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TELEWORKING IN LUXEMBOURG

OPINION

Luxembourg, 11 September 2020

Contents

Contents.....	1
Introduction	1
1. General framework of the teleworking scheme	5
1.1. Definition and different concepts of teleworking.....	5
1.2. Brief history of the development of teleworking	6
2. Teleworking in Luxembourg in figures.....	8
2.1. The teleworking situation in 2019	8
2.2. The situation in 2020 - Impact of the health crisis on telework	12
3. Teleworking - a different way of organising work.....	15
3.1. The opportunities and risks of teleworking for employees and companies	15
3.2. Impact of teleworking on labour relations.....	16
3.3. Impact and challenges of teleworking on sustainable development	19
3.4. Impact of teleworking on the local economy and public finances	20
4. The legislative framework of the teleworking scheme.....	23
4.1. The European Framework Agreement on Teleworking of 11 July 2002	23
4.2. The legal framework in Luxembourg	23
4.3. Proposed changes to the legal framework.....	26
4.4. Examples of teleworking laws across Europe	30
4.5. The teleworking framework for employees living in border countries.....	34
4.6. Difficulties with the law applicable to the employment relationship.....	37
4.7. Teleworking in the civil service	38
APPENDIX : ESC proposal - Agreement on the legal regime for teleworking	43

Introduction

This opinion was planned as part of the series of self-reviews dedicated to cross-border work. The first opinion in this series, adopted by the plenary assembly on 20 January 2020, gave a comprehensive description of the phenomenon of cross-border work to highlight the vital importance of this contribution of manpower for the Luxembourg economy.

In line with this, the Economic and Social Council (ESC) initially planned to dedicate an opinion to the study of cross-border teleworking. However, with the advent of the health crisis and the strict lockdown measures put in place on 16 March 2020 to prevent the massive spread of the virus, the use of teleworking exploded overnight among the entire working population in Luxembourg. In view of this exceptional situation, the ESC felt that its contribution could not be limited to the teleworking of border workers alone, but that the issue should be extended to the entire working population, regardless of their place of residence.

In Luxembourg, the teleworking regime is subject to a legal framework through a framework agreement signed on 21 February 2006 between the Union des Entreprises Luxembourgeoises (UEL) on the one hand and the trade unions OGBL and LCGB on the other. This framework agreement has been renewed twice (in 2011 and 2015) and declared to be a general obligation on 15 March 2016 by means of a Grand Ducal regulation.

This agreement provides that teleworking cannot be imposed and that it is implemented on a voluntary basis through a formal agreement between the employer and the employee. A simple exceptional agreement is not sufficient and in this context the framework agreement refers to the Labour Code and more particularly to the employment contract implying that regular and usual teleworking must be achieved by the conclusion of an amendment between each individual employee and the employer or by any other written agreement; the workers' representative (if any) must be consulted.

But the current legal and regulatory framework for teleworking hardly corresponds to the practice characterised by accelerating digitalisation. While it is clear that teleworking is generally only possible through the use of "information and communication technologies" (ICT), the fact is that these technologies are no longer new. These technologies are ubiquitous in everyone's daily life and have become commonplace over the last decade so that teleworking is possible from any location at any time. The current situation has thus largely exceeded the contractual framework and the challenges of digitalisation make modernisation of the legislative and contractual framework all the more necessary.

Beyond this fundamental trend, the lockdown imposed in the fight against COVID-19 and the current governmental recommendations to use teleworking have introduced a practice that has completely outgrown an unchanged legal and regulatory framework. Driven by the government and the need to maintain both economic activity and employee health, many employers, both public and private, have had to introduce teleworking overnight. During the lockdown, 69% of the working population (excluding those on short-time working and those on compassionate leave) switched to teleworking, usually without formal or written agreements, and thus outside the existing legal framework.

A revision of the legal and regulatory framework is therefore urgently needed. While the health crisis has clearly accelerated these reflections, the ESC wishes to emphasise that its opinion explores the legislative and regulatory "grey areas" that have arisen with the technological revolution in the world of work, independently of the current crisis. This is true for workers in the private sector as well as for civil servants and public sector employees, including municipal employees.

In addition, the government plans, in its 2018-2023 coalition agreement, to evaluate the 2003 inter-professional agreement. *"The extension of teleworking will be promoted while checking certain aspects of*

labour law and occupational health. Contacts with our neighbours will be made with a view to finding workable solutions for cross-border workers.

The principle of disconnection will be established. It will be implemented by collective agreements or inter-professional agreements. These agreements will take into account the specific features of the sector or company.”

Likewise, Jeremy Rifkin's strategic study on the "Third Industrial Revolution" identifies teleworking and workspaces as a central element of his strategy to help progressively limit mobility demands in the future.

The Minister of Labour and social partners are obviously aware of the topicality of the subject and the need to review the legal bases of teleworking. They decided to give the ESC time to draw up its opinion in order to clear the ground and, if possible, make recommendations for an appropriate legislative or contractual framework.

Other initiatives such as public petition no. 1556, "Introduction of a right to telework", filed in the Chamber of Deputies, are also increasingly visible. The press picks up on this almost daily, with the practice imposed by the crisis serving as a catalyst for all this public debate.

However, this ESC opinion aims to go beyond public debates that often oversimplify a subject that is actually quite complex. It is thus topical but aims to objectively present the different aspects of telework, its numerous legal, fiscal, social security, economic, societal and budgetary implications, as well as areas for reflection and recommendations for adapting the existing framework.

It begins, in the first chapter, with a presentation of the different concepts of teleworking and a brief history of its evolution from the 1970s to the present day.

Then, in a second chapter, it focuses on statistical data by presenting the situation in Luxembourg first in 2019 and then in April 2020, i.e., during the lockdown, to show the impact of the health crisis on the teleworking regime.

Chapter three is first dedicated to the risks and opportunities of teleworking for the employee as well as for the employer and then presents, more generally, the challenges of teleworking taking into account societal and sustainable development implications. Beyond that, it highlights the possible implications that an increase in the number of teleworkers could have on the State budget or on the Luxembourg economy.

Finally, the last chapter is the centrepiece of this opinion as it deals with the existing legislative and regulatory framework and makes concrete recommendations on the various aspects of the teleworking regime, based on some examples of international law.

The appendix contains the terms of a new agreement proposed by the ESC.

1. General framework of the teleworking scheme

1.1. Definition and different concepts of teleworking

From a sociological perspective, teleworking can be succinctly defined as "*the exercise, in whole or in part, remotely, of a professional activity using information and communication technologies*". It is different to on-site work, i.e., work carried out on the employer's premises. Information and communication technologies, hereafter ICT (telephony and data transmission on mobile networks and fixed networks (copper and fibre optics)) have enabled its development, hence the name "e-work".

In its opinion on economic, social and financial developments in 1996 (annual opinion), the ESC noted that: "*The concept of teleworking applies to a set of employment relationships that involve modern communication techniques. Thus, teleworking can take place at home, but also in centres outside the main company premises. Another example is part-time teleworking, which combines working in the company with teleworking from home.*"

Teleworking can, in this sense, be carried out not only from home, but also in a tele-centre, a satellite office, from shared spaces (*coworking*) or nomadic working. In this respect, it is useful to specify that *nomadic teleworking* (*digital nomads* or *remote workers* or *travellers*) refers to those who do not have a fixed office and who have the possibility of working from any place and at any time. This way of organising work has grown considerably in recent years.

According to the *Electronic Commerce and Telework Trends* (ECATT)¹ report, there are five categories of teleworkers:

- *Regular home-based teleworking* refers to those who work from home at least one day a week on average.
- *Occasional teleworking* refers to those who work less than one day a week from home.
- *Telework in telecentres* includes all situations of telework in local infrastructures, shared or not by several companies.
- *Mobile teleworking* refers to those who work at least 10 hours a week away from the office or home, using online services.
- *Self-employment in SOHOs* (*small office, home office*) corresponds to a self-employed status, located at home and using online services.

¹ECATT, Telework Data Report (population survey), Report for the European Commission, Empirica, Bonn, August 2000.

1.2. Brief history of the development of teleworking

Telework was long thought to be the solution to a wide range of problems such as regional development, mobility or women's employment, before it emerged as a specific type of flexible arrangement within organisations that have undergone profound change.

As early as the 1970s, teleworking was promoted (via telephone and fax) as a solution to the recurrent problems of rush hour congestion in large cities caused by commuting (hence the term *telecommuting*). Teleworking was also sometimes seen as a tool to fight against the desertification of low-density territories, too far from large employment basins to attract workers. In France, for example, the French authorities saw it a means of regional development. Thus, many municipalities have tried, through local partnerships, to promote local employment and the development of economic activity by setting up telecentres. These small telecentres, which were trialled in several countries in the 1980s, have mostly failed.

With economic globalisation and the intensification of trade in goods and services in the mid-1990s, teleworking has become increasingly important as one of the tools allowing companies to relocate and/or outsource work in order to reduce costs and increase *labour mobility* as a new management and coordination practice. Traffic congestion and air pollution are also mentioned in early discussions on teleworking.

At the European level, the European Commission has been a driving force in promoting teleworking through White Papers² and Green Papers, and particularly through the Bangemann Report³ which identified teleworking as a means of supporting the development of the information society. As early as 1998, employment guidelines were put forward with a view to promoting the modernisation of the organisation of work and forms of work⁴.

In 2000, the Heads of State committed themselves in the *eEurope Action Programme* to support teleworking. For the European Commission, knowledge and ICTs are inextricably linked to the development of telework and it is in this sense that the Lisbon Strategy set itself the strategic goal of "*becoming the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion*". Two years later, on 11 July 2002, a framework agreement on teleworking was signed by the European social partners⁵ aimed at providing more security for employed teleworkers in the EU.

In recent years, teleworking has developed from being a technological project to one that involves a growing number of organisations and workers. A series of change factors have contributed to this

² European Commission, "Growth, Competitiveness, Employment: Challenges and Opportunities for the Twentieth Century", (White Paper), 1994

³ European Commission, "Europe and the Global Information Society", Bangemann Report, 1994.

The Bangemann report aimed to create, by 1995, 20 telecentres in different European cities involving 20,000 teleworkers. The target was that 2% of *white-collar workers* would telework by 1996 and that by the year 2000, 10 million people would be teleworking.

⁴ Council Resolution of 15 December 1997 on the 1998 Employment Guidelines (*Official Journal of the European Union No C 030 of 28/01/1998, pp. 0001-0005*)

⁵The European Trade Union Confederation (ETUC), the Union of Industrial and Employers' Confederations of Europe / the European Association of Craft, Small and Medium-sized Enterprises (UNICE/UEAPME) and the European Centre of Public/ Private Enterprises (CEEP)

development, including the globalisation of markets, the increased speed of transactions between economic stakeholders, changes in consumer demand and the significant development of available resources (materials, technologies, management tools, information networks, cognitive skills of employees, etc.).

According to the authors of a study by the University of Leuven ⁶ (Laurent Taskin and Patricia Vendramin), four major trends are behind the development of teleworking, namely

- the dissemination of information and communication technologies;
- the emergence of the concepts of competence, knowledge and employability;
- individualisation of the employment relationship and autonomy;
- and the multiplication of forms of labour flexibility.

