours, daily and weekly rest periods and an annual period of paid leave.

Principles 5, 7 and 9 of the **European Pillar of Social Rights** promote the right to fair and equal treatment regarding working conditions, the right to be informed about employment conditions and the right to work-life balance.

The **Digital Decade Policy Programme** provides a framework of enabling factors for telework, including actions and targets on digital skills, digital infrastructure and connectivity, digitalisation of businesses and public services. **The European Declaration of Digital Rights and Principles** reinforces existing rights on and outlines the signatories' commitment to, among others, connectivity, digital education, training and skills, and fair and just working conditions, including the ability to disconnect and safeguards for work-life balance.

The **Working Time Directive** (Directive 2003/88/EC) is applicable to all workers in both the public and private sectors.⁶² It lays down minimum requirements for the organisation of working time, especially on daily and weekly rest periods, paid annual leave, weekly working time and night work. For workers whose working time is not measured or predetermined, Member States can derogate from all previously mentioned rights except paid annual leave. In its extensive case law interpreting the Directive⁶³, the Court of Justice of the European Union has given specific guidance on the qualification of periods during which workers must remain available to resume their work if needed, such as 'on-call' and 'standby'. The time spent on-call must be regarded in its entirety as working time if the worker is required to be present at the workplace that is not their residence. The entire period of standby, where a worker must be reachable at all times but is not required to remain at a place determined by the employer, qualifies as working time when the constraints imposed by the employer have an objective and a very significant impact on the worker's possibility to freely manage the time during which their services are not required and thus on the possibility to pursue their personal and social interests. By contrast, where these constraints do not affect a worker's ability to pursue their own interests, only the time linked to the actual provision of services must be regarded as working time.⁶⁴ Therefore, a right to disconnect, where the worker enjoys the right not to engage in work-related activities and communication outside their working schedule, would need to be carefully considered in relation to the concepts of 'standby' and 'on-call'.

Directive (EU) 2019/1152 on **Transparent and Predictable Working Conditions**⁶⁵ provides that workers receive from their employers essential information in writing about their working conditions and sets out material rights reinforcing the predictability and stability of the employment relationship, especially for workers in flexible working environments. Some of its provisions are particularly relevant to telework and the right to disconnect, such as Article 4(2)(b) that lays down that the employer must inform the worker of their workplace or, where there is no fixed or main place of work, the principle that the worker is free to determine his/her place of work. In addition, Article 4(2)(1) stipulates that the employer must inform the employee of the length of a standard working day or week and any arrangements for overtime

⁶² Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9). Derogations apply to specific functions and activities under Articles 17-21 of that Directive.

⁶³ See also the Interpretative Communication on Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time (OJ C 165, 24.5.2017, p. 1). Available [online](#).

⁶⁴ Case C-344/19, *D.J. v Radiotelevizija Slovenija* and Case C-580/19, *R.J. v Stadt Offenbach am Main*.

⁶⁵ Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L 186, 11.7.2019, p. 105).

and its remuneration. Moreover, with regards to access to training, Article 13 of the Directive recognises that where an employer is required to provide training to workers, such training will be provided free of cost, count as working time and, where possible, take place during working hours.

Furthermore, Article 6 of that Directive also sets rules on the provision of information by the employer on any change to the employment relationship, including information related to the length of working hours, overtime and the place of work.

Occupational safety and health and access to social protection

The **Occupational Safety and Health Framework Directive** (Directive 89/391/EEC) lays down general principles for the protection of workers in both the public and private sectors⁶⁶ from occupational risks and for their prevention. It places an obligation on employers to take measures to ensure the safety and health of workers in every aspect related to the work and to adjust such measures to take into account changing circumstances (Article 6(1)) as well as adapt to technical progress (Article 6(2)). In this context, training is considered an integral part of safety and health measures in the workplace. Member States must take the necessary measures to ensure that each worker receives sufficient training appropriate to the characteristics of the job. Furthermore, Article 6(5) of the Directive indicates that measures related to safety, hygiene and health at work may in no circumstances involve the workers in financial cost. It also provides that the employer must consult workers and/or their representatives in relation to the planning and introduction of new technologies as regards equipment, working conditions and the working environment (Article 6(3)(c)). These provisions are particularly relevant to telework where ICT tools are extensively used and can significantly impact workers' health. At the same time, where teleworkers work from home, employers can face practical challenges in fulfilling their obligations in light of the right to privacy and personal/family life.

