

The EU Telecom Social Partners' Guidelines on Remote Work

PREAMBLE

Being at the forefront of technological change, the European Social Partners in the telecom sector are aware of the profound transformation, the opportunities, and the challenges that new technologies entail when applied to the workplace. Therefore, they have been addressing technological change and its impact on work organisation for a considerable time. Since 1998, the Joint Committee on Telecommunications issued an opinion on telework that covered many of the areas discussed today in the context of remote work. Over the past two decades, the world of work has rapidly changed due to digitisation and technological innovation. The telecom social partners have continued to respond to this with the Guidelines for Telework in Europe (2001), the Joint Declaration on Future ICT Skills Needs (2014), the Joint Declaration on Telework (2016), the Joint Declaration on ICT-based Mobile Work (2017) and the Joint Declaration on Artificial Intelligence (2020).

Accordingly, remote work is far from being a new topic for the European Social Partners in the telecom sector. However, the massive uptake of remote work during the Covid-19 pandemic since early 2020 has sped up the remote working trend rapidly and longer-term demands for more remote or hybrid work post-pandemic are likely to increase. In this context, the Social Partners want to provide more specific and updated guidance on the implementation of remote work arrangements in order to reflect recent societal and technological developments.

This Joint Declaration further develops the Telecom Social Partners' aims at providing recommendations on how remote working arrangements can be established to the benefit of both employers and employees. It is essential to find a balance between the shared request for more flexibility, that can ensure a better work-life management and increase productivity, as well as the safeguarding of working conditions, worker protection, trade union, digital and labour rights.

The social partners agree that regular presence at the workplace is beneficial and important for positive engagement with the organisation and colleagues. As demonstrated, during the covid 19 pandemic, regular social contact is fundamental for enhanced mental health and wellbeing.

I. DEFINITION OF REMOTE WORK

Remote work can take many different hybrid forms, as part of the future world of work that allow for a combination of work at the employer's premises and outside the regular workplace. Though many workers have returned to work at the office, remote work will remain an option for work organisation in the long term.

The Social Partners understand remote work to be a form of work organisation that allows workers to perform work during their agreed working hours at a location agreed by the employer and the worker or chosen by the worker outside of the normal worksite/office. Remote work is carried out using primarily ICT devices and equipment provided by the employer and respecting all the necessary health, safety and security requirements.

II. SOCIAL DIALOGUE, COLLECTIVE BARGAINING & COLLECTIVE TRADE UNION RIGHTS

Remote work should not lead to any significant changes in the terms and conditions of employment beyond those governing the remote workspace and use of equipment. Remote working rules should be considered as a subject of collective employee involvement, including collective bargaining. Freedom of association and workers' collective rights, including social dialogue and collective bargaining, should be guaranteed also in a remote work context.

To allow for fair representation and ensure that trade unions can maintain effective contact and organise remote employees just as they would those in a physical workplace, employers should provide them with access to the remote workforce mirroring the rules and regulations that govern such access in the physical workplace. Tools put to the disposal of trade unions and employee representatives must also be available in a remote work / virtual context (e.g., access to electronic communication and virtual bulletin boards, access to inductions for new staff), with full privacy and data protection guarantees.

The social partners agree that equal access of remote workers to trade union information, and the communication flow between remote workers and trade unions are key to ensure workers' collective rights, and consequently social dialogue. Therefore, the employer should engage with the trade unions to provide opportunities and access to members without surveillance for communication and engagement between trade unions, employees, and their representatives.

Remote workers are equal to employees working at the employers' premises, also as regards the calculations for determining thresholds for and election to employee representative bodies in accordance with European and national law, collective agreements¹ and/or any other relevant practices. To this end, companies must provide information on the election process by all available means and in good time.

