

LABOUR AND SOCIAL JUSTICE

TOOLKIT ON TELEWORK:

New Realities of Labour in the
Pan-European Region.

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Millions of workers were impacted through standard workplace arrangements being replaced by telework/ remote work. Only a few countries have legislation adopted in response to the COVID-19 pandemic.



Teleworking brings to the fore several issues that require trade unions' attention, for example gender equality, occupational health and safety, working time, employment relations and surveillance.



The purpose of this toolkit is to equip trade union representatives with the appropriate resources to address the questions that workers are likely to ask as well as to draw attention to relevant sources of information.

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Pan-European Region.



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Preface

- The outbreak of Covid-19 has impacted millions of workers through standard workplace arrangements being replaced by telework/remote work.
- The FES & ITUC-PERC organised a two-day conference entitled “New realities of labour in the Pan-European region: remote work challenge and its regulations”¹, whose key information and practical implications are related and explored in this toolkit.
- The purpose of this toolkit is to equip trade union representatives with the appropriate resources to address the questions that workers are likely to ask as well as to draw attention to relevant sources of information, from which such representatives can draw support for their actions.

¹ <https://perc.ituc-csi.org/New-realities-of-labour-in-the-Pan-European-region-remote-work-challenge-and?lang=en>

1

TELEWORK: WHAT IS IT AND HOW CAN IT BE REGULATED?

Telework is defined in different ways, including the following:

ILO	EU
<p>'Telework is defined as the use of information and communications technologies (ICTs), such as smartphones, tablets, laptops, and desktop computers, for work that is performed outside the employer's premises. In other words, telework implies work achieved with the help of ICTs and conducted outside the employer's locations. Teleworking should happen in a voluntary agreement between the employer and the worker. Besides agreeing on the location of the work (at the home of the worker or elsewhere), there are several other aspects that need to be clarified, namely the working hours or schedule, the communication tools to be used, the work to be accomplished, the supervisory mechanisms and the arrangements for reporting on the work undertaken. Teleworking is not normally defined so as to include those working in the platform or gig economy; for example, a freelancer who works primarily from home may not be classified as a teleworker but might be classified as a home-based worker, under the terms of ILO Convention 177 on Homework (1996)' (ILO, 2020: 10)²</p>	<p>Telework is a form of organising and/or performing work using information technology in the context of an employment contract/relationship, where work which could also be performed at the employer's premises is carried out away from those premises on a regular basis (European Framework Agreement on Telework of 2002:1).³</p>

TRADE UNION CONFEDERATIONS			
ITUC (International Trade Union Confederation) ⁴	UNI Global (Union Network International) ⁵	ETUC (European Trade Union Confederation) ⁶	EPSU (European Federation of Public Service Unions) ⁷
<p>Telework is work performed with ICTs from outside the employer's premises. This can involve traditional forms, such as working from home, or working from various alternative locations outside the employer's central office. The term excludes homework, which involves work performed under the instruction of an employer or intermediary without the use of ICTs.</p>	<p>Telework is defined as 'workers performing part or all of their work during their agreed working hours at a location (chosen by the worker) outside of the normal work site/office and using primarily information and communication technologies provided by the employer' (Uni-Global Union, 2021:2)⁸</p>	<p>Telework is defined as a form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work which could also be performed at the employer's premises is carried out away from those premises on a regular basis (European Framework Agreement on Telework, 2002)⁹</p>	<p>EPSU adds to the definition of telework used by ETUC the following statement: 'The characteristic feature of telework is the use of computers and telecommunications to change the usual location of work' (Joint ILO–Eurofound report, 2017:10)¹⁰</p>

² www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/instructionalmaterial/wcms_751232.pdf
³ Article 2 of the 2002 European Framework Agreement on Telework (hereafter referred to as the European Framework Agreement) www.eurofound.europa.eu/sites/default/files/ef_files/docs/eiro/tn0910050s/tn0910050s.pdf; www.eurofound.europa.eu/publications/report/2010/telework-in-the-european-unioninstructionalmaterial/wcms_751232.pdf
⁴ www.ituc-csi.org/?lang=en

⁵ www.uniglobalunion.org
⁶ www.etuc.org
⁷ www.epsu.org
⁸ www.uniglobalunion.org/sites/default/files/files/news/uni_remote_work_guidelines_report.pdf
⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Ac10131>
¹⁰ Eurofound and the International Labour Office (2017) <http://eurofound.link/ef1658>

A few countries have legislation adopted in response to the COVID-19 pandemic. Here are two very different countries to underscore the extent to which regulatory initiatives share some commonalities.