Council Directive 90/270/EEC of 29 May 1990 on the **minimum safety and health requirements for work with display screen equipment** requires employers to perform an analysis of workstations in order to evaluate the safety and health conditions to which they give rise for their workers, particularly as regards possible risks to eyesight, physical problems and problems of mental stress. Despite the potential relevance of these provisions for telework, the extent to which modern ICT tools, including tablets and mobile phones, fall within the scope of the Directive is not clear. The reason for this is that when defining display screen equipment, the Directive mentions computer screens and keyboards and a short list of other devices. However, other types of display screen equipment in current use, such as laptops, TV screens, tablets, smartphones, handheld devices and projection screens, are not mentioned in the Directive.

Council Directive 89/654/EEC of 30 November 1989 concerning the **minimum safety and health requirements for the workplace** regulates aspects such as electrical installations, emergency exits, fire detection and ventilation. However, like Directive 90/270/EEC above, the applicability of the Directive to telework is unclear as it includes a definition of workplace that appears to exclude telework.

⁶⁶ Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989, p. 1). Derogations to certain specific activities apply under Article 2(1).

Given this situation, the 2021-2027 EU strategic framework on health and safety at work, published in June 2021, has called for modernising the occupational safety and health legislative framework in the context of digitalisation, including by reviewing Directives 90/270/EEC and 89/654/EEC.

Lastly, the **Council Recommendation of 8 November 2019 on Access to Social Protection for workers and the self-employed** encourages Member States to ensure that both workers and the self-employed have access to effective and adequate social protection. It also aims at increasing transparency on social security systems and rights.

Privacy and data protection

The **General Data Protection Regulation (GDPR)**⁶⁷ provides a general framework for the protection of personal data of individuals, including in the field of employment. It is particularly relevant to telework as telework involves the use of various ICT tools and the constant use and exchange of data. Processing personal data is lawful under certain conditions, including when it is based on the data subject's informed and freely-given consent, it is necessary to comply with a legal obligation, for the purposes of legitimate interests, unless overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, or where it is necessary for the performance of a contract (Article 6). Data processing also needs to respect certain principles including that of 'data minimisation', 'purpose limitation', and 'integrity and confidentiality' of personal data (Article 5). This is particularly important for telework, where the more extensive use of ICT tools could increase the risk for potential data breaches and unauthorised processing. This can raise additional questions related to responsibility and accountability, especially where data breaches in telework compromise data for which the employer is responsible as a data controller and/or where data breaches occur while the teleworker uses their own ICT equipment.

The GDPR also lays down that data subjects must be informed of any processing of their personal data and its purpose in a concise, transparent, intelligible and easily accessible way (Articles 12-14). This would also apply in situations where an employer monitors teleworkers' activities. The Regulation also prohibits processing sensitive personal data, such as biometric data, which is used for the purpose of uniquely identifying a natural person, unless one of the stipulated exceptions apply (Article 9). The GDPR also places an obligation on employers as controllers of personal data to implement technical and organisational measures that afford a level of security to the personal data of workers appropriate to the risk (Article 32). They must also carry out a data protection impact assessment under certain conditions (Article 35). Lastly, the GDPR provides for data subject's rights, including those to access, rectification, erasure, data portability as well as the right not to be subject to a decision based solely on automated processing (Articles 15 – 22).

Equal treatment and non-discrimination

Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on **Work-life balance for parents and carers** facilitates the reconciliation of work and family life by laying down individual leave rights for parents and caregivers. It also provides for the right to request flexible work arrangements, including remote working arrangements.

⁶⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (OJ L 119, 4.5.2016, p. 1).

Employers are required to respond to such requests within a reasonable period of time and provide reasons for any refusal.

The **Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation** provides a general framework for combating discrimination in employment and occupation on the grounds of religion or belief, disability, age or sexual orientation. Of particular relevance is the obligation of employers to provide ‘reasonable accommodation’ to workers with disabilities to facilitate their equal participation in employment (Article 5). Telework and the right to disconnect could potentially constitute such accommodation measures.