III. WORK ORGANISATION AND EMPLOYMENT ASPECTS OF REMOTE WORK

A. TERMS AND CONDITIONS

Remote work cannot be used to change the nature of the employment status (e.g. shift employment status from stable long-term labour contracts to non-standard forms such as temporary agency or independent contracting arrangements). All remote workers - including those on short or fixed-term contracts – must benefit from the same employment rights and conditions, guaranteed by applicable legislation and collective agreements, as comparable to workers at the employer's premises. Their contract of employment is not to be significantly amended as a result of working remotely and all existing rights are maintained, and equivalent benefits secured and negotiated.

The collective terms of the remote work agreement should be negotiated by companies, trade unions and employee representatives through national, sectoral and/or company collective agreements. The workload and allocation of responsibilities should be outlined and be equivalent to those of comparable employees based at the company's premises. Performance criteria should be the same for all, whether working remotely or not.

¹ Throughout this document, reference to collective agreements also include works councils' agreements.

Furthermore, remote workers will not be discriminated against in line with national employment equality legislation.

Employers and employees should maintain and facilitate relationships with all the employees no matter where they work. This includes both individually and in a wider staff setting, offering and asking for support as required, such as communication tools and networks for colleagues to keep in touch with each other, including more informal and online settings.

B. VOLUNTARY AND REVERSIBLE

Remote work should be subject to the agreement of employer and employee and thus can be agreed to be voluntary and reversible by both parties, considering the relevant criteria necessary to ensure an appropriate remote work setting (e.g. workspace at home; need for regular contact with colleagues etc.). It can be part of the original job description and if it is not, the employee shall have the possibility to either accept or decline the offer according to national law and collective bargaining practices. When a remote employee must report to the office, for example for face-to-face training or a necessary meeting, sufficient notice shall be given to enable the remote employee to plan their working day.

If one of the parties wishes to terminate the remote work agreement, the employer must offer the possibility to work at the employers' premises as soon as reasonably practical.

The social partners agree that employees should be able to combine remote work with office-based work in a pattern that works best for them and will be treated equally whichever work pattern was agreed upon. In turn, employers can require employees to come back to the workplace and the reasons should be objectively justified according to the national law and collective agreements. An internal appeals process should be in place for the employee and consideration should also be given to other flexible work options that may suit the employee and employer.

Any reorganisation of the office space due to the introduction of remote work models should be discussed between the social partners from the planning phase. This will ensure the best and most effective working conditions to the mutual benefit of both employers and employees.

In cases of remote work restructuring, permanent worksite closure and/or the digital offshoring of jobs, the employer should negotiate the restructuring terms with the trade union and employee representatives, and any existing legal mechanisms on restructuring should be engaged. In all cases, measures should be put in place to protect workers' rights as they move through the restructuring process. When workplaces are closed, workers should be offered the best possible conditions to stay in employment (e.g. transfer to another workplace location, or remote work).

C. HEALTH AND SAFETY

The occupational health and safety of remote employees is regulated and followed in accordance with EU Directive 89/391EEC and the relevant associated directives, national legislation, and collective agreements. Employees who work remotely may face different health and safety risks than those who work from the regular workplace and attention should be directed to ensure the well-being of all. This includes the generally applicable employee protection rules, according to the relevant European and national legislation, collective

agreements and customs related to comprehensive insurance, liability, sick leave, quality work environments, ergonomics, and violence-free workplaces.

The employer, with agreement from the trade unions and employee representatives, should provide all workers with clear and detailed remote working information, and should complete a health and safety assessment related to the remote work, including physical and mental health risks, a risk mitigation plan, and regular monitoring and updating of plans.

Remote workers should be given the opportunity to regularly meet and communicate with colleagues (both formally and informally) and to access employer events as it enhances their mental wellbeing and engagement in the company. While remote work may reduce face-to-face forms of harassment at work, it may lead to a higher risk of technology-enabled harassment such as work-related cyberbullying. Hence, policies should be put in place or existing policies extended to prevent, monitor, and minimise these situations, and these policies should be made known to all employees.

