

# **Joint Report of the Hungarian Social Partners (National Employers' Organisations and Trade Unions) on the Implementation of the Telework Agreement**

## **Preceding situation**

According to point 12 of the Framework Agreement on Telework concluded by the European social partners on 16 July 2002, in the course of autonomous negotiations, implementation should be carried out within three years after the date of signature of the agreement. Following the implementation, member organisations of the European social partners are to report on it to the ad hoc group set up by the signatory parties and under the responsibility of the Social Dialogue Committee. This ad hoc group is obliged to prepare a joint report within four years after the date of signature of the framework agreement on the measures taken in connection with its implementation.

The Social Dialogue Committee decided in its meeting on 7 March 2006 that the ad hoc group would meet on 16 March 2006, in order to prepare the report before the four year deadline set up in the agreement expires.

The Social Dialogue Committee has called upon the member organisations of the European social partners to prepare, before the meeting, their joint national reports on the implementation of the Telework Agreement in the different countries.

The joint report should cover the following areas:

- the method of implementation, the procedure used; the role of the social partners
- the content
- the description of the impact of the Telework Agreement at national, sectoral and company level.

## **1 The Method of Implementing the Telework Agreement, the Procedure Used in Connection with the Implementation**

### **a) The method**

In Hungary, following the government's proposal, telework was regulated by the Parliament by *laws*. Since 1 May 2004, the basic rules of telework have been regulated in the Labour Code (Articles 192/C-193/A.). The OHS regulations specific to telework are included in a specific OHS law (Act XCIII of 1993, Chapter VII/A), while sanctions for non-observance of the provisions of telework regulations have been added to the law on labour inspection (Act LXXV, Article 1).

The labour law regulations of telework also cover civil servants and public servants.

The justification given by the legislators for the introduction of the regulations within the Labour Code was that – in accordance with solutions in EU member states – telework does not imply a specific legal relationship, but is performed within the framework of general employment relationship.

It is evident from the justification for the supplementary law modifying the Labour Code with the regulations on telework (Act XXVIII of 2004), that in the course of the regulation of telework by law, legislators also took into consideration the European Telework Agreement. According to the justification “In 2002 in Brussels, in the context of the European

Employment Strategy and at the request of the European Commission, the Framework Agreement on Telework was concluded by the European employers' (UNICE/UEAPME and CEEP) and trade union (ETUC) organisations. Considering that the introduction of these regulations into an EU directive is very likely in the future, the present law includes the regulations of all the issues that were agreed on by the employers' and employees' interest representation organisations."

*Thus the regulation of telework in Hungary was not initiated by the social partners, but by the government and the method of implementation included widespread and detailed legal regulations. Although the motivation behind the regulations was not directly the implementation of the Framework Agreement, its goals and content were taken into consideration both by the government when preparing their proposal and by the social partners involved in the discussions on the draft law. The social partners – after all - accepted this method of the implementation.*

#### b) Procedure; the role of the social partners

The role of the social partners in the regulation of telework was similar to their role in preparing other laws related to employment. The text of the draft law was prepared by the government and handed over to the social partners, who then, following the usual procedure – after discussions in the relevant special committee /Labour Law Committee/ of the National Interest Reconciliation Council (NIRC) – discussed it in the course of tripartite meetings. After this debate in the NIRC, the government finalised the bill to be handed in to the Parliament.

In the framework of the procedures in the NIRC, the social partners had the possibility to modify the draft text either by a tripartite consensus or by the government supporting the opinion of one of the social partners.

In the National Interest Reconciliation Council and in its special committee the debate lasted for about three months.

The *Hungarian translation* of the European Agreement was produced by the relevant ministry and, at their request, was given to the employers' and employees' representatives working in the special committee of the NIRC. An unauthorised Hungarian translation of the Agreement can be found on the website of the Ministry of Employment and Labour Affairs. The following were the *main points of debate* between the social partners: the definition of telework, the bearing of the costs related to telework, regulating the responsibility for compensation and defining the working time.

## **2 The Main Content of the Regulations on Telework – Bearing in Mind the Aims and Content of the Framework Agreement**

The laws prepared following the above procedures are basically in accordance with the aims and content of the European Agreement. The Labour Code regulates the specific, extraordinary provisions related to telework in a separate chapter.

