

# Telework in the European Union

by *Brenda Barrett and Malcolm Sargeant*

In January 2010 The European Foundation for the Improvement of Living and Working Conditions released another report on Telework in the European Union. This report, authored by Christian Welz and Felix Wolf, is only available in electronic form on-line (in [www.eurofound.europa.eu/eiro](http://www.eurofound.europa.eu/eiro)).

The report examines the phenomenon of telework in the EU in the context of the European Framework Agreement on Telework which was signed by the social partners in July 2002. It is the third EU report on this subject. The signatory parties published a joint report in June 2006; the European Commission issued a report (authored by Visser and Ramos Martin) in July 2008. This third report by Eurofound aims to complement the two earlier reports by assessing the current incidence of telework in the EU; overviewing the implementation of the Framework Agreement in the Member States; examining employment and working conditions of teleworkers and presenting the social partners' and governments' views on telework.

This report is of particular interest to the authors of this commentary because they have recently conducted somewhat similar research as a contribution to an international research project led by Adapt, funded by the Italian Ministry of Labour (M. Giovannone, S. Spattini, *Lavoro in ambiente domestico, telelavoro e lavoro a progetto: linee guida e buone prassi per la prevenzione dai rischi, anche in chiave comparata, alla luce della riforma del mercato del lavoro in Italia*, December 2009, in [www.adapt.it](http://www.adapt.it), Osservatorio Nuovi lavori, nuovi

*rischi*).

Both the Eurofound and the Adapt project take as their starting point the definition of telework provided in Article 2 of the European Framework Agreement on Telework, namely:

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.

The Eurofound investigation is a somewhat narrow one, not only is it essentially an update on previous reports but it is confined to remote working through the use of information technology by employees in the Member States of the EU (though it also includes Norway). The Adapt project had slightly different parameters. It started with the hypothesis that teleworkers were vulnerable workers and focused more strongly on health and safety issues, taking account of relevant health and safety regimes, but did not confine itself entirely to EU member states and it looked to a broader spectrum of employment relationships than the contract of employment. The UK contribution to this project consisted of a literature review and an account of the relevant protective employment law.

The Eurofound report has an extensive appendix of referenced literature, consisting largely of Eurofound reports on teleworking in individual EU member states. The body of the report refers to an Industrial Relations Service survey of 66 employers in the UK but this is not full referenced in the

text and nor is it included in the appendix. At first sight it is surprising that no reference is made to the work of the ILO, but this may well be because of the narrow scope of the Eurofound report, its function being merely to update on work already done by the EU. However the ILO's Encyclopaedia of Occupational Health and Safety (in [www.ilo.org](http://www.ilo.org)) provides valuable guidance on the occupational health and safety hazards associated with teleworking and the Adapt project took ILO's work into account.

The Eurofound report provides useful information on the incidence of teleworking in the Member States (and Norway) taking as the yardstick employee involvement in telework at least 'a quarter of the time'. It is surprising that the greatest use of teleworking is in the Czech Republic where 15.2% of employees are so involved; on the other hand Malta (0%) and Bulgaria (1.6%) are at the bottom of the list. The UK, with 8.1% is only slightly above the EU average of 7.0%. It is disappointing given this is such a fast developing phenomenon that these figures relate back to 2005. It is interesting that high use of telework can be found in real estate and financial intermediation, though well accepted that it is common place in education: in the UK most school teachers are provided with a laptop by their employer. The high use in real estate may be related to on site recording of dimensions and such like information about premises but nevertheless it is surprising that this accounts for at least 25% of the employee's working time. Eurofound states that male employees are generally more likely to do telework than female workers; on average about 8.1% of male employees engage in telework, while 5.8% of females do so. The British Health and Safety Executive when it reported in 2006 (Z. Whysall, P. Ellwood, *HSE Horizon Scanning Intelligence Group Demographic study – Report*, May 2006, in [www.hse.gov.uk](http://www.hse.gov.uk)) likewise found that in the UK teleworkers are most likely to be men (65%), although those who work at home are more likely to be female and to work part-time. The Eurofound report devotes some pages to identifying and commenting on the way in which Member States have implemented the Framework Agreement which was the first agreement of its kind in that, unlike earlier agreements reached by the social partners at EU level, it was not incorporated into a Directive before publishing it to Member States. This Agreement followed the alternative

