



# Study exploring the social, economic and legal context and trends of telework and the right to disconnect, in the context of digitalisation and the future of work, during and beyond the COVID-19 pandemic

VT/2021/030

*under the multiple framework contracts EMPL/2020/OP/0016*

Executive Summary

May – 2023

VISIONARY  
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**EUROPEAN COMMISSION**

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## **Executive Summary**

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We would like to thank Heejung Chung and Yvonne Lott for valuable comments and advice. The study team is grateful to national experts for data collection and comments: L. Antoniou, Z. Bankó, J. Bednorz, P. Bejaković, N. Boavida, A. Borg, V. Czesana, I. Daminov, R. Dimitriu, D. Drabble, F. Hendrickx, I. Kadarik, V. Koniaris, I. Lichner, B. Lužar, I. Neykov, I. Reinholde, Z. Šimová, M. Štefanik, F. Turlan, P. Vroonhof, and experts from Oxford Research.

Manuscript completed in December 2022.

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Luxembourg: Publications Office of the European Union, 2024

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PDF ISBN 978-92-68-13423-8 doi:10.2767/265683 KE-02-24-314-EN-N

# 1. Introduction

This study aims to provide evidence and analysis on the social, economic and legal context and trends of telework and the right to disconnect. The specific objectives of this study are to:

1. **assess the current state of play** by providing an analysis of the trends, challenges and opportunities presented by telework and the right to disconnect;
2. **provide an overview and analysis** of the relevant EU acquis, national legislation, and social partner agreements;
3. **identify likely future scenarios** for the evolution of telework, as well as assessing the economic, social and environmental implications of different levels of telework; and
4. **provide conclusions and recommendations** for policy development and future research.

Thematically, the study covers telework and the right to disconnect. This study defines **telework**<sup>1</sup> as:

*a form of work organisation in which work that could also be performed at the employer's premises is carried out away from the employer's premises by using ICT.*

This definition of telework excludes work that is performed away from the employer's premises when this is a requirement of the work (e.g. work at clients' premises or in beneficiaries' homes), but includes mandatory telework carried out by workers who, due to the pandemic crisis, temporarily could not perform their work at their employer's premises.

The **right to disconnect** is defined in line with the 2021 Resolution of the European Parliament<sup>2</sup>, which refers to:

*workers' right not to engage in work-related activities or communications outside working time, by means of digital tools, such as phone calls, e-mails, or other messages.*

The overall purpose of the right to disconnect is to ensure the protection of workers' health and safety and to support fair working conditions, including work-life balance.

The evidence base and the overall findings of this study rely on the following sources and methods:

- Desk research, focusing on academic and policy studies in the field;
- Analysis of micro-data from the EU Labour Force Survey (EU-LFS);
- A survey of employees (11,010 respondents) and employers (2,260 responses);
- Interviews with national stakeholders from all EU Member States, as well as experts (96 interviews in total);

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<sup>1</sup> This definition of telework is based on the legal definition established in the Framework Agreement on Telework signed by EU-level social partners in 2002. This Agreement adds that telework is carried out 'regularly'. However, given the expansion of occasional teleworking, this study has adopted a more comprehensive definition that leaves open the intensity and pattern of telework.

<sup>2</sup> P9\_TA(2021)0021, European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL))

- 10 case studies on notable organisational practices relating to telework and/or the right to disconnect;
- A Delphi survey and econometric modelling on the likely future trends in telework;
- Three deep-dive studies focusing on cross-border telework, equality and non-discrimination, and privacy and surveillance; and
- Four workshops involving stakeholders and experts.

All primary data collection (surveys, interviews, desk research) was carried out in 2022. Analysis of the EU Labour Force Survey micro-data covered 2020 (the most recent data at the time of writing) and previous years.

## 2. Telework and the right to disconnect: current state of play

According to Eurostat, the share of employees working from home in the EU-27 has almost doubled between 2019 and 2021, from 11.1% to 21.9%. Nevertheless, wide variation between countries persists.

Prior to the pandemic, telework was mostly concentrated among highly skilled professionals and managers, as an occasional work pattern. Telework and flexible working time arrangements were mainly used by organisations to enhance (or reward) the individual performance of a small number of high-status workers.