### *The definition of telework*

The law defines telework via the definition of the person doing telework. According to this, an employee doing telework performs work belonging to the employer's scope of activities, on a regular basis, in a location of his /her own choice and separate from the employer's

headquarters or premises, via IT equipment and communicates the result of his/her work via electronic devices.

### *The voluntary character of telework*

The law indicates the voluntary character of telework by stating that it is only possible if there is an agreement between the two parties involved. Forced agreements are prevented by the general rules regulating the invalidity of agreements concluded under force, threat or by mistake.

The law stipulates in detail the employers' obligation to provide information.

### *Employment conditions, data protection, privacy*

Within the employment conditions, the law ensures equal treatment for employees doing telework by stating: the regulations of this law should be applied to employees doing telework including the changes stipulated in this chapter. However, "authorised" by the European Agreement and adjusting to the particularities of doing telework, it stipulates rules differing from the general provisions in the following areas:

The scope of the employer's right to give instructions, the scope and practical implementation of the employer's right and obligation to provide control, the employer's right to enter the location where the work is performed, the employer's obligation to provide information on the way of performing the work, registering working and resting time, defining and scheduling working time, the employer's right to have access to the data of the IT equipment used by the employee for work, the employee's obligations related to the use of the IT equipment provided by the employer, the method of communication between the employer and the teleworking employee.

The employer may enter and stay in the location where the telework is done only as long as his stay does not cause disproportionate grievances in the personal, family and other circumstances of those using the property. The employer must give advance notification of a visit, and is allowed to enter the location of telework only for purposes determined by the law and only during working time determined according to the law.

The possibility of employing a "monitoring system" is not regulated by the law.

### *Equipment*

When preparing the law, most of the debates were triggered by proposals in this area and the government basically accepted the arguments and proposals of the employers.

According to the legal text, providing the equipment basically depends on the agreement between the two parties and the employer shall provide the equipment necessary for doing the work and communicating only if there is no relevant agreement.

Covering the costs related to teleworking is not regulated by the law, but is rather left to be decided by the two parties: they have to agree in the agreement on doing telework on the method of settlement of costs incurred at the employee necessarily and justifiably in relation to performing the work. Without this agreement no telework employment can be started.

As for compensation for damage – despite the counter-arguments from the employees' representatives – the law, deviating from the general rules, aggravates the teleworking employee's liability for damage, while the employer's liability is lessened with reference to the specificities of teleworking.

### *Health and safety*

The specific OHS rules pertaining to teleworking are regulated by the law on OSH. The regulations are in accordance with the European Agreement. Rules cover only situation when the teleworker employee's activities are going on with the equipment owned by the employer.

### *Organisation of work*

Working time is determined in the law not by the number of hours during which telework should be done, but on the basis of defining the amount of work to be performed during the general legal working time, taking into consideration the work performed at the employer's premises by employees in the same or similar position, as well as the nature and amount of the work and the necessary physical or mental efforts.

### *Training*

The law does not provide specific rules for the training of teleworkers – despite proposals from the employees' representatives. According to the identical positions of the government and the employers, the general rules regulating – in the case of each employee and in a uniform way – this obligation of the employer are enough.

### *Collective rights issues*

As the Hungarian rules of law in force guarantee for all employees – without discrimination – the freedom of association, there was no need for extra provisions on this when regulating telework.

The law stipulates the employer's obligation to provide information, stating that the employer shall at least every half year inform the works council on the number of employees employed as teleworkers and on their positions.

## **3 The Impacts of the European Telework Agreement**

In Hungary, telework has not become widespread since the legal regulation came into force. Its scale is about 2-3 % (source: KSH – Central Statistical Office – Hírlevél, 01.02.2005.) despite the fact that according to a survey, about 86% of companies have the equipment necessary for teleworking and a high percentage of employees would be willing to work in this form. The employers find this form work both effective and economic, most of them, however, think that the investments necessary for telework will not be feasible for at least five years.

One of the main reasons, however, behind the low number of teleworking employees is the relatively low availability of personal computers and the low level of IT technology availability.

In order to promote telework, the government in 2004 set up a Telework Council (11/2004/Mük.8/ order of the Ministry of Employment and Labour to set up the Telework Council).