NATIONAL LEGISLATION	
RUSSIA	SPAIN
<p>With Federal Law No. 407-FZ¹¹, based on the work of a tripartite committee, a new set of rules on remote work entered into force on 1 January 2021, dividing it into two types: I) continuous work for a period determined by the parties (but for no more than six months); II) periodic work when the employee alternates between work from the office and at a distance</p> <p>Advantages:</p> <ul style="list-style-type: none"> – The employment contract during teleworking can only be terminated on the general grounds set forth in the Labour Code – Employers must provide teleworkers with equipment, software, hardware, information security systems and other necessary work resources. When teleworking employees uses their own equipment, the employer must compensate them for the corresponding expense – Teleworking conditions can be laid down in more detail in collective agreements <p>Open questions:</p> <ul style="list-style-type: none"> – Given that employers enjoy wide latitude in the management of telework, how can trade unions increase their influence and leverage? – How can prospects for effective implementation of the recently established legal framework on remote work including periodical remote work, which has not been addressed so far, be improved? 	<p>The 1979 Workers’ Statute and National Sector Collective Agreements, in line with the 2002 European Framework on Teleworking, had provisions regulating ‘work from home’. During the Covid-19 outbreak, the government introduced a legal framework for Telework (Royal Decree Law 28-2020¹²) specifying parameters (at least 30% of working time consists of ‘work from home’) and measures for avoiding undeclared telework</p> <p>Advantages:</p> <ul style="list-style-type: none"> – Telework is promoted by collective bargaining and legislative action if and whenever necessary – Telework is formalised through written agreements, it is ‘voluntary and reversible’ – Teleworkers benefit from existing workers’ rights with regard to health and safety, equality and transparency – The use of ICT is encouraged as a tool for flexible working, and is matched with the ‘right to disconnect’ <p>Open questions:</p> <ul style="list-style-type: none"> – How will social partners translate these rather broadly defined targets into specific objectives? Besides this, how can trade unions promote the diffusion of these provisions across different sectors? – Since voluntary arrangements (unlike binding measures) can be ignored, especially by employers, is the social dialogue an instrument with which to improve compliance?

The Conference reflected on the variety of definitions and regulatory opportunities existing with regard to telework. The most widespread perception is that clear rules on telework are lacking. There was also general agreement that regulation is needed to help both trade unionist and employers to ensure at a minimum decent and sustainable teleworking, as well as to prevent other employers from turning telework into an opportunity for exploiting labour and encouraging fragmentation of workers. When the details involved in any such regulation were discussed, several participants noted that international institutions had already devised some useful legislative tools.

Starting with the ILO, trade union initiatives draw support from the ILO Centenary Declaration¹³. This does not focus directly on telework, but offers some important guiding criteria and a framework for trade union action¹⁴ that would ‘ensure a just transition to a future of work’, sustain technological progress through social dialogue, and ‘pro-

mote the acquisition of skills, competencies and qualifications for all workers’. Similarly, some ILO conventions can already be applied to teleworking, beginning with the recent Convention no. 190 on violence and harassment at work¹⁵.