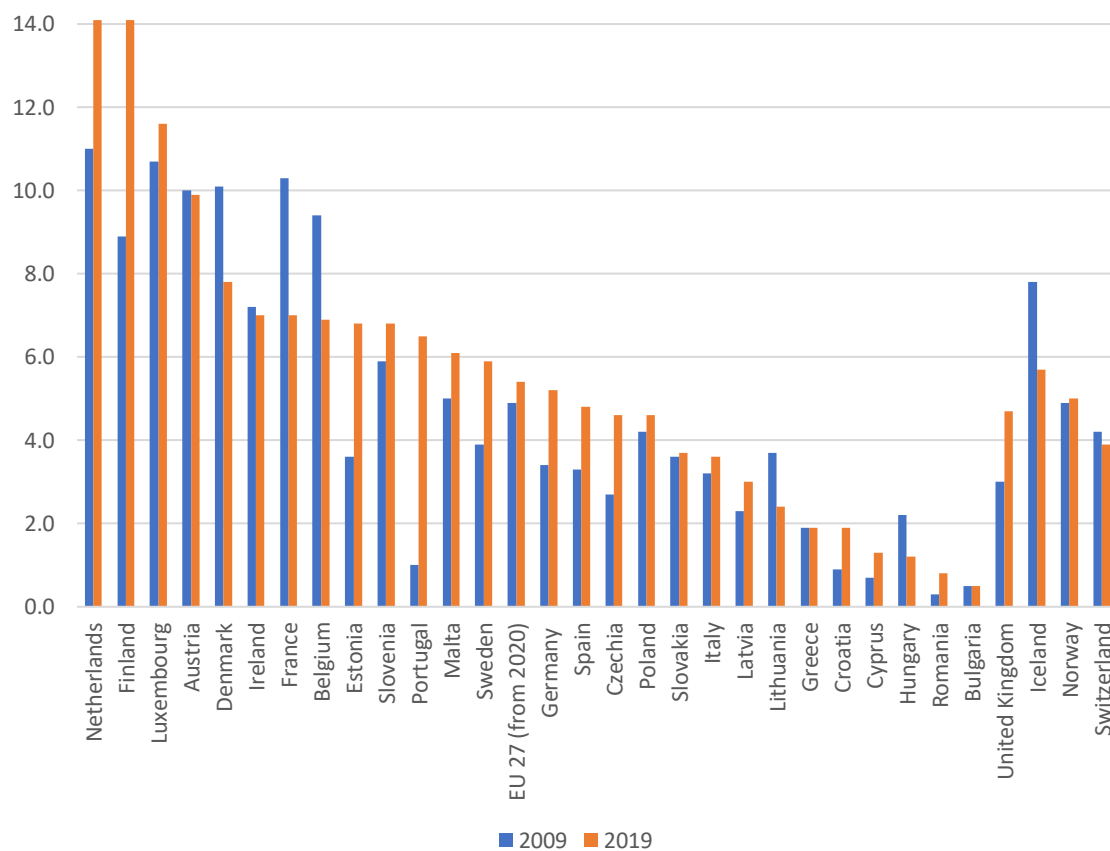
⁶ Laurent Taskin, Patricia Vendramin, "Le télétravail, une vague silencieuse. Les enjeux d'une nouvelle flexibilité", Presses Universitaires de Louvain, 2004

2. Teleworking in Luxembourg in figures

2.1. The teleworking situation in 2019

According to Eurostat⁷, in 2019, 11.6% of working people (aged between 15 and 64) residing in Luxembourg declare that they regularly telework at home (at least one day a week). Luxembourg is the third most common country in Europe for teleworking, behind the Netherlands and Finland with 14.1%. These two countries have recorded the highest growth in the number of teleworkers over ten years (+4.2% for the Netherlands and +5.7% for Finland). In the European Union (EU27), 5.4% of employees worked at home in 2019, a figure that has been rising slightly over the last ten years.

Graph 1: Regular home-based teleworking in Europe in 2009 and 2019 (in %)



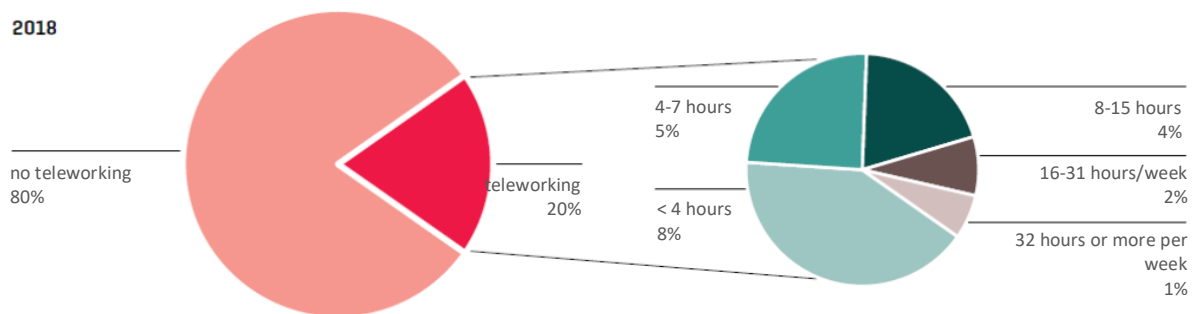
Source: Eurostat

⁷Article "How usual is it to work from home?" published by Eurostat on 24 April 2020 (accessed on 4 September 2020).

With 11.6%, regular teleworking in Luxembourg is slightly down compared to previous years when 12.7% declared in 2017 that they regularly teleworked at home and even 14.0% in 2014, but up compared to 2009 when the rate was 10.7%.

Furthermore, it is worth noting that in 2018, 19.8% of employees say they work from home 'occasionally' (less than one day a week). This last figure is in line with the data of the Statec which notes, in its report "Work and social cohesion"⁸, that in 2018 almost 20% of employees teleworked. The number of teleworkers has tripled in less than ten years, as in 2010 only 7% of employees were teleworking. Despite its success in recent years, the statistical institute notes that teleworking is limited to a small number of hours per week. The graph below, taken from the report, shows that in two thirds of cases, the time spent teleworking remains below 8 hours per week. This share has grown the most compared to 2010, which, according to Statec, is more due to the increasing digitalisation of the world of work in general than to the increasing digitalisation of "classic teleworking".

Graph 2: Teleworking in 2018 - hours per week teleworked



Source: Report "Work and Social Cohesion" 2-2019

According to a LISER⁹ study, the development of teleworking in Luxembourg is mainly hindered by the nature of the jobs and the offer of teleworking by companies. The survey conducted for this publication shows that in 2013, 88% of employees reported that they did not have the opportunity to telework, 52% because their job did not lend itself to this form of organising work, and 36% because their company would not allow them to. Of the 12% who have the opportunity to telework, the majority of employees choose to take advantage of it, as 80% telework at least occasionally.

In general, all of the above statistical data should be treated with caution as it is based on sample surveys and there is some doubt about the uniformity of the definition of teleworking, a term which

⁸The results analysed in the report "Work and Social Cohesion" are taken from the *2018 Labour Force Survey*. In this representative survey, more than 8,000 residents were asked about their use of teleworking, and the definition of teleworking from the Framework Agreement was used to assess the status of teleworking in Luxembourg in more detail with the following two questions: 1) Have you teleworked in the last 4 weeks? 2) How much time did you spend teleworking per week?

(Statec, *Work and Social Cohesion Report : The social state and well-being of Luxembourg society, Analyses 2/2019*)

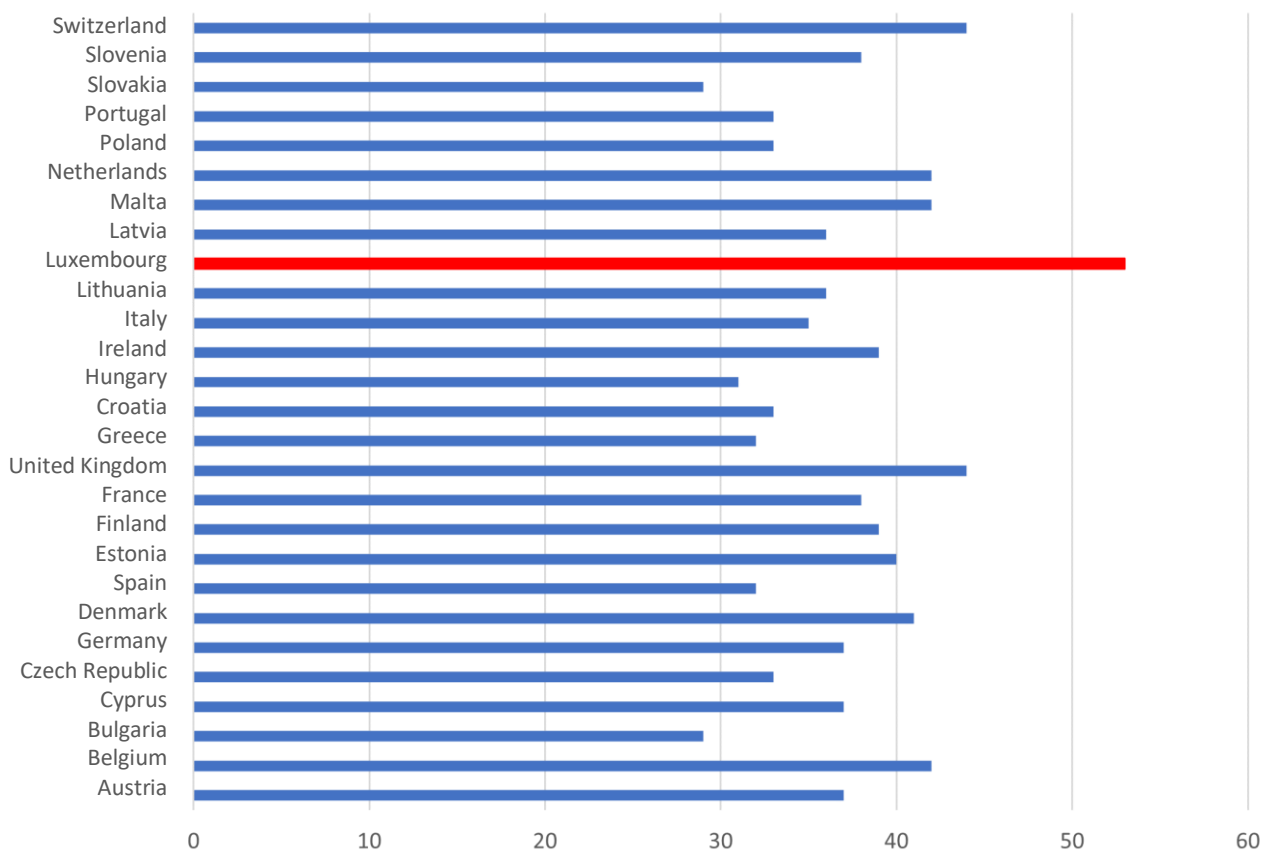
⁹Laetitia HAURET, "Teleworking : Opportunities, choices and benefits", July 2019

The study is based on data from the "Working conditions and quality of life at work" survey conducted in 2013 among non-temporary employees in the private sector with at least six months' length of service in their company.

covers quite different behaviours. However, they indicate that Luxembourg is one of the EU countries with the highest use of teleworking.

According to a study by the Becker Friedman Institute for Economics¹⁰, 53% of jobs are "teleworkable" in Luxembourg, as shown in the graph below. Luxembourg has a higher rate than other European countries, such as France or Germany, where it is only between 35 and 40%. This is due to the structure of our economy, which is predominantly tertiary, with highly skilled workers and a high level of technology. The research institute shows that the number of remotely doable jobs also increases with GDP.

