

Joint report on Implementation of the European Agreement on Telework in Poland

prepared by

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The European Agreement on Telework has not been formally implemented in Poland so far although a lot of work has been done. At present social partners affiliated at the European level intend to complete the autonomous negotiations concerning this issue as far as possible.

I.

The discussion of the process of implementation of the Agreement must be started with emphasis on the noticeable weakness of the autonomous dialogue in Poland. At the national level, it remains in the shadow of tripartite arrangements. Sectoral collective bargaining is actually the only but still underdeveloped form of bilateral dialogue.

Polish social partners do not have experience in negotiating autonomous cross-sectoral agreements. Additionally the *erga omnes* extension mechanism although provided by the Polish labour law, has never been used in practice. These circumstances make it difficult to implement the results of such negotiations effectively.

Bearing the above in mind, Polish social partners have analysed available solutions for many months. They deemed the process of implementation of the European Telework Agreement to be an opportunity of creating procedures useful for the process of implementation of other European agreements. Finally, the principle of autonomous negotiations involving all the representative associations of social partners (whether they are affiliated at the European level or not) was adopted. The negotiations should result in a voluntary agreement that would be submitted to the government along with a request to make relevant amendments to the law. This approach will ensure the common application of provisions negotiated by social partners.

II.

The process of negotiations is chronologically presented below.

1. The first meeting of social partners concerning the negotiations under implementation of the Telework Agreement took place on 28 January 2005. The following nation-wide representative organisations entered the negotiations: Confederation of Polish Employers (KPP), Polish Confederation of Private Employers Lewiatan (PKPP Lewiatan), Polish Craft Association (ZRP), Independent and Self-Governing Trade Union Solidarnosc (NSZZ "S"), All-Poland Trade Unions Alliance (OPZZ) and Trade Unions' Forum (FZZ). The organisational background and consultations were provided by the European Integration Social Dialogue Round Table (an autonomous advisory body of social partners attached to the Minister of Labour). Social partners decided to set up a Negotiating Team that would work out the wording of the agreement. Later on, after the approval of the wording of the agreement by statutory bodies of each organisation, the Negotiating Team together with experts from the Ministry of Labour was supposed to propose required amendments to the Labour Code. The proposed amendments to legal regulations were supposed to be enclosed to the wording of the agreement.
2. The Negotiating Team finished its work on 10 June 2005. The draft agreement (discussed in part III of this report) was approved by statutory bodies of KPP, PKPP

Lewiatan, ZRP, NSZZ "S" and FZZ. OPZZ was the only organisation that did not take a standpoint on the contents of the agreement. They requested that specific proposals concerning telework be presented by the government. Since other organisations deemed such approach to be contrary to the principle of autonomous negotiations adopted in the European agreement, they decided after a prolonged wait to finalise the national agreement even without the participation of OPZZ.

3. The Labour Code Commission is working on the new Labour Code in Poland. The new code is supposed, among other things, to regulate telework. The completion of those works is planned for autumn 2006. At the "ad hoc" meeting on 6 April 2006, some of the social partners (KPP, ZRP, and NSZZ "S"; - PKPP Lewiatan did not participate because of some organizational shortcomings of the meeting) proposed to delete the provision stating that draft amendments to the Labour Code would be prepared by social partners from the draft Telework Agreement. This would enable a quick signature of the agreement and its transmission to the Labour Code Commission through the Ministry of Labour in order to enable the commission to take its provisions into account. The status of work of the Labour Code Commission and the expiration of the time limit for the implementation of the Telework Agreement is the argument for the said solution.

III.

The draft agreement (the draft agreement is quoted in whole, with no cuts. One should bear in mind that due to the fact that negotiations are still not completed the final version can be different)

General

Given the condition of the Polish labour market and efforts to improve the competitiveness of businesses, the social partner organizations representative at the national level, i.e. the Confederation of Polish Employers, the Polish Confederation of Private Employers, the Polish Craft Association, NSZZ Solidarnosc, the Polish Alliance of Trade Unions, and the Trade Union Forum, recognise the need to put in place a proper legal framework for the development of flexible work arrangements, including telework, while at the same time emphasising the need to balance flexible work arrangements and social security for employees.

The Social Partners perceive telework as a means to modernize systems of work of private businesses and public institutions alike and improve work-life balance. Telework makes it possible to effectively use human resources, including the facilitating of access to the labour market for the disabled, women (in the first instance mothers of small children) and those living in structural unemployment areas.

Telework makes it possible for employees to have more discretion in shaping work location and working time arrangements, improves work-life balance and may contribute to greater job satisfaction. From the perspective of the employer, telework enables putting in place rational employment arrangements.

Moreover, the development of telework is in line with the Lisbon Strategy objective of creating an information society.

With that in mind and guided by the European Framework Agreement of 16 July 2002, the Social Partners hereby lay down the general principles to be followed with regard to teleworkers.

Definition of telework

Telework is a system of work where work is usually performed away from the employer's office using advanced information technology.

Freedom to choose telework and terms and conditions of employment

Telework may be introduced at the initiative of the employer or the employee. Where possible, the employer should accommodate the employee's request for telework.

The introduction of telework requires the employer and the employee to issue a joint statement of intent to that effect. Telework arrangements may be introduced in a contract of employment, in any other document establishing an employment relationship or by a legal transaction which changes the existing employment relationship. It shall not be allowed to introduce telework against the will of the employee, under Article 42 para. 4 of the Polish Labour Code.