- Turning to European social partners, the ETUC, Eurocadres (European Confederation of Executives and Managerial Staff)¹⁶, UNICE-now BusinessEurope¹⁷, UEAPME-now SMEUnited (European Association of Craft, Small and Medium-sized Enterprises)¹⁸ and CEEP-now SGIEurope (European Centre of Employers and Enterprises)¹⁹ signed a Framework Agreement on Teleworking as far back as in 2002. This was followed by national efforts aiming to specify instruments and procedures for implementation. Cases of dissemination and transposition of this European framework to different national contexts could be witnessed between 2002 and 2006 and details of these are provided here²⁰. The

11 www.cms-lawnow.com/ealerts/2020/12/russia-changes-labour-legislation-on-remote-work
 12 <https://ec.europa.eu/social/ajax/BlobServlet?docId=23324&langId=en>
 13 www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_711674.pdf
 14 www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_767224.pdf
 15 www.ilo.org/global/topics/violence-harassment/lang--en/index.htm and https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_711674.pdf

16 www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/eurocadres
 17 www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/unice
 18 www.eesc.europa.eu/en/links/ueapme-1
 19 www.ceep.eu
 20 <http://erc-online.eu/wp-content/uploads/2014/04/2006-01429-EN.pdf>

agreement set out the basic framework, and required revision to meet the challenges posed by Covid-19 (European Agency for Safety and Health at Work, 2021)²¹.

- The Framework Agreement on Digitalization, signed by BusinessEurope²², the ETUC²³, SGIEurope²⁴ and SMEunited²⁵ right before the Covid-19 outbreak, offers important elements to support a new approach to telework. The agreement in fact promotes not only the integration of digital technologies at workplaces, but also investment in digital skills, skills-updating and continuous employability of the workforce²⁶.

21 <https://osha.europa.eu/es/publications/regulating-telework-post-covid-19-europe>

22 www.buinesseurope.eu

23 www.etuc.org/en

24 www.ceep.eu

25 www.smeunited.eu

26 www.etuc.org/en/pressrelease/eu-social-partners-reach-agreement-digitalisation

2

TELEWORK: WHAT ARE THE MAIN IMPLICATIONS FOR WORKERS?

TELEWORK AND ITS IMPLICATIONS FOR WORKERS	
Emerging risks	<ul style="list-style-type: none"> – Check effects on data protection, privacy, health and safety, organisation of work, access to training, well-being at work, availability, gender equality – Ensure equal access to ICT and equip workers with the necessary skills to use it – Reconcile workers’ responsibilities for caring for others with employers’ priorities in terms of business continuity and productivity – Communicate achievable deadlines, allowing for some degree of teleworkers’ autonomy while fostering a positive organisational culture and effective leadership
Issue 1. Gender inequality	<ul style="list-style-type: none"> – Telework could nevertheless offer equal opportunities in emerging working arrangements and viable options to overcome work-life conflicts (IndustrialAll, 2021)²⁷; the workload (job and family care) of women has increased more than that of men (Eurofound, 2020; ILO, 2021; CSEE-ETUCE²⁸) – Women working remotely from their home are more exposed to the risk of domestic violence (PERC Women Committee Presidium²⁹; ILO, 2021³⁰) – Critical factors for promoting ‘gender-neutral’ remote work (UniGlobal, 2021)³¹ are: <ul style="list-style-type: none"> – A cultural shift towards an equal sharing of care and household duties, and access to good and affordable (public) care services – Accessibility of the necessary technologies, facilities and skills
Issue 2. Occupational health and safety (OSH)	<ul style="list-style-type: none"> – Definition of employers’ responsibility for the health, safety and security of teleworkers – Focus on multiple factors underpinning security of space for teleworking: <ul style="list-style-type: none"> – The possibility for teleworkers to access healthcare (ILO ACTRAV, 2021) – Employers’ provision of clear and detailed remote working information, supported with a health-and-safety assessment (ITUC Guidelines, 2021) – The inclusion of ergonomic design of workstations at home (EPSU Toolkit, 2021³²) – Effective checks on the implementation of OSH measures, for instance through labour inspectorates (UFTUM-Montenegro)³³
Issue 3. Working time	<ul style="list-style-type: none"> – Teleworkers tend to work longer hours than when they work at the employers’ premise (ILO, 2020; ITUC Guidelines, 2021) – Work routine for teleworkers, especially those where the workplace involves tasks performed at home, dissolves the boundaries between paid work and personal life (ITUC, 2021; Uni Global, 2021) – Given that telework jobs are becoming more time-dependent rather than place-dependent, more workers can apply for the same job despite their location (Samek Lodovici et al. 2020³⁴). – The time teleworkers do not spend commuting should be devoted to domestic issues and family rather than to work (ILO, 2021)
Issue 4. Employment relations	<ul style="list-style-type: none"> – Telework can mean flexible work arrangements that jeopardise the trust between workers and employers (European Commission, 2021³⁵) – Using telework to turn employment contracts for dependent workers into autonomous contracts for self-employed persons leads to fragmented labour markets (Countouris and De Stefano 2021³⁶)