Graph 3: Share of "teleworkable" jobs by country in %



Source: Paperjam and Becker Friedman Institute for Economics

¹⁰ Jonathan I DINGLE et Brent NEIMAN, *How Many Jobs Can be Done at Home?*, Becker Friedman Institute for Economics at the University of Chicago, June 2020.

The LISER study mentioned above estimates that 74% of employees in senior management and professional and scientific occupations consider that their job is suitable for teleworking (see table below). In contrast, employees in manual or customer-facing occupations are less likely to report that their jobs are suitable for teleworking.

Table 1: Share of employees who consider their job suitable for teleworking by type of occupation

	Employees who consider their job teleworkable
Senior managers or professionals	74%
Intermediate occupations	62%
Administrative employees	54%
Shop and market vendors	28%
Service staff	29%
Craft workers or artisans	31%
Plant and Machine Operators and Assembly Workers	23%
Unskilled workers and employees	30%
Set	48%

Field: Non-temporary employees in the private sector (residents and cross-border workers) with at least six months' length of service in their company.

Source: "Working conditions and quality of life in the workplace survey", Ministry of Social Security, LISER, 2013.

The table below, taken from the Statec's "Work and Social Cohesion" report, highlights the characteristics of those teleworking and shows that teleworking is more common among men (20.5%), non-Luxembourgers (22.5%) and workers in the 30 to 50 age group (22.0%). The level of education also plays a predominant role among teleworkers: 30.0% have a high level of education and 27.5% are in skilled white-collar occupations.

Table 2: The characteristics of teleworking in 2018

Percentage of people who have done* "teleworking"		
People in employment		
overall average		19.4
by gender	man	20.5
	woman	18.0
by family situation	without children	18.8
	with children	21.9
by age	15-29	18.0
	30-49	22.0
	50+	14.5
by nationality	Luxembourgish	15.7
	non-Luxembourgish	22.5
by level of education	low	8.0
	medium	11.7
	high	30.0
according to the sector of activity	industry	13.2
	services	19.8
by type of occupation	qualified white-collar workers	27.5
	low-skilled white-collar workers	10.1
	qualified blue collar workers	6.6
	low-skilled blue-collar workers	4.8

Source: Report "Work and Social Cohesion" 2-2019

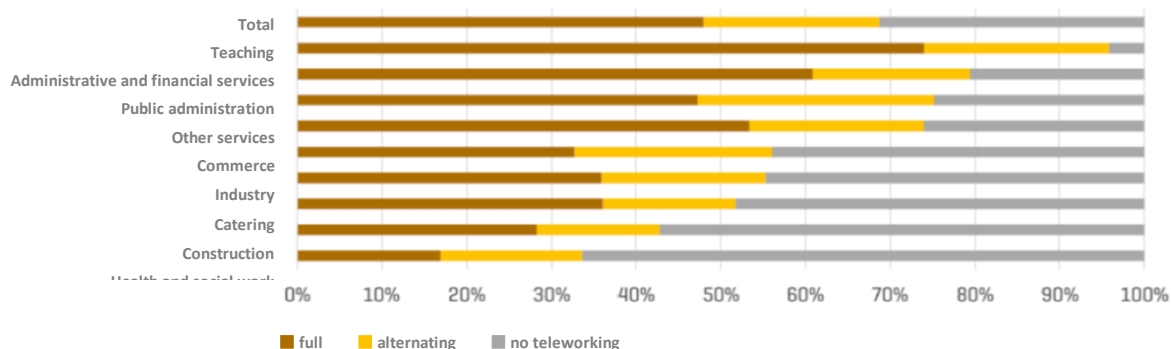
2.2. The situation in 2020 - Impact of the health crisis on telework

The COVID-19 health crisis has radically changed the practice of teleworking, which in mid-March 2020 became, overnight, the only way to run companies in compliance with the instructions of public authorities and the health of employees. Teleworking has gone from being the exception to the rule for many people and has saved the national economy from further collapse.

According to the results of an ad hoc survey¹¹ conducted by Stateg, 69% of the working population (not including those on short-time working or family leave) switched to teleworking during the lockdown on 16 March 2020, compared to 20% in 2019. 48% of workers (employees and self-employed) were fully teleworking, 21% were alternating and 31% continued to attend their workplace. The graph below shows that full teleworking was particularly high in the education (74%), administrative and financial services (61%) and public service (47%) sectors.

¹¹ Stateg, *Teleworking explodes: a positive experience for the majority of workers*, Statnews No. 15, 19 June 2020. The ad hoc survey was conducted between 29 April and 8 May 2020 among 2,000 residents.

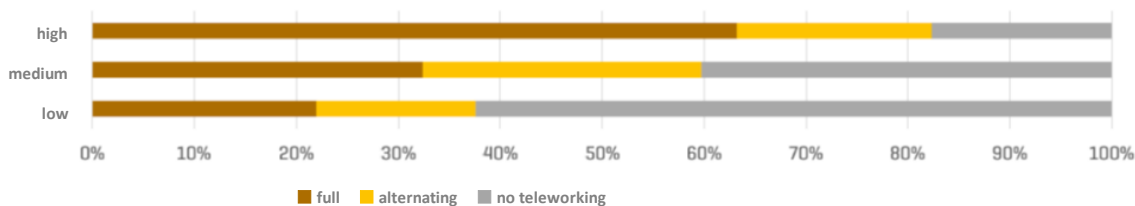
Graph 4: Teleworking in the different sectors of activity during lockdown



Source: Statec

During the lockdown, full teleworking was higher among workers with a high level of education, as shown in the graph below.

Graph 5: Teleworking by level of education



Source: Statec

For 74% of teleworkers, this was exclusively due to the health crisis, while for 8% the crisis did not lead to major changes because they were teleworking regularly before. 17% of the respondents answered that the current teleworking arrangement is a result of COVID-19 but that they used to telework occasionally.

As mentioned earlier, such surveys are based on a limited sample of people, so the results must be interpreted with caution. This does not prevent this survey from showing that the health crisis served as a catalyst for many private sector companies and public administrations to have their workers telework and thus allow the Luxembourg economy to continue to function despite the "lock down". According to the spring 2020 economic forecasts, Luxembourg is likely to have suffered less than other EU countries, with a GDP decline of 5.50% in 2020, while the euro area is expected to experience a record contraction of 7.75% in 2020. The European Commission points out that economic recovery in each Member State will depend not only on the evolution of the pandemic in the country in question, but also on the structure of its economy and its ability to respond to stabilisation policies.

The current stage of "semi-normality" does not yet allow an answer to the question posed by Statec as to how much of the current use of teleworking is still a one-off effect of the health crisis or whether it is a new and sustainable way of working.

However, it is now clear that the health crisis has accelerated the use of telework. Everyone was able to see its usefulness, its feasibility, its comfort for employees, its beneficial effects on the congestion of transport routes and the environment. The limitations and disadvantages were also tested, and all these lessons guided the discussions in the ESC.

3. Teleworking - a different way of organising work

3.1. The opportunities and risks of teleworking for employees and companies

As highlighted in the previous chapters, telework is an increasingly popular form of work. A source of flexibility for company employees, it allows for a better work-life balance, but also promotes the quality of work, the quality of life of employees and thus the performance of the company. Teleworking can be an opportunity to mobilise digital tools to improve the quality of life at work. In this respect, teleworking can be an opportunity to balance the quality of life of employees and the performance of the company and to allow new socio-productive compromises. But teleworking can also involve risks for both the employer, in terms of performance and productivity, and for employees, in terms of the organisation of work.

The table below, taken from the study "Teleworking, a silent wave" by Laurent Taskin and Patricia Vendramin, summarises the possible benefits and drawbacks on both sides. The ESC stresses that Table 3 does not summarise its own reflections but adopts a list from the above-mentioned university study for illustrative purposes only, to show that the benefits of teleworking are double-edged and can have negative consequences, either for the teleworker or for the employer. Of course, the assessment of the benefits and disadvantages of telework is very subjective; it depends on the type of company and organisation and especially on the individual who is teleworking.

Table 3: Perceived benefits and disadvantages of teleworking

On the teleworkers' side	
Possible benefits	Possible disadvantages
Reducing travel ; More flexible hours; Increased productivity ; Reduction of work-related stress ; Work-life balance ; More autonomy in the organisation of work ; Improved quality of life (less commuting time) ; Increased quality of work.	Social isolation ; Uncertain career and development opportunities; Conflict between private and professional spaces; Legal status ; Increased workload ; Difficulty in self-motivation ;

On the employers' side	
Possible benefits	Possible disadvantages
Increased productivity ; Reduction of costs; Increased staff retention ; Positive image of a modern company.	More difficult to control; Increased costs for support, selection, etc. Decreased loyalty and involvement ; More difficult to communicate; Socialisation of new employees more difficult; Real costs of teleworking (tax implications, data security, etc.).

Source: p. 52 "Le télétravail, une vague silencieuse - Les enjeux socio-économiques d'une nouvelle flexibilité", Laurent Taskin and Patricia Vendramin, UCL (Presses universitaires de Louvain), 2004

3.2. Impact of teleworking on labour relations

Teleworking is part of a certain evolution of society, and more particularly of the world of work, employment and human resources management, resulting in particular from the diffusion of ICTs and the emergence of the concept of skills, knowledge and employability as well as flexibility, individualisation and autonomy. It has sometimes ambiguous repercussions; for example, it provides more flexibility and empowerment for the teleworker, but also the fear of a "loss of control" for the employer. Hence the reluctance of employers, but also of the employee, to telework.

- **Teleworking - a tool for flexibility and managing working time**

In its early days, teleworking was often seen as a great opportunity to reconcile work and family life. It now appears that it is also a component of flexible work management, which contributes to extending working time through a relative increase in available time. A latent risk of the flexibility associated with today's teleworking is to move towards ever greater, even permanent, availability.

Indeed, according to a Statec¹² study, teleworkers work on average 4 hours longer than other workers, and usually in the evening and on weekends. 55% say they work in the evenings, compared to only 33% of non-teleworkers.

The conception of time has changed mainly due to profoundly different working patterns, and these changes have accelerated in the last ten years. Paradoxically, contractual working time has decreased, but at the same time it has spread outside the traditional working day. According to the authors Taskin and Vendramin, "*this extension of working time, despite a constantly decreasing contractual duration, leads to an increased fragmentation of working time and a growing desynchronisation of social time*".

¹² Statec, *Le télétravail à consommer avec modération*, Regards N°7, July 2020 (Data is based on the year 2019 and relates exclusively to residents in Luxembourg; cross-border teleworkers are therefore excluded from this study)

The acceleration of work has also increased and densified in recent years. Work is increasingly urgent and the demand for responsiveness and availability often disrupts the planning of working time. According to a survey conducted by Eurofound in April 2020¹³, 27% of respondents working from home indicated that they had worked in their spare time to meet the demands of work. These results are in line with those established in a previous survey in 2015, according to which 28% of regular teleworkers indicated that they frequently telework in their free time, compared to only 8% of all employees.

According to the above-mentioned authors, teleworking, "as a *tool for managing time and space*", represents a solution to the problems posed by this new relationship to time. But it is also a solution with new challenges because of the increased risk of "*blurring the boundaries between work and non-work time*". The fundamental issue is to what extent the employee can delimit this interference of work in his private life.

The ESC would like to stress that this concept of time availability is very subjective and mainly depends on the relationship an employer has with his employees.

