

REPORT ON THE IMPLEMENTATION OF THE EUROPEAN FRAMEWORK AGREEMENT ON TELEWORK

1) Country – Portugal

2) Sources of information

- Trade unions: UGT-P (General Workers Union) and CGTP-IN (General Confederation of Portuguese Workers-National Inter Trade Union), members of ETUC
- Employers: CIP (Confederation of Portuguese Industry), member of UNICE, and APOCEEP (CEEP Portuguese Association)

3) Report

A – At national level

In Portugal, the transposition of the agreement on telework was made by law (Labour Code, Law 99/2003, 27 of August).

During the discussions about the elaboration of the Portuguese Labour Code, held between 2001 and 2003 in the Standing Committee for Social Dialogue, CIP opposed to the introduction of telework rules in the Code.

CIP arguments were that, in one hand, the above-mentioned agreement on telework clearly states in its point 12. (Implementation and Follow-up), that the "... European framework agreement shall be implemented by the members of UNICE/UEAPME, CEEP, and ETUC (...)" and, on the other hand, that the proposed legislation was more rigid, in some aspects, than the rules agreed upon by social partners in the Framework Agreement.

Disregarding CIP arguments, the Government legislated about telework.

Being as it is – with telework ruled by the Labour Code –, CIP has only to report that the European Framework Agreement on Telework is already implemented in Portugal, and that the Labour Code even offers more protection to teleworkers than the Framework Agreement. CIP must say, also, that the sanctions related to telework are, in the Labour Code, too heavy.

The global position of the Trade Unions is different.

The adoption of concrete measures concerning telework by the Portuguese legislator, more specifically the inclusion of this issue in a specific section of the Labour Code (that comprises articles 233 to 243), did not fully meet the existing Trade Unions concerns on this matter. In fact, Trade Unions consider that the Labour Code doesn't fully agree with the framework agreement in some issues.

Nevertheless, Trade Unions see this as a positive measure, since it fulfilled an existing gap in the national law system.

In Portugal, nowadays, the number of teleworkers is high. Only in call centres, presently, are working about 48.000 to 52.000, but not all of these workers are in fact teleworkers.

Both Trade Union Confederations support that the implementation of the agreement should be also made by Collective bargaining at sectoral and enterprise level.

There are still no reliable data of the number of workers on telework, in general.

For Trade Unions, one added difficulty is the instability of the sector, with a large number of undeclared workers and enterprises, making it very difficult to assess the real dimension of the phenomena and to have a more efficient Trade Union action.

Collective bargaining does not address this issue. In fact, the Government Green Book on Labour Relations, published last month, refers that none of the analysed Collective Agreements regulates telework, although some Confederations have translated the framework agreement into Portuguese.

Moreover, the Labour Code does not regulate the issue of telework centres, which Trade Unions think should have a specific approach, namely in what concerns ownership of working instruments.

Another of the concerns about telework has to do with the fact that in many cases telework means self-employment – in some cases false self-employment – and therefore it is not subject to the Labour Code regulation.

Workers who are liable to this regulation and who are theoretically self-employed do not benefit yet from the legal protection established by the Labour Code.

Trade Unions think that the adopted measures may not be sufficient to assure effective protection to self-employed workers, not only concerning issues related to privacy (which, among others, allow visits to the working place between 9 a.m. and 9 p.m.), working time organisation and health and safety rules at work, but also regarding matters such as collective participation and representation, matters which the Labour Code regulates.

Therefore, in spite of the growing impact of telework in Portugal, Trade Unions perspective is that this is still not ~~in~~ a situation that duly protects teleworkers' rights, who can have different treatment, because of working outside the company's facilities, comparing to other workers in the same company; who are ~~not~~ working inside the company's facilities.

To Trade Unions, the risk of association of telework to precarious work is real. This risk can only be mitigated through the inclusion of concrete principles and rules in collective bargaining tools, assuring effectively equal treatment to these workers, when compared to workers labouring within the employer's facilities.

B – At company level

Several Companies, members of APOCEEP, are studying the interest on the implementation of the telework, namely the following:

- “*CP – Caminhos de Ferro Portugueses, E.P.*”, (Portuguese Railways) has not yet implemented Telework because this is not integrated in the Collective Agreement, but knows that is possible in stay functions in the railway transport activity, what is already integrated in the Contingency Plan;
- “*CTT – Correios de Portugal*” (Portuguese Post) is improving equipment and technology to implement telework modalities.

Trade Unions are studying specific clauses envisaging their introduction on collective bargaining agreements to be celebrated in companies or sectors with teleworkers, namely in call-centres.

APOCEEP (CEEP Portuguese Association)
CGTP-IN (General Confederation of Portuguese Workers)
CIP (Confederation of Portuguese Industry)
UGT-P (General Workers Union)