27 www.industriall-union.org/report-why-telework-needs-institutional-regulation-and-collective-bargaining

28 www.csee-etuice.org/en/news/education-policy/4349-telework-challenges-in-education-gender-equality-and-working-conditions

29 <https://perc.ituc-csi.org/New-realities-of-labour-in-the-Pan-European-region-remote-work-challenge-and?lang=en>

30 www.ilo.org/wcmsp5/groups/public/---dgreports/---dgdg_p/documents/publication/wcms_791858.pdf

31 www.uniglobalunion.org/sites/default/files/files/news/uni_remote_work_guidelines_report.pdf

32 www.epsu.org/sites/default/files/article/files/Toolkit%20January%202021.pdf

33 Intervention at the Conference

34 [www.europarl.europa.eu/RegData/etudes/STUD/2021/662904/IPOL_STU\(2021\)662904_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2021/662904/IPOL_STU(2021)662904_EN.pdf)

35 https://ec.europa.eu/jrc/sites/default/files/jrc120945_policy_brief_-_covid_and_telework_final.pdf

36 <https://socialeurope.eu/the-long-covid-of-work-relations-and-the-future-of-remote-work>

TELEWORK AND ITS IMPLICATIONS FOR WORKERS	
Issue 5. Surveillance and monitoring	<ul style="list-style-type: none"> – Telework introduces new worker surveillance tools (ITUC Guidelines, 2021) – There is a need to specify when teleworkers are monitored by employers, and to ensure that surveillance is not extended to non-working areas and non-working time (EPSU Toolkit, 2021) – Privacy management with registration of the webcam during telework (UNI Global, 2021) – Data-creation during monitoring needs to be transparent and specific (OECD, 2020³⁷)
Issue 6. Cost (other emerging issues)	<ul style="list-style-type: none"> – Identify employers' liability for indirect costs of teleworking (e.g. electricity, wi-fi) (EPSU, 2020³⁸; UniGlobal, 2021³⁹) – Discuss employers' ability to provide, maintain and replace the equipment necessary for regular remote work (IT and non-IT related) (ILO–Eurofound, 2017⁴⁰) – Clarify workers' rights and obligations regarding the general organisation of remote workplaces (ITUC Guidelines, 2021)

³⁷ www.oecd.org/coronavirus/policy-responses/productivity-gains-from-teleworking-in-the-post-covid-19-era-a5d52e99

³⁸ www.epsu.org/article/rethinking-way-we-telework

³⁹ www.uniglobalunion.org/sites/default/files/files/news/uni_remote_work_guidelines_report.pdf

⁴⁰ www.eurofound.europa.eu/publications/report/2017/working-anytime-anywhere-the-effects-on-the-world-of-work

3

TELEWORK: GOOD TRADE UNION PRACTICE IN THE MAKING?