The analysis of facts and trends shows that nowadays, teleworking is mainly developing in an informal way. Indeed, according to the statistical data presented above, the proportion of people working less than eight hours per week at home has increased significantly since 2010 (see *Figure 2): Teleworking in 2018 - hours per week teleworked*).

Over the last decade, teleworking has tended to emerge as a particular form of flexible arrangement, but only in certain occupations, for certain functions and in specific organisational contexts. Teleworking no longer refers only to the practice of teleworking using ICTs, but to a certain "*logic of mobility*", a new flexibility.

- **More autonomy and responsibility for the teleworker**

The general rise in qualification levels, the desire for self-realisation and the 'liberation' of the employee from the constraints of organised work partly explain the increasing value placed on autonomy to the detriment of hierarchy, which is considered to be rigid and restrictive. This orientation leads to a questioning of certain forms of hierarchy and control, to the favouring of autonomy and to an appeal to all individual skills.

The organisational charts of the past with their long hierarchical chains and many levels are giving way to flat organisational charts where many employees have real authority over their area of responsibility. Internal company communication is becoming more horizontal and less hierarchical. In this way, autonomy, empowerment, goal-oriented work and participation in common objectives are conducive to the individualisation of work and self-monitoring, which in turn are conducive to the implementation of teleworking. It therefore also implies a transfer of certain responsibilities from the employer to the worker, including those of time management and work organisation, and implicitly a transfer of risks.

This development can be perceived as a source of stress or as freedom, but this obviously depends on the individual. The transfer of certain organisational responsibilities to workers can intensify work and even lead to an increase in the mental burden of work, in a context where the teleworker is "de-spatialised", and thus, to some extent, isolated from other workers. Conversely, teleworking can reduce

¹³Survey "COVID-19 unleashed the potential for telework - How are workers coping ? " (asked on 4 September 2020)

stress as it allows more autonomy and flexibility in time management and avoids, among other things, stress related to mobility problems. This is an open question, as stress depends on the situation and the individual.

- **The risk of social isolation of the teleworker**

The social isolation of the teleworker remains a concern in all teleworking situations. Teleworking effectively reduces the frequency and quality of interaction with colleagues and the organisation. Likewise, when teleworking is partial, the employee may feel that he is missing out on part of the collective experience.

It is worth remembering that the risk of isolation again depends on the individual, the profile of the workers, the work activity, the different teleworking situations, etc. Some workers are indeed more capable of self-discipline and autonomous working than others.

However, the involvement of teleworkers is an important challenge for companies and especially for human resources. To alleviate this lack of human contact and social exchange, it is important to develop training and *team building* schemes.

- **Fear of loss of control by the employer**

For the employer, one of the issues related to teleworking remains control. The distance, multiple locations of work and flexible working hours of teleworkers make direct and personal control difficult, and sometimes impossible. Teleworking removes the two fundamental components of traditional managerial control, namely location (the ability to observe the worker) and presence (the ability for a worker to interact with colleagues).

Even if control tends to be more individualised, diffuse and multiple, in particular via ICT, staff evaluation and skills management or selection, questions arise: should control be based on working time or rather on results? What objective control criteria should be used? What should be monitored and measured?

In this respect, the ESC notes that teleworking must be implemented according to a company strategy, and the organisation's oversight function may be modified according to the specific context of each company. Teleworkers are also not comparable: the various forms and conditions of their teleworking, their skill portfolios, their levels of responsibility, their functions and their motivations to telework are not equivalent.

Finally, the perception of control is also related to the type of managerial and social relations. In this respect, the ESC draws attention to the fact that, irrespective of the type of enterprise, trust appears to be a key factor underpinning successful teleworking experiences.

- **The importance of a relationship of trust between the teleworker and the employer**

While trust is a key factor in the decision to telework, it is also a human quality that needs to be inspired and nurtured.

However, for any company of a certain size with a large number of teleworkers, a human resource management policy based mainly on trust is a gamble. Research shows that the combination of high trust (i.e., a low degree of control) and relatively high autonomy has been shown to have negative effects on workers' performance. Trust therefore does not eliminate control.

- **The importance of human resource management**

In view of the above, it is clear that the introduction of teleworking requires the development of appropriate and renewed human resource management policies capable of supporting the changes in business management brought about by teleworking. This process leads to an interest in various concepts such as control, employee involvement, the support of the management, selection of candidates, managerial relationship, trust, skills and training. Communication is essential to "demystify" the teleworker and avoid suspicion. The communication effort will also be aimed at non-teleworkers to act on misperceptions.

Teleworking makes sense as an organisational project rather than a technological one.

3.3. [Impact and challenges of teleworking on sustainable development](#)

- **Impact on reducing traffic congestion**

One of the policy objectives of promoting teleworking is to reduce traffic congestion on the outskirts of cities, but policies in this direction have not produced the expected effects. Indeed, teleworking allows for the postponement of travel to urban centres after peak hours, but from an overall point of view, it does not reduce the number of journeys very much. Studies show that for occasional teleworkers there may be a positive impact on the quality of travel, especially through greater flexibility in terms of working hours, but the quantitative effect is negligible.

However, it cannot be ruled out that teleworking can have positive effects on traffic congestion, as congestion thresholds at the entrance to large cities are sensitive to very small fluctuations.

Beyond these observations, the ESC would like to add that from the point of view of the teleworker's well-being, teleworking saves time by eliminating commuting, and also travel due to a reduction in traffic at peak hours. It alleviates the burden of transport, saving time spent in transport and giving more scope for non-work activities.

- **Impact on the reduction of air pollution**

As highlighted above, teleworking could have a positive impact on the quality of travel, but to a lesser extent on the number of trips. It could thus contribute to reducing the number of kilometres travelled, but the beneficial effect on air quality tends to fade (for example, teleworkers will use it to make other trips, such as shopping or picking up children from school). These journeys are generally shorter than the journey to and from work, but they weaken the environmental balance of the teleworking day.

According to research¹⁴ carried out in the city of Lille, results from simulation work show a reduction in greenhouse gas emissions of between 3 and 5% depending on the scenario applied (higher or lower rate of teleworkers, teleworking at home or in other places, etc.).

3.4. Impact of teleworking on the local economy and public finances

If teleworking were to become the new way of working, it would have, beyond the positive aspects (quality of life, environment, etc.), significant negative repercussions, notably on the State budget, the extent of which would depend, among other things, on the bilateral conventions agreed with neighbouring countries, as well as on the Luxembourg economy, in particular on local businesses due to the reduction in consumption (see box below).

Indeed, given the high concentration of jobs in Luxembourg City, the physical absence of teleworking employees constitutes a paradigm shift for traders, especially restaurant owners, who see their customer base shrink during the week. There is also no guarantee that teleworkers will consume more in their local area. It may well be that consumer behaviour will shift more towards online shopping.

In addition to this major challenge for local businesses and its impact on government revenues, including VAT revenues, public finances could also be affected more directly. If border workers stayed at home or in foreign workspaces beyond tax-exempt days, they would pay part of their taxes to the state of residence. Conversely, if the Luxembourg State manages to negotiate more generous thresholds to avoid administrative burdens for those concerned, it must be anticipated that these concessions from neighbouring States will also not be free of charge.

¹⁴EFFETS project, Final report "Experimentation of a decision-making support tool: estimation of the impact of teleworking on travel and greenhouse gas emission levels", June 2014.

A similar reasoning must be made with regard to social security, in the awareness that the issue is even more difficult because of the outright switch involved in exceeding the 25% threshold and the indirect implications for social benefits.

It is therefore necessary to find the right balance between the application of the teleworking regime and the related budgetary and economic losses.

Box: Economic impact of teleworking on the hospitality sector and trade

The effects of current teleworking are having a significant impact on the catering sector, especially in urban and central areas. As it is highly likely that in the near future more employees will make regular use of teleworking, it is important to pay attention to the potential economic impact of this paradigm shift.

Based on 2019 employment figures, the total domestic employment of 460,000 people is made up of 258,100 residents and 201,900 cross-border commuters. Assuming that 45% of residents, i.e., 116,145 people, and 40.5% of cross-border commuters, i.e., 81,769 people, work in an administrative function which does not necessarily require continuous presence, a maximum of 197,914 people would be able to telework.

Realistically assuming that these people work some 220 days a year and telework on average once a week, physical travel would decrease by 8,708,216 round trips over the year ($220/5 \times 197,914$). This would correspond to some 40,000 fewer round trips per working day with significant effects on mobility.

This hypothesis would also have a non-negligible economic impact on the local catering and commercial sectors. Thus, the HORESCA estimates that the daily consumption of an employee in the workplace corresponds to approximately 25 euros in the hotel and catering sector and 15 euros in other businesses, i.e., 40 euros per day. HORESCA concludes that teleworking could reduce the turnover of the local business concerned by about 350 million euros per year ($8,708,216 \times 40$).

According to HORESCA, this drop in revenue would result in the loss of over 2,000 jobs, €17 million in social security contributions, €10 million in VAT and almost €6 million in withholding tax on salaries in its sector alone. These estimated impacts are much lower than the actual figures in, 2020 where teleworking and other reticence and restrictions due to COVID have caused a drop in turnover in the catering sector of more than 50% in the months of June and July 2020.

Source: HORESCA

4. The legislative framework of the teleworking scheme

4.1. The European Framework Agreement on Teleworking of 11 July 2002

The framework agreement on teleworking, signed on 11 July 2002, is of particular importance as it is the first European agreement implemented by social partners themselves. This framework agreement represents a fundamental step in the European social dialogue because it is the first to be implemented by voluntary means under Article 154 TFEU (former Article 139 TEC).

The aim of this framework agreement is, on the one hand, to establish a general framework for teleworkers' working conditions at a European level and, on the other hand, to reconcile the common needs of employers and workers for flexibility and security. Teleworkers are thus granted the same overall protection as workers who work on the company's premises.

The framework agreement defines teleworking as "*a form of organisation and/or performance of work using information technology, within the framework of a contract or employment relationship, in which work which could also have been performed on the employer's premises is performed away from those premises on a regular basis*". This definition adopted by social partners covers a wide range of situations allowing for different forms of teleworking. In addition, it highlights several key areas where the specific features of teleworking need to be taken into account, namely:

- the voluntary nature of teleworking;
- employment conditions (teleworkers have the same rights as comparable workers on the company premises);
- data protection ;
- respect for privacy ;
- teleworking facilities ;
- health and safety at work ;
- the organisation of work ;
- the training of teleworkers ;
- the collective rights of teleworkers.

The ESC notes that the technical framework has changed significantly since 2002. The definition and scope as well as the key areas of the European framework agreement no longer correspond to the reality of increased digitalisation where ICTs are omnipresent and part of everyday life.

4.2. The legal framework in Luxembourg

In Luxembourg, the teleworking regime is subject to a legal framework through an agreement signed on 21 February 2006 between the Union des Entreprises Luxembourgeoises (UEL) on the one hand and the trade unions OGBL and LCGB on the other hand and is based on the European framework agreement described above. This agreement has been renewed twice - in 2011 and again on 15 December 2015.

The latter was declared a general obligation on 15 March 2016 by means of a Grand-Ducal regulation for the teleworking scheme¹⁵.

The convention adopts the definition of the European framework agreement; it therefore considers teleworking to be a particular way of organising work governed by the Labour Code for which the following three cumulative criteria are decisive:

- provision of work using information and communication technologies;
- in a place other than the employer's premises, especially at the employee's home;
- on a regular and habitual basis.

This definition limits the agreement to regular and usual teleworking and makes no reference to other categories such as occasional, tele-centre, mobile or self-employed teleworking (see above).