procedure allowed by Article 139(2) of the EC Treaty. It was a so-called autonomous agreement published directly by the social partners, to be implemented "in accordance with the procedures and practices specific to management and labour and the Member States". Autonomous agreements are intended to be made binding rather than voluntary, through their implementation by the social partners in individual Member States. Nevertheless there is a question as to whether such autonomous agreements produce 'hard' or 'soft law'. 'Soft law' is the term applied to EU measures such as guidelines, declarations and opinions in contrast to 'hard law' such as regulations, directives and decisions.

The report identified that by May 2009 21 countries had reported some form of implementation and according to the mechanisms used for implementation these countries fell into three main groups. 9 countries used collective agreements concluded mainly at national or intersectoral level, but in three cases the collective agreements had been applied to all the remaining sectors of the workforce by legislation; in the remaining 6 countries the Agreement was clearly treated as soft law because it was not extended to non-unionised sectors. 6 countries, including the UK, had implemented through 'voluntary' measures such as guidelines, codes and recommendations. In 6 countries, where there was no strong tradition of collective bargaining, the Agreement had been transposed into legislation, though in most cases the national social partners had been consulted during the legislative process.

The report states that in the UK the social partners agreed in August 2003 on a guidance on telework and this was subsequently published by the Department of Trade and Industry (DTI), the then relevant Government Department. It suggests "This development is considered by some as a significant step in the evolution of the British industrial relations system". However while the Confederation of British Industry (one of the signatories) describes the text as 'voluntary, non-binding' its web site is the only one which the authors of this commentary found to feature the Agreement. It did not appear to feature on the site of the Department for Business, Innovation and Skills, the successor to the DTI. It is interesting to note that while collective bargaining is comparatively weak in the UK it is one of the minority of six Member States that has not backed the Agreement by legislation; most of the

remaining 15 countries have either used legislation as the primary means of implementation or legislated to ensure the Agreement is enforced throughout their workforce.

The Eurofound report devotes some space to considering the employment and working conditions of teleworkers, noting at the outset the voluntary nature of telework so that there is no right as such to telework and no obligation to do telework. Nevertheless the report notes that teleworkers often have different working conditions from office employees and suggests that they may be discriminated against with regard to working time, workplace standards or access to training. It also notes that issues such as the implementation and monitoring of health and safety regulations as well as data protection may be difficult to apply outside the employer's premises. It posits that social isolation and a lack of separation between work and private life can also be challenging. However these matters are all addressed in the Framework Agreement with the objective of ensuring that teleworkers enjoy the same rights and comparable conditions of work as their colleagues at the employer's premises and the report provides examples of how Member States have dealt with them when implementing the Agreement.

These commentators were particularly interested in what the Report says about health and safety as the Adapt project was more directly concerned with this issue. The report correctly states that according to the Framework Agreement the employer is responsible for health and safety measures at the teleworker's workplace. It instances that the employer has to inform the teleworker of risk related to the work and that this applies in particular to risks relating to working with computer equipment. The report further states that "The principle of equal treatment in terms of health and safety measures for teleworkers and permanent employees is an important dimension of many telework arrangements". Given the comparative lack of force of the Framework Agreement in the UK the Adapt team looked to the national health and safety protective legislation to identify whether it applied to teleworking, having regard to the risks identified by the ILO's encyclopaedia, which apparently envisaging teleworking was homeworking, emphasised poor working environment, with shortcomings in heating, lighting, ventilation and work space. The ILO in another publication (V. Di Martino, *The*

*highroad to teleworking*, International Labour Office, 2001, Geneva) identified many factors likely to induce stress, for example low participation in decision making; career uncertainty and stagnation; poor status work; poor pay; job insecurity or redundancy.