TRADE UNION INITIATIVES REGARDING TELEWORK	
Broad initiatives	<p>The ITUC identifies several guidelines to help trade unions face the challenges of teleworking⁴¹:</p> <ul style="list-style-type: none"> – Produce an impact assessment of telework prior to its introduction and implementation – Assure that telework is voluntary for employees – Guarantee equal treatment of teleworkers – Respect for regular working hours and the right to disconnect – Make employers pay for work equipment and costs for remote workspace – Keep employers responsible for the health and safety of workers – Achieve equal access to training and career development for teleworkers – Protect the right to privacy of teleworkers – Ensure respect for the rights to freedom of association and collective bargaining for teleworkers
Social dialogue	<ul style="list-style-type: none"> – Constructive social dialogue, including consultations, exchange of information or negotiation of several aspects where teleworking has an impact (ILO ACTRAV, 2021) – Same fair work representation of remote workforce; employers should allow trade unions to gather information and share actions with teleworkers (UNI Global, 2021) – Coordination between trade unions, employers and the state is key to effective and sustainable regulation of the implications of teleworking for workers (ITUC, 2021; ILO, 2021)
Collective bargaining	<ul style="list-style-type: none"> – According to EPSU (2020)⁴², collective agreements should include: <ul style="list-style-type: none"> – Information and consultation of workers – Digitalisation and restructuring – Skills and training – Health and safety, including psychosocial risks – Working time and work-life balance – The right to disconnect – Monitoring and surveillance – Data privacy – Use of Artificial Intelligence – Twofold tool: for proactive trade unions to participate in the regulation of changes and for employers to demonstrate empathy and creativity in supporting teleworkers, especially women (ILO ACTRAV, 2021⁴³) – Useful for the development of inclusive practices such as training in IT skills needed by remote workers (Voss, 2021) – Restrictions on surveillance of remote workers and data-collection (ITUC, 2021). As a venue to accommodate individual circumstances and preferences of employees /workers, much more than in the past (ITUC, 2021)
Right to disconnect	<ul style="list-style-type: none"> – No penalisation of workers who refuse to respond to work-related emails and calls outside working hours – Social dialogue and collective bargaining as a legal instrument for regulating teleworking and the right to disconnect of teleworkers at all levels (Uni Global, 2021 ; ITUC Guidelines, 2021⁴⁴; ILO, 2021)
Gender equality	<ul style="list-style-type: none"> – Lobbying for ratification of ILO Convention 190 and ratification of the Istanbul Convention, then pressing for its most extensive application, including for female teleworkers (Rubery and Koukiadaki, 2016)⁴⁵ – Stressing the importance of work-life balance, OSH and proper working arrangements for remote work in the prevention of domestic violence and cyber-bullying, both linked with teleworking and on the rise during the pandemic⁴⁶ – Interpret collective bargaining also as a tool for reducing the gender pay gap and eradicating violence against women and vulnerable groups in general as well as in the case of telework (EPSU, 2020⁴⁷) – Crucial role of social actors. For instance, the PERC Women Committee’s goal is to develop policy documents, increase awareness and campaign, among other things, for ratification of ILO Convention no. 190⁴⁸

⁴¹ www.ituc-csi.org/ituc-legal-guide-telework?lang=en

⁴² www.epsu.org/sites/default/files/article/files/Toolkit%20January%202021.pdf

⁴³ <https://perc.ituc-csi.org/New-realities-of-labour-in-the-Pan-European-region-remote-work-challenge-and?lang=en>

⁴⁴ www.uniglobalunion.org/news/new-uni-guide-winning-right-disconnect-changing-law

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EXAMPLES OF THE TRADE UNION INITIATIVES

Example 1. CSEE ETUCE and well-being in the education sector	<p>A sector highly affected by teleworking is education, where teachers have experienced several well-being-related issues (hybrid forms of teaching, emails around the clock from parents and superiors, difficult to organise the lesson). Here the calls for action from CSEE ETUCE (European Trade Union Committee for Education)⁴⁹ have focused on four areas⁵⁰:</p> <ul style="list-style-type: none"> – Public investments in material, infrastructure, training for teachers, as well as an inclusive approach towards disabled pupils and a financial commitment to recruit teachers – Social dialogue for tackling professional needs related to digitalisation, training and inclusion – Health-and-safety measures covering physical as well as mental issues
Example 2. Promoting social dialogue in Montenegro	<p>As reported by UFTUM (Union of Free Trade Unions of Montenegro⁵¹), one example of how the synergies between national trade unions and the ILO boost the chances of cooperative relations between social partners is the case of Montenegro. When Covid-19 officially broke out in the country (March 2020), the government opted for a unilateral approach to policymaking and, despite both trade unions and employers being asked to be involved in the process, it was necessary for the ILO intervention to restore the social dialogue. After that, Montenegrin social partners were consulted in drafting a package of measures to support the economy and citizens during the pandemic. These measures followed guidelines set by the ILO and were discussed in the Social Council as a tripartite body in which representatives of trade unions, employers and the government of Montenegro all participate</p>
Example 3. Reimbursing telework-related cost in Latvia	<p>Latvian trade unions (LBAS⁵²) gathered information on which expenses need to be regulated for reimbursement purposes, either through legislation and/or collective agreements, and eventually hypothesised what the cost-management process would look like through union-related news</p>