The principle of equal treatment between workers in traditional forms of employment and those in non-standard ones is laid down by the three **EU directives on part-time work, fixed-term work and temporary agency work**.⁶⁸ The same principle can also be relevant to teleworkers to ensure that they have the same rights and obligations as those that normally apply to them when working from the employer’s premises or those that apply to comparable workers at the employer’s premises.

Cross-border mobility

While there is EU legislation safeguarding the freedom of movement of workers and regulating aspects of cross-border work, its application to telework can prove challenging, particularly depending on the nature, location and degree of teleworking arrangements.

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the **law applicable to contractual obligations (Rome I)** helps determine the law applicable in civil and commercial matters, including in individual employment contracts. In cases where there is no explicit choice of law, the Regulation provides that the law applicable is that of the Member State where the employee usually carries out their work (Article 8).

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on **jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Brussels I)** determines the jurisdiction over individual contracts of employment.

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the **coordination of social security systems** seeks to protect the social security rights of workers moving within the EU by setting out that they ‘shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof’ (Article 4). Article 13 is of particular relevance to cross-border telework as it sets out that where workers work in two or more Member States, they are subject to the legislation of their Member State of residence when they pursue a ‘substantial part’ of their activity there (Article 13(1)(a)). In line with Article 14(8) of implementing Regulation (Regulation (EC) No 987/2009⁶⁹), at least 25% of working time (and/or the remuneration) in a 12-month period is considered as an indicator of a ‘substantial part’.

⁶⁸ Directives 97/81/EC, 99/70/EC, and 2008/104/EC.

⁶⁹ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

As regards the interpretation of the Regulation's Articles 12, 13 and 16, which are of relevance to cross-border telework, the Administrative Commission (AC) for the Coordination of Social Security System adopted a **Guidance Note on telework**⁷⁰ applicable from 1 July 2023. However, the Guidance Note does not have a binding legal force.

In response to the growth of cross-border telework, interested Member States have concluded the **Framework Agreement** on the application of Article 16 (1) of Regulation (EC) No. 883/2004 in cases of habitual cross-border telework.⁷¹ It entered into force on 1 July 2023 and brings the usual threshold of less than 25% of telework in the Member State of residence to less than 50% of the total working time. It thus allows workers to telework more in their Member State of residence without an impact on their social security affiliation. At present, the agreement has 20 signatory countries in which it is applicable.⁷²

6. NATIONAL CONTEXT

In the absence of EU legislation on the right to disconnect and telework, several Member States have introduced measures to regulate these issues.

6.1. The right to disconnect

The right to disconnect is currently regulated in **11 Member States**⁷³, but its scope and definition vary. In Belgium, France, Italy and Luxembourg, there is no precise **definition** of the right to disconnect. In Croatia (for teleworking in the public sector) and Portugal, the right to disconnect is framed as a duty on the part of the employer not to contact workers outside working hours or during rest periods. In the other countries, the right to disconnect is broadly defined and usually refers to a right not to use the technological tools used to carry out work. However, in Greece and in Ireland, the definitions of the right to disconnect also include the right to not engage in work.

In six out of the eleven Member States⁷⁴, the right to disconnect applies only in relation to telework and related categories of work that involve the use of ICT tools and/or are carried out at a distance⁷⁵, while in the other five⁷⁶ it is recognised for **all workers**. In Belgium, Croatia, France and Greece, there is also specific legislation for public sector workers. Moreover, in Belgium (only for the public sector), Croatia, Portugal and Slovakia, the right to disconnect is subject to considerations of urgency and unforeseen circumstances.

Another difference across Member States is the **implementation** method of the right to disconnect. In most Member States⁷⁷ with legislation on this right, the most common implementation method is through collective bargaining at sectoral or company level. Where employer and worker representatives fail to reach an agreement, the right to disconnect can

⁷⁰ Available [online](#).

⁷¹ Available [online](#).

⁷² 17 Member States plus 3 EFTA countries: as of 1/7/2023 Belgium, Germany, France, Spain, Poland, The Netherlands, Austria, Czechia, Slovakia, Luxembourg, Portugal, Finland, Sweden, Croatia, Malta, Lichtenstein, Norway and Switzerland; as of 1/9/2023 Slovenia; and as of 1/1/2024 Italy.

⁷³ Belgium, Cyprus, Croatia, France, Greece, Ireland, Italy, Luxembourg, Portugal, Slovakia, and Spain.

⁷⁴ Cyprus, Greece, Italy, Luxembourg, Portugal and Slovakia.

