



*Employers entrusted to deliver
Sustainability Growth Innovation*

Position Paper

SGI Europe response to the First stage consultation on a possible action in the area of
telework and workers' right to disconnect

25 June 2024

Brussels, 25-06-2024
24SAB09

Introduction

SGI Europe intends, in its response to the first stage consultation of social partners on telework and a right to disconnect, to compare the Commission's assessment and proposals for further action with the knowledge base built during the cross-sectoral negotiations.

SGI Europe agrees that since the Covid pandemic, which saw at Member State level an extensive shift to "forced" telework, more flexible ways of working and telework have, in general, increased in most EU Member States. Different initiatives and policies have been found and implemented in different Member States by Social Partners and governments. However, the situation during Covid cannot be compared to the current situation. During Covid telework was mainly imposed on employees as a matter of urgent necessity, while currently telework is voluntarily agreed between the employer and the employee. In addition, things have changed after Covid in the way that many workers have returned to carry out their activities at the employer's premises or, in many cases, telework is performed in a hybrid form.

This reflects ongoing changes in work organisation and the post-pandemic world of work.

As a first remark, SGIEU thinks that the 2002 EU social partners' Framework agreement on telework is still valid in many parts of its content and generally fit for purpose, and that the "spirit" of it therefore should serve as inspiration for any further initiative from European level/ from the Commission. The purpose of this agreement was to provide Member States, Social Partners and enterprises a ground to further build policies at national level. In addition to already pre-existing initiatives and collective agreements in Member States, the 2002 agreement resulted in national-level regulation in all EU Member States and in numerous collective agreements that are still today the main frameworks for organising telework at national level.

The issue of connecting and disconnecting was defined, and is still valid, in the Framework agreement on digitalisation (2020) which addressed the modalities of connecting and disconnecting from a social partner and enterprise point of view. This agreement is now in its fourth year of implementation and has motivated numerous new social partners practices in the different Member States.

Therefore, any future action at European level on the issue of telework and the modalities of connecting and disconnecting must be conscious of and respect the richness and diversity of social partners solutions already found and yet to come, to address the several opportunities and challenges identified in the Consultation document. Social partners have a special role to play, are best placed to find and are closest to solutions that correspond to the needs of both employers and employees. Thus, the interest, needs and solutions of social partners from both sides – employers and employees - should be in the centre and clearly recognised, visible and reflected in any coming initiative from the Commission.

SGIEU believes that telework, in general, foremost brings opportunities for both employers and employees and that the advantages of this form of organising work, could have been more/ better emphasized/ underlined in the consultation document. Having said this, telework should of course be planned and undertaken in a predictable, conscious, clear and safe manner and environment, for both the employers and the employees. SGIEU will try to elaborate a bit more about this below.

The needs and the role of employers must also be considered in any future initiative, to give the right incentives for telework in the future and make it functionable and workable. It is important that any new proposal has a balanced approach to the topics.

Going forward SGI Europe identified the following crucial points as preliminary elements to consider when addressing telework and the modalities of connecting and disconnecting from a European perspective:

- Any EU action should respect the **proportionality** and **subsidiarity** principles and anticipate its impact and **consequences** for different national systems and be accompanied by thorough impact assessment.
- Respect for the **different contexts at national level** about the **legal situation, labour markets and collective bargaining systems**.
- Keep in mind the already existing regulations and agreements and ensure complementarity (e.g. with the provisions and rationale for derogations of the working time directive, Health & Safety legislation). A European approach to telework and connection and disconnection should **empower social partners** at national level while fully respecting their **autonomy and diversity**.
- It is crucial going forward to preserve **the fundamental elements of the 2002 framework agreement on telework as a general, concise framework and the approach to connecting and disconnecting from the 2020 framework agreement on digitalisation**.
- Respect the **prerogatives and autonomy of the employers** in leading and organizing work and services (staffing, availability...), and in identifying the activities suitable for telework.
- Any obligations put on employers should be **practically and financially feasible** to implement, avoiding unnecessary burdens and obligations.

If the elements above and the content of the below response, are duly considered SGI Europe thinks that an initiative on telework and connecting and disconnecting at European level, if formulated in an appropriate way, could have an added value to provide Member States, Social Partners and enterprises with a ground to further build policies at national level.

Below SGI Europe will further elaborate on some crucial elements for us and illustrate what is stated above and that we would like the Commission to take into consideration in its coming work.

Do you consider that the Commission has correctly and sufficiently identified the opportunities and challenges related to telework and the right to disconnect?

Telework

As stated in the introduction, SGI Europe foremost believes that telework brings opportunities for both employers and employees and that the advantages of this form of organising work, could have been more and better emphasized in the consultation document.