⁴⁵ www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_540889.pdf

⁴⁶ <https://perc.ituc-csi.org/PERC-Women-Committee-meeting-2313?lang=en>

⁴⁷ www.epsu.org/sites/default/files/article/files/CB%20and%20digitalisation%20-%20work-life%20balance%20-%20CGA%20-%20EPSU.pdf

⁴⁸ <https://perc.ituc-csi.org/PERC-Women-Committee-meeting-2313?lang=en>

⁴⁹ www.csee-etuice.org/en/about-us/about-etuice

⁵⁰ www.csee-etuice.org/en/news/education-policy/4349-telework-challenges-in-education-gender-equality-and-working-conditions?highlight=Wyj0ZWxld29yayJd

⁵¹ <http://usscg.me/en>

⁵² <https://arodbiedribas.lv/en/home>

4

TELEWORK: A FEW POINTS TO CONSIDER FURTHER

Teleworking brings to the fore several issues that require trade unions' attention to develop practical solutions to adequately address them. At the same time, the Conference noted that there are still unresolved questions, both of a practical and short-term nature, and a need for more strategic reflections.

Short-term challenges	<ul style="list-style-type: none"> – How to deal with the fiscal implications of telework, given that telework can be part of transnational business activities and, as such, is associated with a risk of social and wage dumping that have already put employment systems and taxation regimes under pressure? – How can one ensure that employers comply with rules on telework that are in the making? And does the labour inspectorate have any role to play? – How can trade unions find legitimate, reasonable and practical ways to approach teleworkers in their homes?
Long-term challenges	<ul style="list-style-type: none"> – How can the social dialogue and collective bargaining provide fair and decent working conditions to teleworkers? – How does telework fit into the broader discussions about climate change, sustainability and digitalisation? How would these impact on more specific topics such as labour market flexibility, flexible employment policies and workforce skills? – How can trade unions turn the challenges brought about by telework into opportunities for better and more inclusive labour markets and social policy agendas?

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TOOLKIT ON TELEWORK: New Realities of Labour in the Pan-European Region



There has been general agreement that regulation is needed to help both trade unionist and employers to ensure at a minimum decent and sustainable teleworking, as well as to prevent other employers from turning telework into an opportunity for exploiting labour and encouraging fragmentation of workers. Among emerging risks are data protection, privacy, health and safety, organisation of work, access to training, well-being at work, availability, gender equality as well as equal access to ICT and equipment of workers with the necessary skills to use it.



The ITUC identifies several guidelines to help trade unions face the challenges of teleworking: impact assessment of telework prior to its introduction and implementation; telework is voluntary for employees; equal treatment of teleworkers; respect for regular working hours and the right to disconnect; work equipment and costs for remote workspace should be the employer's responsibility; employers should remain responsible for the health and safety of workers; equal access to training and career development; the right to privacy of teleworkers; and ensure respect for the rights to freedom of association and collective bargaining for teleworkers.



Teleworking brings to the fore several issues that require trade unions' attention to develop practical solutions to adequately address them. However, there are still unresolved questions, both of a practical and short-term nature, and a need for more strategic reflections. How can trade unions find legitimate, reasonable and practical ways to approach teleworkers in their homes? How can trade unions turn the challenges brought about by telework into opportunities for better and more inclusive labour markets and social policy agendas?