The agreement provides that teleworking is introduced on a voluntary basis, i.e., by mutual agreement between the employee and the employer. This implies that an employee's refusal of a teleworking proposal made by his employer cannot be a reason for termination of his employment contract and the employer cannot impose teleworking on him. For this purpose, a written agreement must be reached between the employer and the employee for regular and usual teleworking and thus meet the conditions required by the Accident Insurance Association (AAA) to intervene. A simple one-off agreement is not sufficient and in this context the agreement refers to the Labour Code (Article 121-4), namely: *"the employment contract, either for an indefinite period or for a fixed term, must be recorded in writing for each individual employee at the latest at the time of the employee's entry into service"*.

If applicable, the written document must contain compulsory information such as the location of the telework, the description of the function and tasks to be performed, the hours and days when the teleworker must be reachable, or the exact description of the teleworker's work equipment provided.

The teleworker has the right to return to the traditional work arrangement, with the agreement of the employer. The fact that the employee wishes to stop teleworking cannot be a reason for dismissal.

Concerning the teleworker's work equipment, the agreement states that it is the employer's responsibility to ensure the compliance of facilities, to provide the equipment or to cover the costs of teleworking, and the responsibility of the teleworker to take care of the equipment entrusted to him or to inform the employer in the event of a failure or malfunction of the work equipment.

¹⁵ Grand-Ducal Regulation of 15 March 2016 declaring the general obligation of an agreement on the legal teleworking scheme concluded between the Union des Entreprises Luxembourgeoises, on the one hand, and the trade unions OGBL and LCGB, on the other hand.

In terms of working conditions, the agreement stresses that the principles of equal treatment must be respected, and that working time must be managed by mutual agreement and in accordance with the law. The workload and performance criteria must be equivalent to those of employees working traditionally. The right to information provided by the employer or by the workers' representative must be respected under the same conditions as for other employees, and the possibility of meeting regularly with colleagues must be provided for in order to prevent isolation.

With regard to data protection, the agreement sets out the employer's obligations under labour law on the one hand and the obligations arising from the protection of personal data on the other.

The employer must therefore take measures, including software measures, to ensure the protection of data used and processed by the teleworker. The teleworker must be informed and trained in data protection and be informed, in particular, of any restrictions on the use of computer equipment or tools, as well as penalties for non-compliance.

With regard to the obligations arising from data protection laws, the employer must take technical and organisational measures to

- ensure secure processing,
- conclude a contract with specific clauses with any subcontractor implementing telework solutions,
- justify any transfer of data outside the European Economic Area,
- conduct an impact assessment when teleworking involves data processing with specific risks, or report data breaches resulting from teleworking to the National Commission for Data Protection (CNPD) and to the data subjects in a timely manner.

It is worth noting that the financial sector has specific rules on data protection.

To respect the privacy of the teleworker, the agreement provides that any employer who wants to inspect the equipment at the teleworker's home must make an appointment. The employer's access is thus limited to the place where the work equipment is located. Any monitoring of the teleworker must be within legal limits.

As for occupational health and safety, the agreement only sets out the employer's responsibility to inform the teleworker of the company's policy on occupational health and safety, including the requirements for display screens and the teleworker's responsibility to apply these policies correctly.

In terms of accident insurance, the Accident Insurance Association¹⁶ currently requires that, for the teleworking employee to be covered, an amendment to the employee's original contract of employment must be introduced while respecting the other provisions of the teleworking agreement. Coverage and compensation are exactly the same as for a workplace accident.

As a transitional measure, since March 2020, the AAA had considered that *"in this time of health crisis, it is sufficient for the employer to confirm to the AAA, in the event of an accident at home, that the employee was authorised to telework"*.

¹⁶ <https://aaa.public.lu/fr/support/faq/Covid-19.html> (article published 7 April 2020, accessed 4 September 2020).

The ESC regrets the lack of precision regarding the duration of the period described as a "health crisis". At present, we are in a phase of "semi-normality", i.e., some employees have returned to work on the premises of their company and others continue to telework. The latter, especially those with whom no amendment to the employment contract has been concluded to date, are outside the legal framework. As this situation is likely to continue, the ESC wonders whether the teleworkers concerned continue to be covered by the AAA when an accident at home occurs.

Pending clarification, the ESC considers that it is not within the jurisdiction of the AAA to define the means of proving the link between the accident and the work.

4.3. Proposed changes to the legal framework

The current massive use of teleworking is a reaction to the health crisis and should be considered as an exceptional event, especially because the legal and regulatory framework has been largely ignored since mid-March 2020. The crisis situation has led to collective teleworking, far from the individual and voluntary framework that the social partners envisage for permanent regulation. The ESC therefore proposes disregarding the exceptional situation in its opinion to focus on a "normalised" post-Covid-19 situation. It is true, however, that the current intermediate situation - the end of compulsory lockdown, but systematic physical distancing - is likely to last.

Even if the crisis proves, as one might assume, to be a catalyst for teleworking and more people will use it, this does not mean that the weekly proportion of teleworking will increase significantly. In normal times, i.e., according to 2019 statistics, 90% of telework is between 0.5 and 2 days per week. A revised agreement or legislation should therefore cover these most frequent cases as a priority.

The European framework agreement on teleworking of 2002, which was drawn up in the framework of the promotion of new information technologies at the time, is no longer adapted to today's reality in certain aspects. This also applies to the 2006 Luxembourg inter-professional agreement on the legal teleworking regime, which transposes the European framework agreement.

However, the social partners gathered in the ESC consider that the current agreement, declared to be a general obligation, is still the best instrument for regulating the matter. They therefore propose rewriting it by making it less formalistic, more readable and by adapting its scope. A review should be guided by the following principles:

1. Teleworking remains voluntary

A future regulation or agreement will provide neither a right nor an obligation to telework. The introduction of teleworking therefore requires a bilateral agreement between the employer and the employee on a double voluntary basis. This agreement between the parties is valid both for the transition to teleworking and for the return to the traditional way of working within the company.

As the number of people who want to use this instrument increases alongside the number of companies that want to use it, the situations where both parties find themselves in it will increase. There is no need to force the shift to teleworking, but regulation must accompany this movement in a constructive way for teleworkable professions and trades.

2. A precise definition with a broad scope

It is a question of defining the concept of teleworking in a precise manner, bearing in mind that the social partners meeting within the ESC agree that purely ad hoc interventions, particularly by telephone, should not fall within the scope of the regulations. More generally, they agree to explicitly exclude from the definition of telework :

- secondment abroad ;
- the transport sector in the broad sense (excluding administration);
- sales representatives ;
- *co-working spaces*, in the sense that work is done in a satellite office of the company;
- *smart working*, in the sense of occasional interventions by smartphone or laptop outside the usual workplace or teleworking location;
- all services provided outside the company to customers.

The agreement will be able to regulate two types of teleworking, rather "recurrent" teleworking and rather "occasional" or even spontaneous teleworking, which extends the scope of application compared to the current text which only regulates the "regular" use of teleworking. Both types then share the same legal regime, which is more restrictive in certain essential aspects (e.g., health and safety at work, accident insurance), but more flexible for occasional teleworking on practical or technical aspects.

The social partners agree on a threshold for separating regular and occasional teleworking. After discussions, they unanimously agreed that teleworking should be considered "occasional":

- when it is carried out in response to unforeseen events; or
- when teleworking represents less than 10% on average of the teleworker's normal annual working time.

Beyond that, teleworking is automatically regular.

Once the two types of teleworking, regular and occasional, are clearly distinguished by the agreement, there is no limit to the application of maximum teleworking time. In practice, the agreement will also cover cases of 100% teleworking.

Another element of the definition of telework seems to be the determination of the teleworker's workplace. In this respect, contemporary mobility has led the ESC to avoid counterproductive restrictions and to simply determine that it is work which would normally have been carried out on the employer's premises, but which "is carried out away from those premises". In practice, the exact location of teleworking or the methods for determining its location are to be agreed in writing between the employer and the employee.

The criterion of the use of information and communication technologies is part of the usual practice of teleworking but should not become an absolute condition.

3. The need for a written agreement

The principle of dual consent implies an agreement between the parties, which however requires written proof that summarises the conditions applicable to teleworking (places of

teleworking, hours or days of teleworking, etc.). The form of all these agreements can be freer than required by the current agreement, and the individual agreement can therefore be enshrined either in the employment contract or by other means (e-mail, SMS, etc.) for non-recurring teleworking periods. Individual agreements are not necessarily necessary if there are agreements at a collective level (i.e., collective agreements, company agreements or agreements with the workers' representative).

The current need for an amendment to the employment contract (point 4 of the current agreement) and the conditions for setting up teleworking and returning to face-to-face work (points 5, 16 and 17 of the agreement) are thus no longer necessary, at least not with the current formalism and cumbersome nature.

In particular, the formalities currently envisaged for the return to the traditional system do not make much sense for occasional teleworking. To avoid cumbersome formalities, the conditions of return should be established within companies, from the outset, in the written agreement on which teleworking is based, either at the collective level of the company or at the individual level.

4. Role of the workers' representative and the possibility of a specific optional teleworking scheme

In any case, the workers' representative is regularly informed about the number of teleworkers and its evolution within the company. The terms for the transmission of this information are agreed within the company concerned.

The social partners at the ESC also consider the possibility for companies of defining a specific teleworking regime, adapted to the particular situation of the company or sector. This system is likely to reduce formalities in practice once again and can be defined by means of a collective labour agreement or subordinate agreement respectively at a company level, while respecting the jurisdiction of the workers' representative. In accordance with the provisions of the Labour Code, the specific teleworking scheme is introduced and modified after information and consultation of the workers' representative or by mutual agreement between the employer and the staff workers' representative in companies with at least 150 employees.

5. Reconciling health and safety at work with the privacy of the teleworker

The new agreement will need to provide for a set of obligations and rights that ensure a fair balance between the employer's obligation to ensure health and safety at work on the one hand, and respect for the privacy of employees on the other. The social partners meeting at the ESC are unanimous in their desire to limit the intrusion of companies into the private lives of employees by deleting the relevant paragraphs in the current agreement, which state: "To be able to monitor compliance with rules on safety and health at work, the employer, the safety representative and/or the competent Luxembourg authorities shall have access to the teleworking location. (...)", or : "The employer shall ensure the compliance of electrical systems and workplaces. (...).

Consequently, social partners believe that the employer must inform the teleworker of the company's occupational health and safety policy and the teleworker must apply it correctly.

As a corollary to this responsibility of the employee, the agreement must ensure the right of the teleworker to request an inspection visit from the company's occupational health department or the company's safety and health representative.

6. Work equipment

The principle that it is the employer who provides the work equipment is not called into question. But the inclusion of purely occasional or even spontaneous teleworking within the scope of the Agreement raised the question of a realistic application of this principle. It is also this issue that the social partners have focused on in defining and distinguishing between "regular" and "occasional" teleworking.

One example of the difficulties in regulating this obligation properly is the provision of a computer by the employer. While this seems quite obvious in the case of regular teleworking, it is conceivable that some types of teleworking do not require this tool. Similarly, the scope of the agreement would allow an employee to stay at home spontaneously because of, for example, bad weather, and it is not clear how or why an employer would then provide a computer at the employee's home for this occasional teleworking.

To avoid restricting the practical applications used by employees and companies, the social partners meeting at the ESC decided to define the principles in the new agreement and to leave it to practice on the ground to define the technical equipment "necessary" to do a job on a case-by-case basis.