⁷⁵ For example, in Italy, the relevant legislation applies to 'agile work', that is, work without precise time or workplace constraints, including partly outdoors without a fixed location. In Luxembourg meanwhile, the right to disconnect applies to workers using numerical tools for professional purposes.

⁷⁶ Belgium, Croatia, France, Ireland and Spain.

⁷⁷ Belgium, Cyprus, Greece, France, Ireland, Luxembourg, and Spain.

take the form of a company policy or charter, as is the case in Belgium and France, or is determined by the employer and communicated to workers, as is the case in Cyprus and Greece.

Enforcement actions, including sanctions, are in place in Cyprus, Greece, France, Luxembourg, Portugal, Slovakia, and Spain. These can vary from the creation of a special division within the labour inspectorate, as is the case in Greece, to monetary fines of up to EUR 25 000 in Luxembourg.

6.2. Telework⁷⁸

Telework is regulated in all Member States by way of statutory legislation⁷⁹ or by way of collective agreements⁸⁰. Certain aspects of telework are also dealt with through general labour law and various other legislation on working time, health and safety and data protection.

The most **common parts** covered by most national statutory definitions of telework include the fact that telework is understood as a ‘work arrangement’ rather than a ‘labour contract’. It involves the use of ICT and can be carried out in several alternative workplaces in addition to the employer’s premises. This, therefore, by definition, restricts the scope of teleworkable jobs.

Telework is usually based on an **agreement between the employer and the worker** and is set up through the employment contract or in a written agreement. In addition, in some Member States⁸¹, legislation clearly states that telework does not change or affect the employment status as is also provided for in the 2002 Framework Agreement on Telework. It is for this reason that national legislation on telework also guarantees the **equal treatment** of teleworkers and workers who always work at the employers’ premises.

Some of the most common elements addressed by national telework legislation are described below.

- *The right to request telework – the ‘voluntary’ principle*

Under the 2002 EU Framework Agreement on Telework, telework is **voluntary** and ‘may be required as part of a worker’s initial job description or it may be engaged in as a voluntary arrangement subsequently’. Furthermore, the decision to move to telework is **reversible**.

In most countries with statutory legislation, workers are entitled to request telework in line with the voluntary principle. However, the application of this principle differs across Member States.

For example, in some countries a **request** to telework often has to be made in specific pre-defined cases. This can be for health or care purposes in Croatia, a documented risk to the worker’s health in Cyprus and Greece, or after having worked for an employer for a fixed period of time, as is the case in Ireland.

⁷⁸ This section is based on the following sources: Eurofound (2022). *Telework in the EU: Regulatory frameworks and recent updates*. Available [online](#); EU-OSHA (2023). *Regulating telework in a post-COVID-19 Europe: recent developments*. Available [online](#); European Commission. *Exploratory study on telework and the right to disconnect*. Available [online](#). (research conducted in 2022).

⁷⁹ Austria, Belgium, Bulgaria, Cyprus, Czechia, Spain, Estonia, Germany, France, Greece, Hungary, Croatia, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, The Netherlands, Poland, Portugal, Romania, Slovenia and Slovakia.

⁸⁰ Denmark, Finland, and Sweden.

⁸¹ Belgium, Bulgaria, Cyprus, Greece, Croatia, Italy, Lithuania, Luxembourg, Malta, Portugal, and Sweden.

Moreover, while employers are not obliged to grant the request to telework, they are usually requested to justify any refusal of such request. National legislation also determines the number of days by which the employer must provide a response, and this can vary from 10 days in Greece to four weeks in Ireland.

Lastly, the **reversibility** of a request to telework is acknowledged in many Member States, including Austria, Belgium, Cyprus, Greece, Ireland, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia and Spain.

- ***Organisation and recording of working time***

In most countries, legislation provides that the general regulatory framework on **working time** applies to teleworkers. This is also the case in the Nordic countries⁸² where there are no statutory definitions of telework and the general occupational safety and health and working time legislation applies.

However, in some Member States, legislation gives teleworkers some **control over the organisation of working time**.⁸³ For example, in Bulgaria and Italy, teleworkers enjoy some autonomy in organising their break and rest periods, and in Romania, workers can request individual work schedules.