During the pandemic, a significantly wider range of employers and employees experienced some of the benefits of working from home, while some of employers' worst fears, such as declining productivity and absenteeism, did not materialise. Future growth in the prevalence of telework is likely to provide multiple benefits for employers and employees alike:

- For **employers**, growth in the prevalence of telework in the future is likely to facilitate staff retention, promote cost savings, foster workplace innovation and digitalisation, and enable employers to hire talent worldwide;
- A growing share of teleworking **employees** are also likely to experience multiple benefits. These include cost and time savings due to reduced number of commutes (although these may be offset to a certain extent by higher utility bills due to working from home); better work-life balance; and lower barriers to access to employment and career opportunities (particularly among disadvantaged groups), including reasonable accommodation for persons with disabilities; and
- Continued growth in telework is likely to support the economic development of **non-metropolitan areas** and lead to higher levels of employment, with positive impacts for both employers and employees.

Hence – somewhat unsurprisingly, and in line with other studies – the surveys carried out for this 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.

To achieve the broad range of potential benefits that telework could offer to both employers and employees, however, certain potential drawbacks must be addressed.

This study has identified and analysed the main challenges in relation to telework and the right to disconnect in five fields:

- **Adequate employment and working conditions, including working time and work-life balance.** In particular, teleworkers may face the risk of an intensification of work, overtime, extended availability and work-life conflict (a blurring of the boundaries between work and private life, etc.). These risks are especially relevant to teleworkers, but also to other workers who receive work-related requests outside of working hours;
- **Occupational safety and health, including mental and physical health.** Teleworkers may face isolation, as well as new psychosocial risks (non-verbal and information overload) linked to the intensive use of virtual communication tools. Furthermore, they can be more exposed to ergonomic risks because employers, workers' representatives and labour inspectorates face difficulties in implementing risk assessments of home workstations and enforcing compliance with OSH requirements;
- **Management and performance.** Employers face difficulties in ensuring the transmission of tacit knowledge and corporate values, which hinders workers' engagement and team innovation. Hybrid work organisation contexts entail new challenges – notably for line managers, in terms of ensuring effective team coordination and knowledge transfer. Furthermore, digital systems based on behavioural control (such as the tracking of time spent on specific tasks) are ineffective in improving teleworkers' performance. In addition, there are increasing concerns regarding the transparency of digital control systems, as well as workers' privacy and the protection of personal data;
- **Equal treatment and non-discrimination.** There is a risk of gender and social bias, e.g. due to flexible working stigma, where employees, often women, who take advantage of flexible working arrangements are regarded as under-performing. This may limit the provision and uptake of telework and flexible time arrangements. This hinders employment and career opportunities (especially for disadvantaged groups);
- **Geographical mobility, with a focus on cross-border telework.** In particular, cross-border teleworkers and their employers face a lack of legal certainty and high administrative burdens in complying with the tax and social security systems applicable in different Member States. Such administrative burdens limit employers' opportunities to attract and hire foreign talent, and can lead to unequal treatment for some groups of workers when making requests for telework (e.g. employees who work in a neighbouring country, due to potential compliance and administrative difficulties linked to cross-border telework).

### 3. Legal and policy context

#### EU acquis

There is no single EU legal act specifically dedicated to telework or the right to disconnect. Nevertheless, the body of EU labour *acquis* applies to all workers, including teleworkers. Hence, the legal analysis focused on the extent to which the existing *acquis* is relevant and effective in addressing specific challenges and opportunities of telework.

The evaluation found that the existing *acquis* is relevant in addressing key challenges faced by teleworkers, particularly what concerns work-life balance, occupational safety and health, privacy, non-discrimination, and the coordination of social security systems for cross-border teleworkers.

The legal analysis found that uncertainties can emerge when applying the relevant EU *acquis* to specific cases pertaining to telework and the right to disconnect. In particular:

- While the Work-Life Balance Directive (EU 2019/1158) aims at facilitating the reconciliation of work and family life for workers who are parents or caregivers by encouraging, among others, flexible working arrangements, it is unclear whether it provides an enforceable legal entitlement to telework.
- With regard to its relevance to the right to disconnect, when applying the Working Time Directive (2003/88/EC):
  - there is some uncertainty whether standby responsibilities should be treated as 'working time' or 'rest time'
  - proper measures to guarantee the recording of working time, which could be essential to resolving disputes regarding the implementation of working and rest time obligations, should be implemented by Member States (however, they can derogate from Articles 3-6 on some conditions)<sup>3</sup>.
- The OSH Framework Directive (Directive 89/391/EEC) covers telework, but it can be challenging to protect workers' safety and health in the context of increased dematerialisation of the workplace and rapid changes in technology. This will be addressed by the ongoing review of the Directive on the minimum safety and health requirements for the workplace (Council Directive 89/654/EEC) and the Directive on work with display screen equipment (Council Directive 90/270/EEC).
- The continuing evolution of technologies entails challenges to the protection of privacy and personal data. This may be due to the difficulties experienced by employees and employers in understanding when personal data is being processed (and when it is not), and thereby ensuring the transparency of digital monitoring/surveillance systems in line with transparency obligations under the GDPR.
- Some cross-border teleworkers may face administrative burdens in complying with the tax and social security legislation, as well as the relevant labour laws, applicable in different Member States, because the existing rules were laid down when telework was less common and usually much more limited in terms of working time. This issue is being addressed for the social security aspects by the Administrative Commission for the Coordination of Social Security Systems.