Thus, where teleworking is regular, the employer is obliged to provide the work equipment necessary for teleworking and to bear the costs directly incurred by it, in particular those related to communications. This obligation is not given when teleworking is occasional, although the agreement does not prevent companies from finding à la carte solutions here too (e.g., provision of laptops that can be used in any premises).

From the moment equipment is entrusted to him, the employee must take care of it and notify the company in the event of breakdown or malfunction of this equipment. As a corollary to this responsibility of the employee, the agreement must ensure the right of the teleworker to request an appropriate technical support service.

7. Organisation of work

In practice, the right balance must be found to allow the typical flexibility and efficiency of teleworking while avoiding an overload of work for the employee. From a regulatory point of view, teleworking should not be an exception in itself. The organisation of working time follows the rules applicable within the company, although specific arrangements may be made in the particular case.

The formal introduction of a "right to disconnect" would go beyond the scope of teleworking alone and is therefore not part of the current remit of the ESC, but if such a right is expressly stipulated, such stipulations apply to teleworkers as well as to others.

Overtime regulations apply, and the employer will ensure that the exceptional nature of overtime is strictly respected, also for teleworkers.

8. Equal treatment

Teleworkers have the same rights and are subject to the same obligations under the law and collective agreements as colleagues in a comparable situation who work on the company's premises.

The social partners in the ESC also believe that different treatment of teleworkers can be justified on objective grounds, but without prejudice to the principles of non-discrimination. Thus, the possible loss of a benefit in kind for the teleworker must be compensated for the time spent teleworking. However, this right to compensation does not apply to benefits in kind that are closely linked to presence on the company's premises (e.g., provision of a parking space, access to a canteen, etc.)

9. Other measures to protect teleworkers

None of the classic protective measures the employee benefits from in common labour law are sacrificed in teleworking:

- Accident insurance : Is mandatory, with limits and exclusions according to the criteria of the Accident Insurance Association (AAA) and case law. Thus, as a formal amendment to the employment contract would no longer be absolutely necessary, an amendment cannot be a condition for the intervention of the AAA in case of an accident at work either.
- GDPR: Data protection must be in accordance with the General Data Protection Regulation of the European Union. It is the employer's responsibility to take the measures required by law and by the GDPR, and it is the teleworker's responsibility to comply with them.
- Training: The teleworker has the same access to training and career development opportunities as comparable workers and receives, on request, targeted training on the particular aspects of this form of work organisation.
- Collective rights : The teleworker has the same collective rights as workers on the company premises, including rights related to worker representation.

Finally, and particularly to prevent the social isolation of the teleworker from colleagues on the company premises, the possibility of meeting regularly with work colleagues and having access to company information must be assured.

The social partners meeting at the ESC have reached an agreement on the basis of these principles and are proposing a revised text of the agreement which is appended to this opinion. The ESC proposes that this text should be the subject of a new, formalised cross-industry agreement and declared to be of general obligation.

4.4. Examples of teleworking laws across Europe

- **Teleworking laws in Germany**

According to Eurostat, 5.2% of working people resident in Germany regularly teleworked from home in 2019, ranking 15th behind the European average.

In Germany, teleworking¹⁷ has been legally defined since November 2016. On the other hand, mobile work is not regulated by law or by ordinance, but this does not call into question the general acceptability of mobile work.

In terms of occupational safety, the German Occupational Health and Safety Act applies without restriction to teleworking and mobile work.

As for the teleworkers' workplace, health and safety law is applicable to protect employees in the design and use of workstations.

With regard to occupational health, employees have an increasing responsibility for compliance with labour laws and health protection, as they themselves determine most of their working conditions, as the work is carried out outside the employer's "sphere of control".

The Working Time Act applies in full to both forms of work. The daily working time must not exceed eight hours and the employer is obliged to record the working time of employees.

As far as accident insurance is concerned, the general protection of employees is guaranteed by statutory accident insurance insofar as teleworking or mobile work is carried out as an employed activity. The protection concerns workplace accidents and occupational illness.

With regard to data protection, compliance with the provisions of the German Data Protection Act and the GDPR requires technical and organisational measures tailored to the situation, which may require a special legal form in the employment contract.

- **Teleworking laws in Belgium**

According to Eurostat, 6.9% of employees teleworked regularly in Belgium in 2019, ranking eighth among EU countries.

In the private sector, structural/regular teleworking is regulated by the law of 6 December 1996 on homeworking, as well as by the European framework agreement of 16 July 2002 and by a collective agreement (CCT 85).

The law of 5 March 2017 on feasible and manageable work introduced occasional teleworking, which can be applied to all workers in the private sector. In practice, occasional teleworking allows you to work at home, with the agreement of your employer, in order to deal with an unforeseen personal situation (a visit to the doctor, receipt of an important parcel, intervention of a technician at home during office hours, etc.) or to deal with a case of force majeure (unforeseeable such as a strike, snowfall, etc.). Any possibility can be considered, if everyone follows the rules set by the employer.

¹⁷ Telework stations are permanent computerised workplaces set up by the employer in the employee's private realm, for which the employer has agreed a weekly working time and a duration of the arrangement with the employee. The telework station is only created by the employer if the employer and the employee have defined the conditions of teleworking in an employment contract or agreement and if the required furnishings of the telework station, such as furniture, work tools and communication facilities, are made available and installed in the employee's private space by the employer or a person designated by the employer.

In the public sector, teleworking is regulated at federal level by a Royal Decree of 22 November 2006 on telework and satellite office work in the federal administrative civil service and at the level of the federated entities (Communities/Regions) by specific provisions.

- **Teleworking laws in France**

According to Eurostat, 7% of workers in France regularly teleworked in 2019.

In France, teleworking is regulated by Articles L1222-9 to L1222-11 of the Labour Code. Several criteria must be met to characterise telework and to be subject to the provisions of the Labour Code: information and communication technologies and working outside the company's premises.

The criteria to be met to be eligible for telework are set by collective agreement or charter.

In the absence of a charter or collective agreement, when the employee and the employer agree to use telework, they formalise their agreement by any means. This means that every employee has the right to work from home in the event of unforeseen circumstances (transport strike, sick children, etc.) or for personal convenience (working in peace, etc.). You need merely formalise your request to telework by e-mail, for example.

In terms of obligations, the employer is required, vis a vis the teleworking employee:

- to inform him of any restrictions on the use of computer equipment or tools or electronic communication services and of the penalties for non-compliance with such restrictions;
- to give him priority to take up or return to a non-teleworking position that corresponds to his professional qualifications and skills and to inform him of the availability of any such position;
- to organise an annual interview which includes the employee's working conditions and workload.

Teleworkers have the same legal and contractual rights and benefits as employees in a comparable situation working on the company's premises.

An employer who refuses to grant the benefit of teleworking to an employee who occupies a position eligible for teleworking under the conditions provided for by a collective agreement or, failing that, by the charter, must give reasons for their decision.

Refusal to accept a teleworker position is not a reason for termination of the employment contract.

An accident occurring at the place where telework is carried out during the teleworker's professional activity is presumed to be a workplace accident within the meaning of Article L.411-1 of the Social Security Code (the presumption of proof is incumbent on the insured party).

In this situation of health crisis, the threat of an epidemic is considered as an exceptional circumstance allowing the employer to impose teleworking on the employee without his agreement (Article L. 1222-11 of the Labour Code). It is a question of adapting the position to allow the company to continue its activity and to guarantee the protection of employees. The implementation of teleworking in this framework does not require any particular formalism. Since the covid-19 epidemic has reached stage 3, the implementation of teleworking is imperative whenever the position allows it.

- **Telework laws in the Netherlands**

According to Eurostat statistical data from 2019, the Netherlands ranks first among EU countries with the most regular teleworkers with 14.1%.

In the Netherlands, the Flexible Work Act ("Wet flexibel werken") allows employees who have been employed by the employer for at least six months to ask their employer (who has 10 or more employees) to change the agreed place of work, for example to a home workplace.

The Dutch Employee Health and Safety Act stipulates that the employer must ensure that the health and safety of employees is protected in all aspects of employment, even when the workplace is at home.

Within the framework of the general working conditions policy, the employer should have a policy in place to prevent/limit job-related psychosocial pressures. It must inform employees of health and safety risks and provide advice on how to limit these risks.

The employer is responsible for the workplace at home, i.e., the design of the workstation, the working method or the provision of tools (ergonomic chair, etc.). The employer can visit the workplace at home or send a health and safety expert to assess whether the workplace complies with the rules and obligations set out in law. The employer is responsible for the costs of making the workplace ergonomic and safe.

In addition, it is important for the employer to decide whether and how the employee will be monitored; not only to ensure that employees do their job, but also to monitor how the job is done. The rules for monitoring employees should also be laid down in a policy.

- **Teleworking laws in Finland**

In Finland, the rate of regular teleworkers increased during 2019 (from 13.3% in 2018 to 14.1% in 2019), thus taking the first position among EU countries, alongside the Netherlands.

This is largely due to the Working Hours Act, passed in 1996, which gives most employees the right to adjust the typical daily hours of their workplace by starting or finishing up to three hours earlier or later.

On 1 January 2020, Finland introduced a new Working Time Act to update the rules governing working time to better take into account changes in the economic structure and working methods. It thus allows for a new concept of working time flexibility: the employer and the employee can agree on flexible working hours if the nature of the employee's duties is such that the employee can decide independently on the allocation of at least half of his total working time, as well as on the place of work. The rest of the employee's working time can still be scheduled by the employer.

Another innovation of the law is that it no longer regulates the maximum amount of overtime separately but provides for a limit on the total working time. The maximum working time, including overtime, is on average 48 hours per week over a four-month period without the possibility of agreeing on overtime.

4.5. The teleworking framework for employees living in border countries

The organisation of teleworking, for employees residing in border countries¹⁸ and employed in Luxembourg¹⁹, is strongly conditional, on the one hand, on the provisions of agreements concluded between the government of the Grand Duchy of Luxembourg and the government of the other border countries with a view to avoiding double taxation and preventing tax evasion and fraud with regard to income and wealth taxes (hereinafter referred to as "tax agreements") and, on the other hand Regulation (EC) No 883/2004 and its implementing Regulation (EC) No 987/2009 on the coordination of social security systems (hereinafter referred to as "social security regulations") and bilateral social security agreements²⁰.

- **The tax impact** of teleworking by an employee residing in border countries

The purpose of tax agreements is to eliminate double taxation. According to these tax agreements based on the OECD model convention, employees are in principle taxed in the state of residence unless the employment is carried out in the other state. In addition, as a general rule and subject to the specific provisions of other tax treaties, the salary of a border resident for days worked outside Luxembourg is taxable in his State of residence. Thus, if the employee physically works outside Luxembourg and also in Luxembourg, he should in principle be taxed in both states (i.e., Luxembourg and the border country of residence), depending on the remuneration received and relating to the days worked in Luxembourg and outside.

Consequently, arrangements relating to the tax treatment of employees residing in Germany, Belgium or France and working (in whole or in part) in Luxembourg have been provided for in tax agreements²¹. Thus, through these agreements, the taxation of the cross-border employee's remuneration is maintained at 100% in Luxembourg if the following thresholds are not exceeded:

- Germany²²: maximum 19 days of work per year outside Luxembourg, since the 2011 fiscal year.
- Belgium²³: maximum 24 working days per year outside Luxembourg, since the 2015 tax year.
- France²⁴: maximum 29 working days per year outside Luxembourg, as of the 2020 fiscal year.