In order to ensure that the health and safety and data protection provisions are correctly applied, the employer, trade union, worker health and safety representatives and/or the labour inspectorate should have access to the remote workplace within the limits of national legislation and collective agreements. When the workplace is in the employee's home, such access is subject to prior notification and employee's consent.

D. WORK-LIFE BALANCE

Maintaining healthy working conditions and an appropriate work-life balance continue to be key aims of the Social Partners in the digitalisation process. As a consequence of continuing digitalisation, it is important to consider the potential challenges and opportunities that may come with the possibilities for more flexible work, including remote work. Remote work can be a measure to improve and maintain work/life balance.

E. WORKING HOURS AND THE RIGHT TO DISCONNECT

The conditions of working time have to comply with company rules, collective agreements and national and European law. Remote workers are entitled to the same rest periods, hours of work, time recording, holidays and leave as office/worksite-based employees, and to a general right to disconnect outside contractual working hours, including determined working hours, respecting the legal and contractual framework, including night shifts where applicable. For employees with designated hours, remote work should not be used to extend hours or to reduce rest periods between scheduled working times. Employees who are subject to overtime rules should be compensated in the same manner as if the extra work were performed in the workplace. Remote on-call duty will be governed by the same rules as if performed by employees using office workplaces, including a possible on-call or standby allowance.

The remote worker shall be available within the time period which is predetermined by the employer or as agreed with the employee (including in collective agreements). Such agreement could also cover situations where it is not possible for the remote employee to respect these times, and when they would need to report and justify this to the employer. A clear and realistic timeframe for the performance of duties should be determined clearly from the outset and monitored as needed, in agreement with the worker and modifiable if circumstances change.

F. RESOURCES & EQUIPMENT

As a general rule, the employer is responsible for providing, installing maintaining and replacing the equipment necessary for any form of work (e.g.: hardware, software, ergonomic equipment) and for other agreed variable costs. If it has been agreed that the employee uses his/her own equipment such usage is subject to all the applicable cybersecurity, data protection usage, employees' privacy and other relevant regulations. Terms and conditions regarding the use of equipment needed to perform remote work are to be clearly defined in advance and outlined in accordance with the EU Directive on Transparent and Predictable Working Conditions².

Based on the applicable law and collective agreements, employers should compensate employees for the cost of performing their duties when remote working. These should be laid down in collective agreements, addressing direct and indirect costs necessary to perform their duties, for example internet, mobile phone service, electricity, workplace hubs, insurance, and others. Employers and trade unions should also inform employees about any national allowances or tax benefits associated with remote work.

G. TRAINING AND DIGITAL COMPETENCE DEVELOPMENT

In terms of training and upskilling opportunities, career guidance and development, and appraisal policies, remote employees will benefit from the same rights and access as their office-based colleagues. Employers should ensure that training takes place during working hours.

Cooperation between the Social Partners at all levels and with full access to educational and professional development programs are essential to maintaining a high level of skills, competencies, and innovation in the ICT sector.

Trade unions have a responsibility to communicate the importance of training and competence development to their members. Retraining and adapting to new working environments should be one of the priorities to be addressed by both the employers and the trade unions. Training plans should also include actions to help bridge the digital divide and ensure employability. Employers must take active measures to promote equal access to digital training, including new tools and technologies. Remote work models will increase the need for these skills, and trade unions and employers must work together to develop inclusive training pathways.

In terms of content, training for remote employees can include the following:

- Training for their professional development including promotional prospects in their current field of responsibility to which they should enjoy the same access as their office-based colleagues.
- Training specific to remote working, i.e., on the obligations and rights of the remote workers, health & safety when working remotely, time management and planning, e-mailing and e-archiving, and on the related software, hardware, and any other technical aspects/equipment necessary for the remote worker to perform adequately;

² Directive 2019/1152 on Transparent and Predictable Working Conditions ensures workers' rights to, among other things, complete information about employment conditions.
(<https://ec.europa.eu/social/main.jsp?langId=en&catId=1313>)

- Training on cybersecurity issues for the security and protection of (theirs, the employer's, and customers') data and the prevention and mitigation of cyber incidents;
- Training may be offered to anyone in the organisation that works directly or indirectly with remote workers, i.e., supervisory staff (managers/leaders of teams that include remote workers, HR officers, legal departments, etc.) and the remote worker's colleagues.