## Social partners' agreements at EU level

Over the last two decades, EU-level social partners have reached several agreements on issues relevant to digitalisation and teleworking. In July 2002, the social partners adopted the Framework Agreement on Telework. In 2004, EU social partners signed a framework agreement focusing on work-related stress. Both agreements address issues that remain

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<sup>3</sup> [Judgment of the Court](#), 14 May 2019, C-55/18, *Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank*, paragraph 63.



relevant today, including employment conditions, occupational safety and health, and the protection of teleworkers' personal data. These agreements were implemented in line with the procedure outlined in Article 155 of the TFEU. The 2002 agreement has contributed to collective agreements and/or legislation in 15 Member States. Nevertheless, differences in implementation procedures and existing legal frameworks at national level, as well as differences over the role of social dialogue in policymaking, have resulted in the uneven uptake of the framework agreement.

In 2020, EU social partners adopted a Framework Agreement on Digitalisation, which addressed emerging issues that are relevant to telework. In June 2022, the European social partners signed a joint work programme for 2022-2024, which includes negotiations on the review and update of the 2002 telework agreement, with a view to legally binding measures to regulate telework and the right to disconnect. At the time of the completion of this study, the negotiations by EU cross-industry social partners were still ongoing, but have since ended with no agreement having been reached.<sup>4</sup>

## Legal and policy frameworks at national level

By the time of the conclusion of this research in 2022, the nature and extent of national-level regulations on **telework** vary widely across EU-27 Member States, influenced by differing traditions and practices in industrial relations. In relation to this, three groups of countries have been identified in this report:

- Countries with specific statutory legislation:
  - (Austria, , Spain, , Greece, Latvia, Portugal, Romania, and Slovakia adopted new legislation since the beginning of the pandemic;
  - Belgium, Bulgaria, Czechia, Estonia, Germany, France, Hungary, Croatia, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland and Slovenia already had legislation in place prior to the pandemic.
- Countries in which telework is mainly regulated through collective bargaining (Denmark, Finland and Sweden); and
- Countries with hardly any regulation: Cyprus and Ireland (until 2021-2022).

Differences also exist between countries with regard to aspects of the content of telework regulation such as:

- **The definition of telework:** in one group of countries, regulation only covers regular telework (Austria, Germany, Spain, Croatia, Lithuania, Latvia, Malta, the Netherlands, Poland, Romania and Slovakia). In a second group of countries (Bulgaria, Czechia, Estonia, France, Greece, Hungary, Luxembourg, Portugal and Slovenia), statutory definitions cover both regular and occasional telework arrangements. Some countries also differentiate between regular and occasional telework, providing different regulation for each (Belgium, Italy). Changes and updates to the way statutory definitions define the intensity and patterns of telework have been developed in several

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<sup>4</sup> After signing the 2022-2024 joint work programme, cross-industry social partners began negotiations to update the 2002 telework agreement 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. Social partners thus acted autonomously and reached a provisional agreement on a text, which in the end, however, they did not endorse. On 17 November 2023, the negotiating cross-industry social partners informed the Commission that they could not reach an agreement. They also informed that they considered that the file was back in the hands of the Commission.

countries since 2020, which have employed different approaches. In some countries (e.g. Portugal), the requirement of regularity has been removed, while in others it has been defined more precisely (e.g. Slovakia, Spain).

- **Access to telework:** in most Member States, regulatory approaches are exclusively based on the voluntary principle recognised in the 2002 EU Framework Agreement. A growing number of countries have also regulated the right to request telework or, more generally, flexible working arrangements, in line with the Work-Life Balance Directive (Croatia, France, Finland, Greece, Ireland, Lithuania, the Netherlands, Portugal).
- **Working time:** in most Member States, the working time of teleworkers is regulated by the same general working-time regulation that applies to all workers. In other countries, legislation establishes that teleworkers can organise their working time for themselves, in line with Article 9 of the 2002 EU Framework Agreement on Telework (Czechia; Italy [only for agile/smart work]; Lithuania; the Netherlands; Romania; Slovakia [modified in 2021]; and Spain [modified in 2020]).
- **Occupational Safety and Health:** a few countries have put in place specific regulations that require a risk assessment as a precondition for teleworking (e.g. Belgium, Croatia [only in the case of regular telework], Germany, Greece, the Netherlands and Spain). In relation to the psychosocial risks of telework, most common provisions tend to focus on preventing the risks associated with isolation. With regard to enforcement procedures, legislation in most Member States does not entitle the company, employee representatives or enforcement agencies to inspect teleworkers' home workstations. In certain countries (e.g. Belgium, Bulgaria, Croatia and Portugal), inspection of teleworkers' home workstations is permitted, subject to certain limitations.