Potential opportunities

SGI Europe can see that telework can bring opportunities for employers such as:

- Provide for new ways of organizing work and meetings.
- Address labour and skills shortages through the ability to attract and retain talent - access to a wider pool of candidates.
- Provides for ways to involve people, also from more remote locations and/or people with disabilities as well as older workers, single parents and to build a more diverse and inclusive workforce.
- Increase productivity due to flexibility.

Potential challenges

- Need to re-organise work and activities
- More effort needed to keep employees motivated and involved and teams integrated while ensuring synergy of the individual performances
- Lack of direct contacts and informal communication channels and telework may for some individuals create barriers and make asking questions difficult
- Possible cost expectations from workers
- Complexity of OSH aspects outside the employer's premises.

SGI Europe can see that telework can bring opportunities for workers, such as

Potential opportunities

- Better work-life balance
- More flexible work schedules and greater time and place flexibility
- Improve Employment opportunities for all including for those further from the labour market (persons with disabilities, older workers, workers with young children, individuals with care responsibilities etc.)
- Reinforced employee satisfaction
- Reduced commuting time and saving transportation costs
- Ability to concentrate on professional tasks away from the office
- enhanced job autonomy
- Acquisition of new skills (digital, ICT etc.)

Potential challenges

- Loss of contact with fellow employees and isolation leading to potential demotivation
- Difficulty to transfer the knowledge between colleagues
- Mental health issues related to lack of social interactions and loneliness.
- Blurring of the delineation between professional and private life

A transversal opportunity regarding telework is also that its development can contribute to reducing an enterprise's carbon footprint.

Opportunities and challenges will differ for each individual and each position and profession and will change also for different enterprises and sectors.

SGIEU wants to stress that any initiative from the Commission must take into account the different circumstances that telework is performed under and leave sufficient room to handle it according to that. The potential opportunities and challenges must be seen in the different contexts of telework; the different circumstances in the individual case, the variations of telework between/ from sector to sector, from profession to profession etc. An opportunity can sometimes also be a challenge or both and vice versa. It is important that the Commission acknowledges what is said above, and that this is clearly reflected in any future initiative, to encourage and have right incentives in place for future telework.

Therefore, beyond the role of collective bargaining at the appropriate levels, and to have clear policies in place, it is important that teleworking is established through individual voluntary agreements between management and employees, leaving room for individual situations.

Do you consider that EU action is needed to address any of the identified issues?

Telework should of course be planned and undertaken in a predictable, conscious, clear and safe manner and environment, for both the employers and the employees.

Any approach on telework should respect the ground that is provided by the Framework agreement on telework from 2002.

Definition and scope

SGIEU believes that, from a European as well as from a national perspective, the definition and scope for telework in the 2002 Framework agreement on telework is still relevant and that there is added value to keep it, to make telework feasible for both sides, including to refer to **regular** telework.

According to the 2002 EU social partners autonomous agreement, *"TELEWORK is a form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employers premises, is carried out away from those premises on a regular basis"*.

This definition has been widely adopted by national social partners and often served to define telework in national legislation. It is worth noting that it does not limit telework to only working from home, therefore makes it relevant also for work performed in other distant locations and via various means of communication.

An EU action addressing telework should **not extend its perimeter to cover unforeseeable, occasional or ad-hoc forms of telework**. Extending the perimeter in this direction would make many potential obligations unsustainable for employers.

Voluntary principle

It is important to highlight the prerogative of the employer to determine how and where the work should be carried out and therefore respect the voluntary nature of the 2002 agreement.

Any action at EU level should start by ensuring the principle of reciprocal/ mutual voluntariness of telework. For Telework to happen in normal circumstances it needs to be agreed in its different components by the employer and the worker at national level.

The voluntariness of the employer to propose telework or to agree (or not) to a request from a worker to telework stems for the management prerogative or the right of management to take and act upon decisions affecting the enterprise which includes the organisation of work.

As such the employer is best placed to and is the only one that determine the teleworkability of an occupation considering the suitability of the activity and the specific circumstances of an employee. Any other solution would not work in practice and also not respect the employers prerogative to lead and organise the undertaking.

The reciprocal voluntary character for an employer and an employee can be further guaranteed by guaranteeing the possibility to request to telework and for the employer and employee to respond in a reasonable period of time. It is important in this situation to guarantee the feasibility of such dispositive and that the format of the response from the employer and employee is not defined precisely at EU level.

It is important to note that imposing administrative burdens on employers to refuse telework would jeopardise its voluntary nature for the employer and the incentives for telework.

SGI Europe further believes that the elements of the 2002 framework agreement on the reversibility of telework are still of relevance.

Telework should therefore be voluntary and reversible for both sides – employers and employees.

Employment conditions

As regards employment conditions, SGIEU thinks that is very important to keep the guiding principle in the 2002 Framework agreement on telework in any future EU initiative. The formulations in the agreement are also still relevant.