If these thresholds are exceeded (by adding days of teleworking and activity in any country other than Luxembourg), the salary in relation to all the days worked outside Luxembourg is generally taxable in the employee's country of residence. These thresholds and the distribution of the related tax law make the determination of the taxation of the remuneration of an employee who is a resident of border

¹⁸ This note only covers the implications for Luxembourg's border countries (i.e. Germany, Belgium and France)

¹⁹ This note refers only to the case of employees who have concluded a single contract with an employer in Luxembourg. Specific cases such as multiple employment contracts, multiple employers and secondments shall be dealt with in a separate note if necessary.

²⁰ Currently, there are bilateral or multilateral agreements, conventions and arrangements in force in the field of social security between Luxembourg and other border countries (i.e. Germany, Belgium and France)

²¹ See details of the references to these agreements in the following footnotes

²² Administrative Arrangement of 26 May 2011 and Circular of the Director of Contributions L.G.-Conv. D.I. No. 56 of 26 March 2012

²³ Mutual agreement reached on 16 March 2015 and circular from the Director of Contributions L.G.-Conv. D.I. no. 59 of 31 March 2015

²⁴ Point 3 of the Protocol to the Agreement of 20 March 2018 between Luxembourg and France for the avoidance of double taxation and the prevention of tax evasion and avoidance with respect to taxes on income and on capital.

countries complex, and in practice do not necessarily help to develop the teleworking of residents of border countries.

So far, employees who have exceeded these thresholds seem to be a very small minority, despite the fact that some neighbouring tax authorities have started a hunt for working days in the hope of imposing additional periods. It is possible that in the future - beyond the suspension of thresholds during the health crisis (see below "Changes to the legislative framework following the health crisis") - some border workers will choose to exceed these thresholds to avoid traffic jams and make more systematic use of teleworking.

- **The impact of teleworking on the social security regime** of an employee residing in border countries

Social security regulations are based on one principle: the employee is insured in one state only, namely the state in which he carries out his professional activity, regardless of where he lives or where his employer is established, provided that the professional activity is carried out in one state only.

In the case of a teleworking employee, he is entitled to the same social protection as the company's employees who have a traditional employment contract.

Employees who reside outside the Grand Duchy of Luxembourg generally remain affiliated to the Luxembourg social security system if they have only one employer and if they do not work at least 25% of their time in their country of residence (approximately less than 1.25²⁵ days per week, calculated over a 12-month period). Therefore, if an employee working in Luxembourg and residing in a border country works at least 25% of his working time in his country of residence, he should be affiliated to the social security system of his country of residence.

Moreover, this entails heavy administrative burdens for the employer, who must also register with the social security system in the employee's country of residence. Moreover, the social security contributions of border countries for both the employer and the employee are higher than the Luxembourg rates. This would therefore entail additional costs for both the employer and the employee residing in a border country and would have an impact on the social benefits received by the employees^{26,27}.

Even if the 25% threshold applicable to social security is higher than the three tax thresholds used with our neighbours, border workers who work in Luxembourg must limit themselves to an equivalent number of days which could be evaluated at approximately less than 56²⁸ days per year to avoid a change of affiliation to their country of residence. Article 16 of Regulation 883/2004 allows for derogations between two or more Member States by common agreement from the provisions on the

²⁵ Less than 1.25 days per week calculated on the basis of 5 days X 25%.

²⁶ Entitlements to social security benefits may be affected by the change of affiliation to the social security system. These impacts should mainly be assessed with regard to family allowances and also student grants for which European rulings already exist. In this respect, it is worth remembering that the European Court of Justice has granted border workers the right to student grants and family allowances in return for the contributions they pay to the Luxembourg Treasury.

²⁷ As the decisions of the competent institutions on a change of social security affiliation in accordance with Regulation 883/2004 are applied retroactively, the border workers concerned are confronted with claims for reimbursement of social security benefits received by Luxembourg during the period after the date of being signed off.

²⁸ 56 days if we consider 224 (i.e. 365 - 104 (weekend) - 26 (paid holidays) - 11 (public holidays) X 25%.

determination of the applicable law in the interest of certain persons or categories of persons. The ESC is not aware whether this provision has already been used in practice by other European countries.

- **Changes in the legislative framework following the health crisis and related recommendations for widespread teleworking**

The health crisis has challenged the existing legislative framework for teleworking. It has led almost all employers to organise teleworking overnight as far as the business allows. In just a few days, the number of employees, whether residents or cross-border commuters, working from home has exploded.

In this state of emergency, voluntary agreements have been concluded in accordance with the provisions of the tax treaties in force between Luxembourg and its neighbours in order to derogate from the general provisions applicable in the above-mentioned tax treaties or protocols relating thereto as from 11 March 2020 for Germany and Belgium and 14 March 2020 for France, particularly with a view to maintaining economic activity and guaranteeing the health and safety of its employees. In view of the risks linked to the coronavirus, these voluntary and temporary agreements under certain conditions prevent non-resident employees working from abroad from being impacted fiscally or socially during a specific period, which in principle can be assimilated to the crisis period.

In the current "semi-normal" phase, the voluntary agreements between Luxembourg and its three neighbouring countries are maintained at least until 31 December 2020 for France and Belgium, while the agreement with Germany is tacitly renewed on a monthly basis as long as neither party terminates the agreement. During the Covid-19 pandemic, working days during which border workers teleworked from their main residence are considered (fictionally and generally in an optional way) as working days performed in Luxembourg.

The ESC believes that it is important to learn from this health situation related to the Covid-19 crisis which can be seen as a catalyst for the teleworking scheme. Once the exceptional measures come to an end, it is important to consider a renegotiation of the bilateral agreements with Germany, Belgium and France in order to adjust the tax thresholds foreseen and thus give border workers a real possibility of teleworking (regularly or occasionally).

Furthermore, to provide more legal certainty to taxpayers, the ESC proposes learning from the Covid-19 crisis for tax aspects and thus to include force majeure clauses in its tax treaties in the future.

Likewise, social security agreements have been concluded between Luxembourg and the three border countries to temporarily avoid applying the above-mentioned 25% rule.

However, these agreements have not been published, although the tax and social security rules applicable to them are not the same. To ensure legal certainty for taxpayers (both employers and employees), the ESC also believes that it would be more than welcome to ensure the publication of any agreements concluded between Luxembourg and neighbouring countries which have both tax and social security consequences for teleworkers or their employers. Moreover, if these rules (or their interpretation) were to remain different from one country to another, the ESC would be more than in favour of administrations/ministries coming together to obtain clarifications (if possible harmonised) on the practical application of these rules and the acceptable methods of proof.

The ESC would find it appropriate to consider aligning the tolerance thresholds for the three border countries upwards as far as possible (within the limits provided for to ensure that employees remain affiliated to the Luxembourg social security system) to simplify the monitoring of these thresholds and the management of the related reporting obligations. Indeed, in the same company located on Luxembourg soil, there may be four different treatments depending on whether the employee lives in Luxembourg, France, Belgium or Germany, which can create tensions between employees.

4.6. Difficulties with the law applicable to the employment relationship

In general, it follows from the previous chapters that the determination of the law applicable to teleworking is complex, because:

- several laws may apply cumulatively to the employment relationship;
- certain concepts in the reference legislation are not precisely defined, in particular the criterion of duration (usual, occasional, regular, alternating, etc.), which leaves some room for discretion (which may differ from one legislation to another) and therefore uncertainty;
- the rules of the other States involved (also for the assessment of teleworking) and their interpretation and application by these States must also be taken into account.

Article 8 of EU Regulation 593/2008²⁹ regulates the question of the law applicable to individual employment contracts as follows:

1. *The individual employment contract is governed by the law chosen by the parties. Such a choice shall not, however, have the effect of depriving the worker of the protection afforded by the provisions which cannot be derogated from by agreement under the law which, in the absence of a choice, would have been applicable under paragraphs 2, 3 and 4 of this Article.*
2. *In the absence of a choice by the parties, the individual employment contract shall be governed by the law of the country in which or from which the employee, in performance of the contract, habitually carries out his work. The country in which the work is usually performed is not deemed to change when the worker performs his work temporarily in another country.*
3. *If the applicable law cannot be determined on the basis of paragraph 2, the contract shall be governed by the law of the country in which the establishment which hired the employee is situated.*
4. *If it appears from all the circumstances that the contract is more closely connected with another country than the one referred to in paragraph 2 or 3, the law of that other country shall apply.*

In short, the parties are free to choose the law applicable to the employment relationship, without being able to deprive the employee of the mandatory provisions:

- of the country where the worker usually performs his work,
- or, failing that, of the country in which the establishment that hired the worker is located,
- or, failing that, of the country with which the employment contract is most closely connected.

Several laws may therefore apply cumulatively to the employment relationship.

²⁹ Regulation (EC) 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

Furthermore, it is worth noting that in practice there could be a risk of considering an employee as both a teleworker within the meaning of the agreement of 15 December 2015 and as a seconded employee³⁰ if the criteria for the application of both regimes are cumulatively met:

- work that could also have been done on the employer's premises,
- work is performed using information and communication technologies,
- work is performed in a place other than the employer's premises,
- work is regularly and habitually performed in this way,
- a service is provided on a temporary basis for another company located in a Member State (host State) other than the Member State of the employer (sending State).

The ESC stresses that the teleworker and the seconded worker are subject to two different regimes. It is important to keep these two situations separate to avoid any intersection.

4.7. Teleworking in the civil service

Prior to the health crisis, teleworking rates were very low in the civil service and public administrations (including municipalities). A survey in 2015 showed that 87% of public administrations claimed not to have teleworkers among their employees and that in total there were an estimated 60 teleworkers among all government employees, i.e., 0.25% of the total workforce.

However, a legal basis for teleworking has existed since 2003³¹, when the General Statute for State Civil Servants³² was supplemented by article 19bis specifying its conditions, which state: *"The official may be authorised by the head of administration to carry out part of his duties at home by teleworking using information technology. The head of administration determines the conditions for teleworking. A grand-ducal regulation may determine the conditions for the exercise of teleworking."* Such a grand-ducal regulation had been introduced on 10 October 2012.³³ Following a motion tabled in December 2016 in the Chamber of Deputies inviting the Government to analyse the potential of teleworking in the Civil Service and on the basis of the Rifkin study, presented in 2016, the Ministry of Civil Service and Administrative Reform launched in October 2017 a pilot "Telework" project within the administrations and offices of the State with the objective of developing a new approach allowing agents a better work-life balance.

³⁰ A "seconded" worker is an employee sent by his employer to another Member State to provide a service on a temporary basis.

³¹ Amended law of 16 April 1979 establishing the general status of Civil Servants.

³² Amended law of 16 April 1979 establishing the general status of Civil Servants.

³³ Grand-Ducal Regulation of 10 October 2012 determining the general conditions relating to the performance of teleworking in the civil service.

A first evaluation of this pilot project, carried out in July 2018, showed that teleworking has significantly improved the well-being of teleworkers. These results are confirmed by their supervisors, who note in particular that teleworkers are more motivated. The impact was found to be neutral when it came to the conviviality and atmosphere at work and 75% of the teleworkers' colleagues surveyed also expressed interest in the possibility of teleworking.

Through this pilot project, the Ministry of the Civil Service and Administrative Reform has noted that the legal framework is no longer adapted to needs. As a result, the Ministry wished to continue the pilot project provisionally at least until the end of 2018, to get as much feedback as possible with a view to drawing up recommendations for amending the Grand Ducal regulation.