Both employers and employees should strive to remain 'visible' within the company and opportunities be provided and used for regular face-to-face meetings for career development and mentorship to promote their growth and advancement, including the creation and building of workplace networks.

H. EQUAL OPPORTUNITIES: REMOTE WORK SHOULD BE GENDER-NEUTRAL AND OPEN TO ALL

The Social Partners believe that the option to work remotely must be available without any type of discrimination and be considered as an equally valuable form of work. The Social Partners agree that remote work respects diversity. The topic of remote working should become part of a wider debate on evolving workplace culture, social norms, and expectations.

As the Eurofound report on the "Covid-19 pandemic and the gender divide at work and home"³ shows, "voluntary, flexible work arrangements – most likely to be adopted by women – can also mean increased unpaid workload and lower visibility in the workplace, with long-term consequences for career progression, pay and pensions."

The social partners believe in the importance to provide equal access to and encourage participation in remote work for all employees, to better balance work with unpaid personal responsibilities and thus remain active in the labour market. This belief extends to achieving fair and 'gender-neutral' remote work that will only be possible if accompanied by a societal and cultural shift towards an equal sharing of care and household duties, as well as better access to good and affordable (public) care services.

Likewise, remote work and the provision of adequate equipment can also facilitate inclusion and enhance equity for all employees.

In order to meet these objectives, the social partners recommend that:

- Assessments of jobs that can be performed remotely should cover all areas of activity. If an assessment shows that remote work is undertaken predominantly in some specific job categories or only by certain employees (based, e.g., on gender, age, position, etc) an investigation of the underlying causes is recommended in order to rule out and prevent discriminatory policies.

³ See https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef22010en.pdf

- Surveys, agreed between the company and trade unions, should be carried out among remote workers to measure the impact that this model of work organisation has on women.
- In companies, areas, departments, in which there is a quota to be filled by remote workers, percentages of women and men should be respected in proportion to their representation in the area where it is to be implemented.
- In the case of victims of gender-based violence, the option of remote working, both in terms of application and reversal, is managed in accordance with the needs expressed by the worker at all times.

The Social Partners commit to monitoring and assessing any difficulties for the employee when the home becomes a workplace within the context of remote work, including cases of domestic violence.

IV. REMOTE WORK AND DIGITAL RIGHTS

The Social Partners consider that the advance of remote work and the increased use of digital devices to carry out such work make it necessary to guarantee a series of digital rights in accordance with applicable law. Achieving compliance can include Social Partner protocols and/or collective bargaining agreements, for the use of digital devices made available to employees, including specifying the type of use of such devices and safeguards to preserve the privacy of employees.

A. RESTRICTING USE OF SURVEILLANCE TOOLS

While information and communication technologies can facilitate work processes, constantly evolving technologies for monitoring and surveillance (including geo-localisation) can also create excessive controls, invade privacy (including data rights), and affect working relations.

The use of surveillance tools to monitor remote employees (video surveillance, sound recording, biometric controls, remote monitoring, indexing of internet browsing, checking of e-mail and/or computer use), storing employee data and usage thereof in disciplinary proceedings, should be restricted, unless firmly regulated through national legislation and/or a trade union collective agreement. Data collection or surveillance of the workforce should be for a clear objectively justifiable purpose only.

Employees and trade unions should be granted the right to information, consultation and transparency prior to the roll out of such tools and should participate in their implementation and use.