The 2002 agreement states that:

“Regarding employment conditions, teleworkers benefit from the same right, guaranteed by applicable legislation and collective agreements, as comparable workers at the employers premises. However, in order to take into account the particularities of telework, specific complementary collective and/ or individual agreements may be necessary.”

An alternative way of expressing this would be:

Workers performing telework shall have the same obligations and shall benefit from the same rights, and terms and conditions of employment guaranteed by applicable law and/or collective agreements or otherwise

provided by the employer, as those applicable to them when working from the employer's premises or as those of comparable workers at the employer's premises.

However, employers should not be required to substitute for facilities that can only reasonably be provided at the employers' premises.

As regards employment conditions, workers who telework shall not be subject to less favourable treatment in comparison to those applicable to them when working from the employer's premises or those of comparable workers at the employer's premises, solely because they telework, unless such different treatment is justified on objective or practical grounds.

In order to take into account, the particularities of telework, specific complementary collective and/ or individual agreements may be necessary."

Since telework is a way to organise and/ or performing work in the context of an employment contract/ relationship, and not a specific employment form or employment status, all laws that are applicable to employees as such, are also already applicable for those who telework. Thus, it is sufficient in any potential future EU initiative to refer to this. There is no need for, nor appropriate, to have special regulation for teleworkers concerning for example working time, information and consultation, workers representatives, or GDPR or other separate regulation in place in fields that affects employees on workplace premises and teleworkers equally (for ex surveillance), other than to remind that the general regulation for employees, is also applicable for teleworkers.

Equipment and costs

SGI Europe believes that as per the 2002 Framework agreement on telework the general principle should be that all questions concerning work equipment, liability and cost should be clearly defined before starting telework via national legislation, collective and/ or individual agreement, work place policies or practices. This should be done at national, not EU level. If additional questions arise during the telework, there may be a need to define also them during the telework. Also, these potential "later arising" questions should be dealt with at national, not EU level.

And that as a general rule, as stated in the 2002 agreement, the employer is responsible for providing, installing and maintaining the equipment necessary for telework unless the teleworker uses his/her own equipment. This is already an obligation in most Member States. These questions should also be defined and regulated at national level,

The 2002 framework agreement provisions on cost have been implemented in many ways at national level reflecting various choices between different tools and types of costs to be covered or not, via law, collective agreements and/or individual contract.

The failed social partners negotiations for a directive on telework and right to disconnect have further revealed the extreme sensitivity on this point and the challenges to create a provision that would be compatible with many different national systems. This highlighted strongly the need for an important margin of manoeuvre to be left for the national level when defining the modalities and the coverage of various costs.

A provision that imposes an obligation on employer can limit the use of telework and can also have a negative impact on the worker because the possibility for telework will be reduced.

Therefore, SGI Europe believes that from the EU level it is not necessary, nor appropriate or possible, to detail the type of costs that could, or not, be covered by the employers, as many different approaches have been devised at national level through collective and individual agreements.

As mentioned in the consultation document, telework can have many positive affects for workers creating a better work-life balance, increased flexibility and can lead to improved well-being and health. It is therefore important to make sure that the employers are not met with further administrative or economic burdens resulting in the lack of incentive for employer to offer telework on a regular basis. It would therefore be counterproductive to establish the possibility for teleworkers to be compensated for extra costs, through regulation at European level. It is best suited for the national level to define.

Right to disconnect - Modalities of connecting and disconnecting

SGI Europe acknowledges that the increasing use of telework and ICT technologies has contributed to better work-life balance and increased flexibility. It is important to recognize that it is the shared responsibility for both employers (that offers and pay for the work) and employees (that gets paid for conducting the work) to be aware of any potential blurred lines between professional and private life that may occur and act accordingly, including minimizing an “always on work” culture.

The Covid pandemic, which saw Member State requesting employers and workers to stay at home, may have blurred the lines between work and private time for that period. This was the case especially for those who did not have a work with physical presence at the workplace and where weeks could go by without any physical presence at the workplace. However, workers and employers have mainly returned to carry out their activities at the employer’s premises making it possible to draw the lines again and reflect on a change in culture.

SGI Europe believes that the working time regulations already provide for means to differentiate professional and private life and contributes to ensuring a healthy and safe work environment.

The principles for connecting and disconnecting in the 2020 EUSP Framework agreement on digitalisation, should be guiding for any future instrument from EU level.

With due respect to the principle of subsidiarity and proportionality SGI Europe believes that further analyses could help pinpoint the common and specific need for a future EU initiative regarding the modalities of connecting and disconnecting.

As stated in the consultation document the Eurostat data from the EU Labour Force Survey (LFS) in 2019 reported that 14% of workers (except the self-employed) in the EU reported being contacted several times for work-related purposes outside working hours, while 22% were contacted occasionally. However, the survey also states that the vast majority of workers have mentioned they were not contacted.