Moreover, in some Member States, legislation clearly sets out the obligation of employers to **record the working time** of their workers and the process for doing so, including for telework. For example, in Greece, employers must provide and operate an electronic system for measuring the working time of teleworkers.⁸⁴ The law also provides for measuring working time by means of a digital card.

Lastly, some Member States have been introducing a right for workers and/or teleworkers to disconnect in an effort to protect their health and work-life balance (national legislation on the right to disconnect has been analysed in Section 6.1).

- ***Occupational safety and health***

Teleworkers are covered by the general legal framework on occupational safety and health although in seven Member States⁸⁵ specific rules on telework and occupational safety and health have been introduced. These can vary considerably in subject and scope and usually cover aspects such as risk assessment, accident insurance and communication on health risks inherent in telework, such as musculoskeletal disorders, eye strain and psychosocial risks.

The general obligation on employers to perform risk assessments can be quite challenging for telework as it risks interfering with teleworkers' right to privacy. That is why in many countries, teleworkers need to agree before the employer can enter the premises of teleworkers for health inspection/monitoring purposes.⁸⁶

⁸² Finland, Sweden, and Norway.

⁸³ Czechia, Croatia, Italy, Lithuania, The Netherlands, Romania, Slovakia, and Spain.

⁸⁴ Law No 4808/2021 (Article 74).

⁸⁵ Austria, Croatia, Greece, Estonia, Poland, Portugal, and Spain.

⁸⁶ Spain, Croatia, Portugal, Denmark, and Sweden.

- *Equipment and compensation for the costs of teleworking*

In most Member States, **employers are responsible** for providing, installing and maintaining the equipment that is necessary to telework and/or to cover workers' telework expenses. The **costs** that are compensated usually include those related to ICT equipment and in some cases, can also include communication and energy costs. For example, in Poland, employers are obliged to reimburse electricity and telecommunication costs, such as for the internet.

Rules on **compensation** can be set out in detail in statutory legislation or by way of collective agreements, or they are agreed between the worker and the employer in written agreements.

- *Privacy and monitoring performance*

While the issue of monitoring workers and their performance is usually regulated through data protection legislation, some Member States have introduced specific legislation for telework. In Cyprus, for example, recent legislation allows employers to evaluate teleworkers' performance within the constraints of data protection but forbids monitoring workers using cameras or similar technologies.⁸⁷

7. EU ADDED VALUE AND POTENTIAL AREAS OF EU ACTION

The challenges outlined in this document affect all Member States and most economic sectors.

The diversity of rules at national level can lead to diverging working conditions and protection of workers' health and safety across Member States. Any EU action would therefore seek to level the playing field and reduce the current fragmented landscape of rules at national level for the benefit of workers and employers alike.

The Commission takes the view that an EU initiative that further protects workers' health and safety, including their work-life balance, by introducing a right to disconnect and ensuring adequate working conditions in a teleworking environment, could be appropriate given the issues set out in this document.

EU action in this area, which could be applicable to all or some sectors of activity, could support the implementation of the principles included in the European Pillar of Social Rights. The following potential areas of action could be considered:

- **Establishing the right to disconnect**

Action at EU level could aim to protect the work-life balance of workers. EU action in this area could ensure that, in general, workers are not obliged to engage in work-related activities outside their work schedule, with due consideration for the concepts of 'on-call', 'standby' as used by the CJEU in interpreting the definition of 'working time', and for specific working arrangements. It could also consider exceptional and unexpected circumstances. It could also ensure that workers are not subjected to any negative or discriminatory treatment for exercising their right to disconnect and require employers to take appropriate measures to ensure that workers can exercise such a right.

⁸⁷ Article 8 of Law: 'The 2023 Regulation of the Framework for the Organisation of Telework'.

- **Ensuring decent employment and working conditions for teleworkers**

An EU initiative on telework could lay down minimum requirements that cover various aspects of work carried out at a location other than the employer's premises using mainly ICT tools.

Any EU initiative covering these aspects could aim to ensure that teleworkers are not subject to any less favourable treatment concerning employment and working conditions when requesting and taking on telework. EU action could also affirm that telework could be requested by either the worker or employer without affecting the worker's employment status. Furthermore, they could outline certain rules on the arrangements for and transparency of monitoring teleworkers' performance. In addition, they could also ensure that teleworkers are provided with adequate equipment and that the possible net costs of working from home are compensated.