B. ALGORITHMIC DECISION-MAKING⁴

Employees have the right not to be subject to decisions based solely and exclusively on automated decisions that affect them significantly. Employers should be obliged to inform, explain, and agree with workers before algorithmic management tools are applied.

Algorithmic management tools (e.g. for profiling, recruitment, internal promotion, changes of function and professional grade level, the system of sanctions, and performance evaluations) are always subject to the “human-in-command” principle. Each employee has

⁴ See also the telecom social partners’ joint declaration on Artificial Intelligence (November 2020, <https://ec.europa.eu/social/main.jsp?catId=521&langId=en&agreementId=5699>).

the right to express their point of view, to challenge the decision and to appeal to a human authorised to override the algorithm.

Companies shall inform and consult with the trade unions and employee representatives on relevant aspects of algorithmic decision-making by companies in advance, according to European and national laws, collective and works councils' agreements and practices. The Social Partners need to agree on barriers for unethical AI systems impacting fundamental rights, workers' rights, and privacy.

Companies shall inform and seek the prior consent of employees who are to be subject to automated decisions about the data to be used, the underlying logic and the purpose and consequences of such processing. Both the data collection and the algorithmic decisions arising from these shall be subject to appropriate measures to ensure that their rights and freedoms and legitimate interests are safeguarded.

Companies shall inform and consult with trade union representatives on all aspects of algorithmic decision-making in advance and may issue impact assessments on the fundamental rights of workers with the aim of minimising risks. Such assessments shall be considered by companies prior to the implementation of algorithmic processes.

C. DATA PROTECTION & DATA SECURITY

It is the employer's responsibility to take measures to ensure data protection, employee privacy and that the remote employee's software and hardware are updated and secure, whilst the remote employee is bound to strictly follow all applicable data protection and data security rules related to both the software and hardware.

The employer, together with all remote employees, must abide by and respect the provisions outlined by the EU GDPR (General Data Protection Regulation), national legislation, ethics policy, the confidentiality and security clauses issued by the employer, and any other similar clauses as stated in individual contracts.

The employment parties are responsible for taking appropriate measures to ensure the protection of data used and processed for professional purposes. The employer must inform the employee beforehand (and offers training where necessary) of all relevant legislation and company rules concerning data protection and data security issues related to data loss, hacking, confidentiality breaches, etc. The employee is responsible for complying with the company's data protection protocols and the company's policies in this area, following instructions received.

The employer ensures that appropriate security levels are in place, considering the privacy of the remote employee, and that any monitoring system is in accordance with applicable European and national legislation or collective agreements at national/sectoral/company level.

V. INTRODUCTION, MONITORING AND EVALUATION

Before introducing or extending remote work regulations, trade unions and employers at the relevant level should jointly assess their impact and produce documentation of all remote working regulations. Remote workers' needs and expectations, within their specific roles and circumstances, should also be assessed, clarified, and documented.

Trade unions and employee representatives should be involved in all aspects of the assessments, mitigation, monitoring, and evaluation – including information, consultation, and exchanges at the national level where applicable. The employer, trade unions and employee representatives could also develop and agree a list of minimum requirements/conditions and could conduct feasibility studies to ensure that remote workers have adequate infrastructure, services, and workspace to perform their duties and remain in regular contact with each other, as well as establishing necessary measures for privacy and data protection.

VI. MOVING FORWARD

Remote and hybrid working arrangements will continue to develop in line with technological innovation. The Social Partners recognise that effective social dialogue is an essential tool to accompany the evolution of the new world of work and will jointly work to promote social dialogue at all levels, including collective bargaining, for the benefit of all stakeholders involved.

The Social Partners commit to promoting this Joint Declaration as appropriate at the European, national, sectoral and company level among the relevant industry stakeholders.

To this end, the Social Partners request the European Commission to translate the Joint Declaration into all EU languages to facilitate its dissemination, visibility, and take-up at these various levels.