The employee's refusal to commence telework cannot be the basis for the employer terminating his/her employment or the existing employment terms and conditions, including pay.

If telework is commenced by an existing employee who previously rendered services to the employer under a system of work other than telework, either party may make a binding request for the reversion to the previous system of work within 3 months of the commencement of telework. After that period, a request of the employee to that effect should be granted where possible. The employer may withdraw from telework arrangements by terminating the terms and conditions of employment.

Teleworkers should be subject to the same hiring or dismissal arrangements, enjoy the same conditions of employment, promotion and access to professional training as office-based employees. Employees must not be discriminated against in any way on account of their commencement of or refusal to commence telework. The anti-discrimination requirements relate in the first instance to equal workload and performance criteria.

Privacy

The employer should respect the privacy of the teleworker and his/her family. A telework monitoring system should not be onerous. If an employee works from home, inspections carried out by the employer should respect his/her privacy and the privacy of his/her family. Any inspection of an employee who works from home may only be conducted to verify the existence or to repair any equipment provided by the employer and only with the prior written consent of the employee.

Work arrangements

The document establishing an employment relationship or any other document on the basis of which the employee is to commence telework should set out, in the first instance, the following: the work system and schedule, the form and manner of reporting for work, the form and manner of explaining absence from work, the work arrangements, including the form and

manner of assigning tasks and reviewing their fulfilment and the rules for sending the teleworker on a business trip and refunding business trip expenses.

Data protection

The employer should issue a policy and ensure to put in place appropriate rules and procedures for the protection of data provided to the teleworker. The teleworker should acknowledge and abide by the employer's data protection policy.

Workplace equipment

The employer shall be required to provide the necessary equipment for use at work. Work equipment must comply with the applicable safety standards and the employer must hold relevant certificates in respect of such equipment. The employer must hold an insurance cover on work equipment.

The employer and the teleworker may make a separate agreement to set forth the terms and conditions of the teleworker using equipment which does not belong to the employer and has been provided by the teleworker. The teleworker shall be entitled to an additional lump sum amount in respect of such equipment. The lump sum amount and payment procedure shall be set forth in such an agreement. Any disputes relating to such an agreement shall be settled by the Labour Court.

The employer shall be required to pay for the installation, repairs and maintenance of work equipment. If the parties to an employment relationship agree that it is the teleworker who shall be required to provide telework equipment, the parties may provide for the employer to have a contractual obligation to pay to the teleworker an appropriate amount to cover the cost of installation, repairs and maintenance.

The employer should ensure that technical assistance and necessary training in using work equipment are provided to the teleworker.

The teleworker shall be required to use work equipment with due diligence. The teleworker shall be accountable for the assets provided by the employer as set forth in the Polish Labour Code.

Health and safety at work

The employer shall be responsible for the health and safety of the teleworker.

Prior to the commencement of telework, any teleworker must receive training in health and safety, including the requirements related to using visual electronic equipment.

The teleworker may raise with the employer any objections to the working conditions, and if they are not met, to request an inspection by an independent institution.

The health and safety regulations pertaining to hygiene and sanitary equipment and place of work shall not apply to the teleworker's home.

Collective rights

Telework use conditions shall be set out in an agreement between the employer and the trade unions. If it is not possible to reach an agreement with all the trade unions operating at the given employer, the employer shall enter into an agreement only with the representative trade unions, within the meaning assigned by Article 241^{25a} of the Polish Labour Code. If there are no trade unions at the given employer, the employer shall agree telework use conditions with personnel representatives selected following the usual practice for the employer.

If the parties fail to reach an agreement on telework within 30 days of the employer announcing draft telework use conditions, the employer shall lay them down in telework

regulations. In laying down the regulations, the employer should take into account the understandings reached during the talks on the agreement.

Teleworkers shall have the same trade union rights and freedoms as office-based employees. The employer shall not hinder them from communicating with personnel representatives.

Preventing the isolation of teleworkers

The employer should use its best efforts to prevent teleworkers from being isolated. In the first instance, the employer should encourage contact between teleworkers and office-based employees and among teleworkers. The Social Partners emphasise the need to introduce tax solutions facilitating the prevention of teleworkers from being isolated.

Final provisions

The Social Partners agree to implement the provisions set forth in this agreement in their respective organisations, to ensure their application in all cases to which they relate.

Full compliance with the provisions set out herein requires certain additions to the existing laws and regulations. The Social Partners hereby jointly request the Government to make legislative changes to introduce legal standards in line with this Agreement. A list of the agreed legislative suggestions is presented as an appendix hereto.

IV

The process of implementation of the European Telework Agreement in Poland could be described as follows:

1. Polish social partners initiated negotiations concerning the implementation of the telework agreement on their own initiative; the process of negotiations took 6 months and led to preparation of the draft national agreement;
2. Lack of approval by one of the organisations taking part in the negotiations caused a break in the implementation process;
3. At present the consultation among other social partners takes place; it is foreseen that finally the agreement can be signed by at least 5 out of 6 organisations participating in the negotiations;
4. Due to the works on the reform of the Labour Code including telework regulations conducted by the government, social partners want to submit the agreement to the government and jointly request including its provisions into the planned amendments to legal regulations;
5. There is a risk, namely, uncertainty whether the government will be willing to respect the autonomous arrangements made by social partners.