In relation to the **right to disconnect**, working time regulation in all EU countries guarantees workers the right to compulsory rest outside of their working hours. Moreover, several EU countries have also developed regulations on the recording of working time that support enforcement of and compliance with working time regulations (e.g. Spain, Greece). Specific legislation on the right to disconnect has been passed in Belgium, Croatia, France, Greece, Ireland (Code of Practices), Italy, Portugal, Slovakia and Spain, via different provisions.

The legislation on the right to disconnect also varies widely in terms of:

- **Legal coverage:** in one group of countries, the right to disconnect is provided by law only in relation to telework or related categories (Greece, Italy and Slovakia). In a second group of countries, the right to disconnect does not apply exclusively to teleworkers (Belgium, Croatia, France, Ireland, Portugal and Spain).
- **Approach to implementation:** legislation in various Member States adopts different approaches to implementing the right to disconnect: through collective bargaining (Spain and France), individual agreements (Italy), or company policies (Belgium, Ireland). In several countries (Croatia, Greece, Portugal and Slovakia), legislation does not establish specific procedures for implementing the right to disconnect.
- **Enforcement:** in Spain, Greece and Portugal, national regulation includes sanctions or new enforcement actions that aim to improve compliance with the right to disconnect.

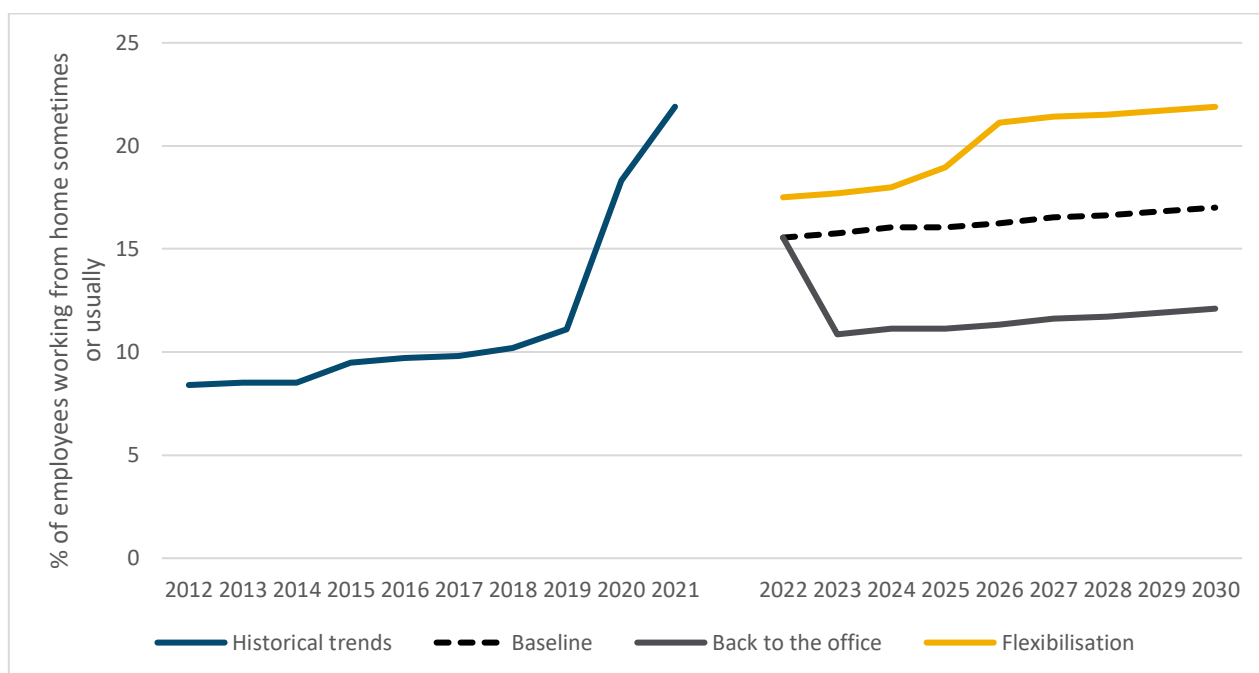
## 4. Likely future scenarios

This study has developed three scenarios to estimate likely (at the moment of drafting) future paths for the evolution of telework in the short term (2022-23), as well as in the medium and long term (distributed during the period from 2022 up to 2030):