It also states that based on a 2022 survey by Eurofound, carried out in only 4 out 27 member states (*Belgium, France, Italy and Spain*), over 80% of respondents reported receiving work-related communications outside their contractual working hours during a typical working week. However, the survey also states that not all communication was from the employer but could also be from colleagues.

SGI Europe believes that the data mentioned above only provides a limited insight into the need for EU initiatives and that SGI Europe therefore supports further gathering of data with the aim to better understand the common challenges, opportunities and trends in relation to the flexibility of working time and work location, with a focus on connecting and disconnecting.

If there should be a binding or non-binding instrument introduced from the Commission on the modalities of connecting and disconnecting it should be with full respect for working time legislation and working time provisions in collective agreements and contractual arrangements. The modalities of connecting and disconnecting is not about the employers being prevented from contacting workers outside working hours and therefore any instrument should not have the character of a prohibition for the employer to contact the worker nor limit the workers autonomy and flexibility.

This means, according to SGI Europe, that a right to disconnect, if defined by the Commission, can only mean a right to not respond, taking into account specific working arrangements. Workers not being contactable outside working hours should not suffer from less favourable treatment because they do not respond; neither should the worker who wishes to be contactable.

SGI Europe believes that if there should be an initiative at EU level it should be without prejudice to specific working arrangements in accordance with the national law, collective agreements and/or practices, which, due to the nature of the activity or the exceptional character of the situation, require contacting workers.

Any instrument regarding the modalities of connecting and disconnecting shall also be without prejudice to on-call, standby and specific working arrangements, in accordance with national law or collective agreements, that require the worker to be contactable during defined periods of time and consequently to perform work.

SGI Europe also believes that it is important to keep in mind that an instrument from the EU regarding the modalities of connecting and disconnecting cannot include all workers and should take into account that different type of work requires different approaches. Many academic workers have for example a large freedom regarding planning working hours and an invasive instrument would therefore intervene with that freedom. The same could be said about certain type of work for example priests and military-workers. It is therefore crucial to carefully look at the scope of any initiative.

SGI Europe further believes that the necessity to take into account specific characteristics of the activity concerned and the balance of the various considerations of both the workers and the employers is highly relevant and should be recognized in this context as it is in other initiatives at EU level such as the working time directive article 17.

Health and safety

- The employer should inform teleworker of the company's OSH policy. It is also advisable to provide information/offer training on ergonomic aspects of working from home, for example healthy sitting, limiting side effects of the prolonged use of ICT equipment etc.
- The employer's role as regards OSH is limited, as employee's privacy needs to be respected and the employer cannot be held responsible for OSH compliance or workplace organized at the employee's home or outside the workplace, and therefore is out of employer's control.
- The employee is responsible for applying the safety policies correctly while teleworking.

The role of social partners

The key point is to create a dispositive that ensures that social partners themselves can work with the implementation of a potential new EU action

As stated by SGIEU already in the introduction, for us social partners have a special role to play, are best placed to find and are closest to solutions that correspond to the needs of both employers and employees. Thus, the interest, needs and solutions of social partners from both sides – employers and employees - should

be in the centre and clearly recognised, visible and reflected in any coming initiative from the Commission. It should be a down-top, not a top-down approach, to be workable in practice for employers and employees.

SGIEU believes that Member States shall, in accordance with their national law and practice, ensure the effective involvement of the social partners and to promote and enhance social dialogue, in any future initiative.

In addition, it is paramount for SGIEU that, in any future initiative from the Commission, the Member States can entrust the social partners with the work and implementation of the initiative.

Furthermore that an initiative clearly states that Member States may, on the condition that the national social partners jointly agree, give the social partners, at the appropriate level and subject to the conditions laid down by Member States, the option of upholding or concluding collective agreements which adapt, complement and/or differ from the rules included in the initiative, provided that the general level of protection of workers, in the initiative, is ensured.

3. Do the potential areas for EU action set out in section 7 of the consultation document present a comprehensive overview of the action needed ? If not, what actions should not be pursued, or what other actions could be considered?

SGI Europe has expressed in the above section that the Commission has indeed identified the topics that are relevant to understanding the evolutions of telework. Those are the same issues that the EU Social partners framed in their 2002 framework agreement and that were the focus of the inconclusive negotiations on telework and a right to disconnect. Nonetheless, SGI Europe already started to highlight in its response the limited scope for an EU action for each of the above listed issue as well as the fact that there are already a number of legislative instruments at European level that provide already a framework for solutions to be found. Therefore, the Commission should look further into the possibilities brought by the implementation and reinforced coordination between the already existing legislative instruments in the context of the second stage consultation of social partners.