- **Protecting teleworkers' health and safety at work**

An EU initiative on telework and the right to disconnect would need to be in line with the existing EU social acquis, including EU occupational safety and health legislation, in line with Directive 89/391/EEC and related directives, and Directive 2003/88/EC on the organisation of working time. Action at EU level could ensure that the specific health risks linked to teleworking, including psychosocial, ergonomic and physical health risks, are properly assessed in cooperation with workers' representatives, and ensure that appropriate measures to prevent and address these risks are introduced and communicated to workers. An EU initiative will be considered in the context of the ongoing revision of the Workplaces and the Display Screen Equipment Directives.

- **Addressing collective information and consultation rights**

An EU initiative on telework could aim to ensure that teleworkers enjoy the same collective information and consultation rights as they would if working from the employer's premises and as comparable workers do. Employers could be required to inform and consult workers' representatives and, in their absence, workers themselves on any changes to the organisation of work.

- **Providing information to workers**

An EU initiative on telework could ensure that employers provide teleworkers with information about the teleworking arrangements. This could include information on the procedures for requesting and implementing telework, coverage and/or reimbursement of possible net costs of working from home, the provision of equipment, and the duration/organisation of work, including the right to disconnect.

- **Promoting the role of social partners**

An EU initiative could ensure that social dialogue and collective bargaining are promoted to ensure that social partners are effectively involved in implementing any EU action on telework and the right to disconnect.

- **Ensuring enforcement**

An EU initiative in this area could ensure the right of workers to effective and impartial dispute resolution as well as protection from unjustified dismissal or adverse treatment purely on the grounds of workers exercising their rights as provided for by EU action.

Any such EU initiative would not affect the role of national data protection supervisory authorities in supervising, monitoring, and enforcing compliance with EU and national legislation on data protection in the context of telework. An EU initiative would also take into account the impact on job creation and competitiveness, particularly on small and micro enterprises.

7.1. Possible instruments

A range of EU instruments could be considered in preparing a possible EU initiative on telework and the right to disconnect. Such an initiative would fulfil the Commission's commitment to follow-up on the European Parliament's 2021 resolution under Article 225 TFEU on the right to disconnect with a legislative act.

Non-binding instruments could include a communication or a recommendation and be supported by, for example, implementation guidance on existing EU legislation related to telework and the right to disconnect.

A binding legislative instrument could take the form of a directive based on Article 153 TFEU.

This should be in full respect of the proportionality, subsidiarity and better law-making principles. While setting minimum requirements to address the issues at stake, a legislative initiative would need to take into account the wide diversity of national circumstances and sectors. It should also take into account EU and national social dialogue, as well as the need to respect the subsidiarity and proportionality principles and the obligation to establish minimum requirements for gradual implementation and avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings, as per Article 153(2)(b) TFEU.

Finally, a package combining several of these instruments could also be considered. This would take into account the scope of the initiative, the wide variety of existing national legislation and practices, social partners' agreements, and the need to respect the principles of subsidiarity and proportionality and the legal boundaries of the Treaty.

8. AIM OF THE CONSULTATION

Under Article 154(2) TFEU, before submitting proposals in the social policy field, the Commission must consult management and labour on the possible direction of potential EU action.

The Commission will examine the views expressed by the social partners. If, having considered those views, the Commission concludes that there is a need for legislative action at EU level under Article 153 TFEU, it will launch a second-stage consultation of the social partners on the envisaged content of any proposal for action in accordance with Article 154(3) TFEU. It will also provide an analytical document on the consequences of the current situation and the likely impact of potential EU action.

The questions on which the Commission would be grateful for the social partners' views at this first stage are set out below.

- I. Do you consider that the Commission has correctly and sufficiently identified the opportunities and challenges related to telework and the right to disconnect?

If not, what challenges or opportunities have been incorrectly or insufficiently identified, or what other challenges and opportunities could be considered?

- II. Do you consider that EU action is needed to address any of the identified issues?

If so, what should be the direction of that action?

What should be the precise scope of that action (namely, should it cover telework, the right to disconnect, or both; and should it address all identified aspects of those topics, or only certain subsets thereof)?

- III. Do the potential areas for EU action set out in Section 7 of this document present a comprehensive overview of the action needed?

If not, what actions should not be pursued, or what other action could be considered?