- The **baseline** scenario assumes that in the short term, the prevalence of telework would decline from its pandemic highs, as some employers enforce back-to-the-office mandates. However, rates of telework will remain above pre-pandemic levels, and in the medium term, the share of employees working from home will increase again: employers and employees alike learn to appreciate the benefits and deal with the challenges of teleworking during the pandemic. In the long term, further growth in telework will be driven by the changing structures of the EU Member States' economies.
- The **'back-to-the-office'** scenario assumes a significant drop in teleworking due to the possible period of stagflation combined with strict back-to-the-office policies being enforced by employers. In the medium and long term, further growth in the share of employees working from home will be constrained by entrenched management practices, flexibility stigma and perceived negative career outcomes.
- The **'flexibilisation – work from anywhere, anytime'** scenario projects significantly faster growth in the prevalence of telework. This is due to the increasingly widespread adoption of digital technologies and business models, as well as the demise of the office as the main place of everyday work.

Figure 1 provides forecasts for each scenario. The stakeholders and experts consulted consider the 'baseline' and 'flexibilisation' scenarios to be the most likely. However, there is a widely shared consensus that, irrespective of which scenario ultimately transpires, telework is here to stay.

**Figure 1. Share of employees working from home: comparison of three scenarios**



Historically, significant differences have existed between Member States with regard to the shares of employees working from home. Although the prevalence of telework is likely to grow in all EU Member States, these differences are likely to remain, due to country-specific path dependencies that are closely related to the structure of their respective economies, the teleworkability of jobs, work organisation practices, the preferences of employees and employers, as well as other factors.

## 5. Conclusions

Based on the key findings, briefly presented above, the study conclusions are structured around three main themes: likely future prevalence of telework, expected benefits for employers as well as employees, and challenges to be addressed, so as to make full use of the opportunities offered by telework. Specifically, the main conclusions of the study are as follows:

1. Telework is here to stay, irrespective of which scenario eventually unfolds. Our projections suggest that in 2030, we can expect between 12% and 22% of employees in the EU-27 to be working from home sometimes or usually, with a baseline estimate of 17%.
2. Future growth in the prevalence of telework could lead to cost savings, as well as supporting workplace innovation and digitalisation, higher levels of employment (including of disadvantaged groups), better work-life balance and increased workplace inclusiveness.
3. There is a need to ensure work-life balance in the context of telework and mitigate the risks of flexible working time arrangements by preventing overtime and work requests outside of working time. It is important to protect workers against the risks of permanent connectivity and long working hours by ensuring the right to rest for all workers.
4. There is a need to better assess the specific psychosocial and physical risks faced by teleworkers, and to implement more effective prevention measures. OSH measures should be oriented to prevent work intensification, isolation, overtime, emerging risks linked to digital communication and ergonomic risks.
5. There is a need to adapt management approaches aimed at assessing worker performance, taking into consideration data protection, privacy, and the use of control, surveillance and monitoring performance systems. While the necessary legal safeguards for data protection and right to privacy are in place, transparency is key when implementing digital monitoring systems at the workplaces.
6. All types of gender and social bias should be avoided in the implementation of telework and flexible work arrangements, including access to such work arrangements in an objective, transparent and non-discriminatory manner and with regard to future career prospects and promoting work-life balance. This could allow to take full advantage of the potential of telework to enhance inclusiveness of workplaces, while avoiding the risk of reinforcing existing social inequalities.
7. Geographical mobility should be facilitated, with a focus on cross-border telework. In particular, there is a need for a long-term, coordinated solution at EU level aimed at reducing the administrative burdens of dealing with the tax and social security systems applicable in different Member States.

While telework has gained prominence over the past years in policy and academic circles, it remains under-researched. To fill the existing data and knowledge gaps, the study has identified a number of recommendations for future research needs. In particular, there is a need for:

- further assessment on the intensity of telework, in relation to work at the employer's premises;
- more extensive research on the extent of 'always-on' culture;
- further analysis of the impacts of telework on energy use and climate, such as traffic congestion, emissions and pollution;
- better understanding of the impact of teleworking on inequalities in the labour market;
- further research on the impacts of telework on care and the division of labour within households;
- better understanding of the impacts of telework on geographical inequalities and communities, including its influence on the regeneration of rural or disconnected regions and districts;
- research on the various regulatory approaches to telework and the right to disconnect at meso and micro level, and their impact on adequate working conditions.

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