The Adapt team found that in respect of teleworking employees in the UK the employer owes the same general duty of care as is owed to other employees. If due to the employer's negligence the employee is injured the employer will be liable (quite apart from the income maintenance provided under national social security provisions) to compensate the employee and it may be liable to criminal prosecution if it has not "done all that is reasonably practicable to ensure the health, safety and welfare" of that employee. In theory the employer's civil and criminal liabilities extend not only to physical injury but also to psychiatric injury caused by stress. In addition, the UK having implemented EC Directives n. 90/270 on display screens and n. 89/654 on the workplace, has addressed other major concerns identified in the ILO encyclopaedia. However, in practice neither civil nor criminal liability is likely to arise.

The Eurofound suggestion that undertaking telework is a voluntary matter for employees, with the implication that the employee accepts the risks of such employment, is somewhat naïve in line with the outdated supposition that every contract of employment is a freely negotiated agreement. As far as homeworking is concerned there may be many who welcome the flexibility of working at home for part of the working week in order to assist with child care or to avoid the stress of the daily commute but there may equally be a number who simply take work home because their workload is greater than can be managed in the time they are at the office. There is much litigation for compensation for work related stress allegedly induced by work overload and homeworking may be a contributory factor in some cases.

It may also be questioned how realistically the two EC Directives provide real protection for teleworkers. The display screen directive is now approximately 20 years old and is framed to protect users of the traditional desktop computer rather than the laptop which is frequently used by remote workers, certainly if the employer has expressly authorised remote work and provided a computer for this purpose. Moreover it is unlikely that either employer

or inspector will witness the manner in which the teleworker actually carries out the work. The employer has some responsibility for ensuring the teleworker is operating in an appropriate environment, though it is not legally obliged to inspect the workplace of homeworkers. The British health and safety inspectorate is legally authorised to enter domestic premises where people are at work but is unlikely to do so if the work carried out there is teleworking by the occupier of the premises and the guidance to the Workplace Regulations states:

‘Domestic Premises’ means a private dwelling. These Regulations do not apply to domestic premises, and do not therefore cover homeworkers.

Where teleworking is peripatetic there is even less opportunity for either employer or inspector to ensure that it is conducted healthily and safely.

Finally Eurofound reports the views of governments and social partners regarding the use of telework. It finds that governments in the Member States are generally supportive of the development of telework; major benefits being that it enables combining working life and childcare and that it limits commuter traffic. Employers are also generally positive, as it enables them to take full advantage of flexible work arrangements and in some cases may help an employer to become more attractive to potential recruits. The trade union view is generally one of cautious support seeing it as creating new opportunities in terms of work-life balance with the potential to contribute to equal opportunities for men and women. However trade unions expressed concerns over isolation, working hours and schedules which may be stressful. It is interesting that many trade unions expressed concerns that teleworking may give rise to a tendency of offering freelance contracts rather than standard contracts of employment. This is of interest to the present commentators because the Adapt project considered whether there might be a considerable number of people who, because of working as self-employed or supplied to an employer through an agency, would be outside the ambit of the Framework Agreement and largely beyond the scope of protective legislation.

In the final paragraphs of the Eurofound Report it is recognised that reliable national statistics about the use of this form of work organisation are rare. It also admits that in some countries “only a small proportion of employment relationships is covered by the European Framework Agreement on Tele-

work”.

The British team working on the Adapt project share the view expressed by the Eurofound Report not simply because the Framework Agreement has a low profile in the UK but because of uncertainty of the extent to which teleworking is undertaken by workers who fall into the grey area where workers, though classified as self-employed are in fact dependent on an employer and have a working relationship which is more akin to that of an employee than of a businessman. Moreover while there is no statistical evidence that teleworkers are vulnerable to work related injury this lack of evidence does not prove that they work safely and do not suffer work-related ill-health.

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