However, this 2012 Grand Ducal regulation was repealed on 18 March 2020, due to the current COVID-19 crisis and the fact that it was no longer adapted to the current context. It excluded some civil servants, e.g., heads of department, trainees and border workers, required five years of service, did not propose clear and objective selection criteria and limited teleworking to 15% of the workforce.

Currently, for civil servants, the organisation of services provided through teleworking, including working conditions and hours, the distribution of work-related expenses (computer equipment, furniture, internet connection, network protection, consumables, various expenses), the health and safety of employees, the place of work, etc., are regulated exclusively at administrative level and in the context of an authorisation granted by the line manager.

A circular letter to ministerial departments and State administrations from the Minister of the Civil Service of 2 July 2020, relating to the progressive opening up of ministerial departments and State administrations and the extension of teleworking, reiterates that the possibility of teleworking is based on Article 19bis of the General Statute of State Civil Servants, which provides that "the civil servant may be authorised by the head of administration to carry out part of his duties at home by teleworking using information technology. The head of the administration shall determine the conditions for the performance of teleworking". For this purpose, a "teleworking authorisation" template is provided, according to which a head of administration can grant civil servants and public employees in his administration the authorisation to telework up to 3 days per week.

It is envisaged that, following consultation with the social partners, the Government will establish permanent recommendations and rules for teleworking within the ministerial departments and State administrations.

Indeed, during lockdown, 47%³⁴ of those working in public administrations (excluding those who took family leave or were furloughed) teleworked fully, showing that many positions in the public service are teleworkable. This experience should serve as a catalyst for the rapid definition of the legal and regulatory bases of the telework regime within the civil service and public administrations in order to put an end to the legal uncertainty in which the public servants concerned currently find themselves. Such a reform could well be inspired by the future agreement on teleworking in the private sector.

At the tax level, cross-border civil servants and public employees are subject to specific provisions set out in the double taxation agreements concluded between Luxembourg and their respective countries of residence³⁵. The taxation of work done from home therefore differs from the regime applicable to the employee, which essentially depends on the number of days worked.

In short, the remuneration of a cross-border civil servant or public employee remains in principle taxable in Luxembourg, except :

- for a resident in Germany (Art. 18 LU-DE tax treaty): if he has German nationality or if he does not reside in Germany solely for work purposes (i.e., if he resides there for personal reasons), in which case his teleworking income is taxable in Germany from the 1st day;
- for a resident in Belgium (Article 19 of the LU-BE Treaty): if he has Belgian nationality without having Luxembourg nationality, in which case his income relating to teleworking provided from his home is taxed by Belgium according to the provisions applicable to employees, i.e., after exceeding the tolerance threshold of 24 days (currently suspended);
- for a resident in France (article 18 of the LU-FR Treaty): if he has French nationality without having Luxembourg nationality, in which case his income relating to teleworking carried out from his home is taxable in France from the 1st day.

* * *

³⁴ Statec, Statnews no. 15 of 19/05/20: "Telework is booming: a positive experience for the majority of workers"

³⁵ Direct tax administration - International treaties in force and under negotiation <https://impotsdirects.public.lu/fr/conventions/luxembourg.html>

Result of the vote:

This opinion was adopted by unanimous vote of the members present.

Daniel Becker

Jean-Jacques Rommes

Secretary General

President

Luxembourg, 11 September 2020

APPENDIX : ESC proposal - Agreement on the legal regime for teleworking

**Agreement of (date)
on the legal regime for teleworking**

Preamble: guiding principles

Teleworking is a specific way of organising work which is governed by the provisions of the Labour Code and the provisions of this agreement.

Teleworkers enjoy all the rights recognised by labour law, by the applicable collective labour agreements, as well as by the company's bylaws (extra-legal benefits).

Without prejudice to the provisions of this agreement, employees shall not be discriminated against on the basis of their teleworker status.

1. Definition of teleworking

For the purposes of this agreement, teleworking is a way of organising or carrying out work, generally using information and communication technologies, so that work which would normally have been carried out on the employer's premises is carried out away from those premises.

For the purposes of this agreement, a teleworker is a person who teleworks in accordance with the above definition.

For the purposes of this agreement, teleworking is considered occasional when it is carried out to deal with unforeseen events or when it represents less than ten per cent on average of the teleworker's normal annual working time.

Teleworking is considered regular in other cases.

The reference period is the calendar year.

2. Scope of application

The scope of application of this agreement covers employees covered by the Labour Code, excluding those that are subject to public law or having a similar status.

In particular, the following shall be excluded from the scope of this Agreement

- secondment abroad ;
- the transport sector in the broad sense (excluding administration);
- sales representatives ;
- *co-working spaces*, in the sense that work is performed in a satellite office of the company;

- *smart working*, in the sense of occasional interventions by smartphone or laptop outside the usual workplace or teleworking location;
- all services provided outside the company to customers.

3. Voluntary nature of teleworking

The employee and the employer are free to choose the teleworking arrangement, taking into account, as applicable, the provisions in force at the level of the sector or company concerned, when the employee takes up his duties or at a later date.

The employee's refusal of a teleworking proposal made by his employer does not in itself constitute a reason for termination of his employment contract. Nor can refusal justify recourse to Article L. 121-7 of the Labour Code to impose this form of work.

4. Role of the workers' representative and specific optional teleworking arrangements

The workers' representative is regularly informed about the number of teleworkers and any changes thereto within the company. The conditions for the transmission of information are to be decided within the company.

Pursuant to this agreement, specific teleworking arrangements, adapted to the particular situation of the company or sector, may be defined at the level of the company or sector in question concerning, for example, the categories of employees excluded from teleworking, the places or types of places authorised, the rules on health and safety in the workplace, the rules on the protection of personal data and the contact persons for teleworking.

The specific regime may be defined, in particular, by means of a collective labour agreement or a subordinate agreement. In compliance with the provisions of the collective agreement or the subordinate agreement, if any, or in the absence of such provisions, the specific teleworking arrangement may also be defined at company level, in accordance with the remit of the workers' representative if any.

Where there is a workers' representative, specific telework arrangements shall be introduced or modified after information and consultation of the workers' representative pursuant to Article L. 414-1 of the Labour Code or by mutual agreement between the employer and the workers' representative in companies with at least 150 employees pursuant to Article L. 414-9 of the Labour Code.

5. Agreement between the employee and the employer

Where teleworking is occasional, the employer provides the employee authorised to telework with written confirmation.

When teleworking is regular, the following elements are defined by mutual agreement in writing between the employer and the employee:

- the location of the telework or the methods for determining this location;
- the hours and days of the week during which the teleworker teleworks and must be reachable for the employer or the methods for determining these periods;

- the conditions of any compensation for benefits in kind according to point 6 of the present agreement;
- the monthly flat rate for connection and communication costs as per point 8 of this agreement;
- the conditions of the transition or return to the classic work approach according to point 13 of the agreement.

These elements can also be defined in the framework of the specific teleworking scheme provided for in point 4 if it exists.

6. Equal treatment

Teleworkers have the same rights and are subject to the same obligations under the applicable law and collective agreements as comparable workers on company premises.

The principle of equal treatment between teleworkers and regular workers must be respected, in particular when it comes to employment conditions, working time, remuneration conditions, conditions of and access to promotion, collective and individual access to ongoing vocational training, respect for privacy and the processing of personal data for monitoring purposes in the framework of employment relations. In addition, the teleworker receives the same information as other employees in the company and at the same rate as the employer, or indeed the workers' representative, circulates it in the company.

However, different treatment of teleworkers can be justified on objective grounds, without prejudice to the principles of non-discrimination and equal treatment.

When regular teleworking implies a loss for the teleworker of a benefit in kind to which he would normally be entitled, it is up to the parties concerned to define compensation which may be specific, but which must respect the principle of non-discrimination.

For the time spent teleworking, the teleworker is not nevertheless entitled to compensation when the benefit in kind is closely linked to his or her presence in the company, such as access to a parking space, a canteen or a sports hall on the company premises.

7. Data protection

It is the employer's responsibility to take the measures required by law and by the European Union's General Data Protection Regulation to ensure the protection of data, including personal data, used and processed by the teleworker for business purposes.

The employer has an obligation to inform the teleworker about data protection and to train him to the extent necessary.

Information and training shall include all relevant laws and company rules on data protection.

The employer shall inform the teleworker, in particular :

- of any restrictions on the use of computer equipment or tools such as the Internet, e-mail or mobile phones;
- of penalties for non-compliance.

It is the responsibility of the teleworker to comply with these rules.

8. Work equipment

Where teleworking is regular, the employer provides the work equipment necessary for it and covers the costs directly incurred by teleworking, in particular those related to communications. This may take the form of a monthly lump sum, to be agreed in writing between the employer and the employee.

If necessary, the teleworker can request an appropriate technical support service. The employer shall be responsible, without prejudice to Article L. 121-9 of the Labour Code, for costs related to the loss or damage of equipment and data used by the teleworker.

In the event of failure or malfunction of the work equipment, the teleworker must immediately notify the company in the manner laid down by the company.

The teleworker takes care of the equipment entrusted to him.

9. Health and Safety

The employer must inform the teleworker of the company's occupational health and safety policy.

The teleworker applies these occupational health and safety policies correctly.

The teleworker is entitled to request an inspection visit from the company's occupational health service or the company's health and safety representative.

10. Organisation of work

The organisation of working time follows the rules applicable within the company. The teleworker's workload and performance criteria are equivalent to those of comparable workers on the employer's premises.

The parties should agree on the terms and conditions governing the provision of overtime that are, as far as possible, in line with the company's internal procedures. The employer will ensure that the exceptional nature of overtime is also strictly respected for teleworkers. Any provision on the right to disconnection applicable to a regular worker also applies to the teleworker.

The employer ensures that measures are taken to prevent the teleworker's isolation from other workers in the company, by giving him the opportunity to meet regularly with colleagues and to have access to company information.

11. Training

The teleworker has the same access to training and career development opportunities as comparable workers working on the employer's premises and is subject to the same evaluation policies as these other workers.

The teleworker receives, at his request, appropriate training on the technical equipment available to him and on the characteristics of this way of organising work.

The teleworker's line manager and direct colleagues may also need training in this way of working and its management.

12. Collective rights

The teleworker has the same collective rights as workers on company premises.

Thus he

- has the right to communicate by any appropriate means with the company's workers' representatives;
- is subject to the same conditions of participation and eligibility for elections to workers' representative bodies;
- is included in the calculations determining the necessary thresholds for workers' representation bodies.

13. Switching or returning to the traditional work arrangement

The teleworker or the employer may at any time request a change to, or return to, working in the traditional way. When teleworking is regular, the conditions of the transition or return to the traditional work arrangement are to be agreed upon in writing between the employer and the employee at the time the employee starts teleworking.

14. Amending provisions

The signatory parties also call on the legislator to amend the existing texts concerned by this type of work, namely

- Article L. 414-9 of the Labour Code which should be amended as follows:
Addition of a point 8 "the introduction or modification of a specific teleworking scheme at company level",

as well as

- the provisions of the Labour Code concerning the safety and health of workers at work,
- the provisions of the Labour Code concerning occupational health services,
- Grand Ducal Regulation of 4 November 1994 concerning the minimum safety and health requirements for the use of work equipment by workers at work,
- the provisions of the Labour Code concerning workers' representatives relating to the safety officer,

texts that need to be adapted to this type of work.