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## Working Group on Teleworking: Report on the third meeting of 22 October 2021

*On 18 October, the administration provided the staff representation with a copy of a draft Circular defining a **mid-term** teleworking policy for the Office (see [CA/38/21](#), page 17) as of 1 February 2022 and to be reviewed in no later than 3 years after entry into force. This Circular would replace both the Emergency Teleworking Guidelines in place since March 2020 and the revised Part-Time Home Working (PTHW) Guidelines in place since May 2018. Management invited the staff representation to a meeting which took place on 22 October.*

### Introduction

At the beginning of the meeting, management made it clear that the draft Circular remains subject to approval by the Member States in the Administrative Council of December. We explained upfront that we have three major points of concern: 1) the timeline for implementation which precedes the end of the pandemic, 2) the lack of specific conditions for mandatory teleworking, and 3) the abolition of accrual of flexi-hours for all staff.

### 1. Geographical scope

#### Primary teleworking place

The Circular defines that the primary teleworking place shall be the employee's residence within their country of employment. However, the Service Regulations (Articles 25 and 55a; see also [Judgment 2278](#), consideration 11) currently do not know of any such requirement to reside in any particular country. This results in lack of clarity of the regulation.

Management confirmed that the employee's residence shall be within the country of employment and that there would be no further geographical limitation. For example, an EPO employee recruited in Munich or Berlin would be allowed to reside in Hamburg and to telework from there. In addition to the employee's residence, an employee can telework from any location within the country of employment.

### Teleworking from other territories

According to the Circular, teleworking can be performed at any other place within the territory of the EPC Contracting States within the times zones UTC, UTC +1, UTC +2 and UTC +3, be it continental European or an island. The Canary Islands, the Azores Islands and Madeira would hence be considered as territory of EPC Contracting States.

We mentioned that employees may be tempted to reside in neighbouring countries and to cross borders just for the day to reach a teleworking place in the country of employment. Management emphasized that such a practice would not be within the legal framework and employees would act at their own risk.

## **2. Time scope**

### “Sense of belonging”

A minimum attendance of **40 working days** a year at the employee’s site of employment will be required, **up to 20** of which may be spent at another Office site of the country of employment (in practice, only applicable for Munich and Berlin) and obviously subject to the workspace actually available.

According to the management representatives, this should foster the “*one-office concept*”. A legal assessment - which has not been shared with us - had revealed that it was not possible to extend the measure to the Office sites in other countries.

The Office may define **up to 20 days** either uniformly for all staff or for groups thereof as periods of common presence, i.e., where staff at Directorate General (DG) level, directorate level or team level would be subject to compulsory attendance instead of teleworking. These days could most likely be announced together with the public holidays and compulsory Office closure days. We noted that in view of the fact that the Office foresees an average of around 50% occupancy on a given day, we expect canteens and other facilities to be scalable for any peak of attendance.

### Teleworking from other territories

Teleworking from another EPC contracting state territory would be limited to **60 working days** a year.

We repeated that such a limitation would not meet the expectations of a group of staff who had hoped to be able to work fully from abroad. Management justified the limitation to 60 days (plus weekends, annual and other leave etc.) by the fact that an employee would need to spend more than six months in the country of employment to be considered as a resident and hence avoid taxation and social security issues. We requested to receive a copy of the legal assessment available to the management on this topic.

### Part-timers

The minimum attendance at the Office for part-timers will be calculated proportionally, but in no case can it be less than 20 working days a year.

We note that a 50% part-timer may thus be imposed to work 20 days in the Office without any flexibility as to these working days if the Office defines 20 specific days of compulsory attendance.

The Circular defines that employees may telework in blocks of full or half working days. We requested this to apply as well proportionally to part-timers.

Management promised to have a look at the matters and to consider to also apply the principle of proportionality.

#### Mandatory teleworking

The Circular defines teleworking as voluntary but, in exceptional cases, the Office may request or instruct employees to telework. According to management this should be limited to specific cases, for example, if it is imposed in the country of employment (e.g. terrorist attack, pandemic) or in case of severe problems with one of the EPO buildings. We warned that with the planned construction and renovation projects, the Office's offer to "book a room for a day" might not be sufficient and colleagues might be forced to telework from home.

### **3. Employee responsibilities**

#### Costs borne by the employee

The Circular clearly states that the employee's choice to telework shall carry no costs to the Office.

As explained in our [letter](#) of 22 June 2021, the Office made huge savings during the pandemic thanks to teleworking. Management again rejected our claim for a *teleworking allowance*. Even in the case of mandatory teleworking, the Circular defines that the employee shall bear all the costs associated with teleworking.

We commented that cost savings still appear to be one of the drivers for teleworking.

#### Equipment

The Office shall provide standard teleworking equipment for the employee's primary teleworking place only. There are no provisions for providing equipment in secondary teleworking places, neither in the country of employment nor in another territory.

#### Health and safety

The employee remains responsible for arranging a suitable workplace for teleworking. This applies even in the case of mandatory teleworking.

Management seems to believe that by now all staff should be equipped to be able to work from home and therefore to comply with mandatory teleworking. We explained that some residences are simply not suitable for teleworking.

The Part-Time Home Working (PTHW) Guidelines defined ad hoc checks by mandated persons at the home workplace to provide support for occupational health and safety

and ergonomics. The new circular does not foresee any such provision, instead the Office will only provide guidance to the employee.

As is the case within the PTHW guidelines, also for the new circular, the Office will not be liable to employees or third-party for any damage, material loss or injury suffered because of teleworking, unless such damage, loss or injury was caused by equipment supplied by the Office. It reduces to the bare minimum the responsibility of the Office and the scope of (tele)work accidents.

#### **4. Line manager responsibilities**

##### Eligibility

The Circular defines that all employees are eligible for teleworking in principle. However, teleworking may be limited or excluded if incompatible with the nature of the tasks.

Management explained that it is the direct line manager who would make this assessment. We believe, however, that different line managers may take diverging decisions for actually similar tasks. There is therefore a risk of lack of harmonisation.

##### Limitation, suspension or withdrawal

The Circular defines that line managers shall take decisions pertaining to the Circular. In this respect, it details that teleworking shall be limited or suspended, or the approval withdrawn, in cases of non-adherence to the minimum attendance requirements, a negative impact of teleworking on the employee's performance, any behaviour which is not compatible with the needs of effective team collaboration (e.g. non-attendance to team meetings) or other operational needs.

We argued that the criteria are vague and could open room for arbitrariness. More clarity was needed.

##### Reduction of the period of notice compared to PTHW

The Circular defines that the decision to limit, suspend or withdraw the approval is taken with at least one month's notice. This is half of the period of notice for PTHW (two months) although negative decisions as to PTHW had a lower personal impact because the scheme was limited to an area of 100 km around the place employment. In our view, the notice period should have been increased instead of reduced.

##### Fast conflict resolution panel

The Circular does not define any clear process and steps for negative decisions on teleworking, the criteria remain vague. This gives room to managerial arbitrariness and could result in a huge personal impact on the staff member.

We proposed to define a fast joint conflict resolution panel, including staff representatives, for dealing with such cases.

## **5. Abolition of core-time and flexi-hours**

All provisions of the Guidelines on arrangements for working hours concerning the accrual of flexi-hours and the establishment of core time are suspended by the Circular.

We disagree and protested that management intends to suspend flexi-hours for all staff. The PTHW guidelines only suspended accrual of flexi-hours to teleworkers on the days on which they work from home.

Management did not give any explanation on the reasons for the abolition of the accrual of flexi-hours for days worked at the Office but mentioned that they will analyse it and come back to us with a new proposal.

## **6. Entry into force**

According to the management, between 200 and 300 colleagues are currently teleworking from another EPC contracting state territory. Since the new circular is meant to enter into force on 1 February 2022, this would mean that staff in this situation would have to relocate in their country of employment. Transitional measures with a grace period until 1 September 2022 are foreseen for colleagues, who on 1 February 2022 have enrolled a dependent child in an educational facility at pre-school, primary or secondary level in another territory.

We noted that the deadline for implementation might precede the end of the pandemic. Management explained to us that Germany has planned to declare the end of the pandemic in November, but if there were again dramatic developments, the Office would consider extending the Emergency Guidelines.

We requested an explicit and binding announcement at least one month before the entry into force, to allow everyone interested or returning to prepare accordingly.

## **Conclusion**

The Circular is still to be considered work under progress. As pointed out to the management, on some of the aspects, more clarity is still needed. Criteria still need to be defined and agreed upon. We have requested copies of the legal assessments, on the basis of which the Circular has been drafted.

We understand that it is not possible to meet the expectations of all our colleagues but we should try to find a compromise between the staff needs, the Office needs and the legal implications.

A next working group meeting is foreseen shortly. We expect management to address properly the issues we have raised.

The Central Staff Committee