



Munich, 11/11/2021
sc21128cp

Working Group on Teleworking: Report on the fourth meeting of 4 November 2021

Management invited the staff representation to a fourth meeting of the Working Group on Teleworking and presented it as the last one before final consultation in the General Consultative Committee (GCC). Overall, management dedicated two meetings of 1h30 with a tight timeline to discuss the Circular with the staff representation. In preparation of the meeting, we had sent a mail with comments on the proposal (see annexes to the report). Despite our submissions, the administration has not brought any of the proposed amendments to the Circular.

Introduction

Management explained that the draft Circular is still a living document which is subject to approval by the Member States in the December Council meeting. The draft Circular was already sent to the delegations and preparatory discussions will take place by the end of November. The administration has also sent the document to the Ambassadors of the host states.

At the earliest stage of the consultation, the Office wanted to offer the possibility for staff to spend up to 20 days at any other Office site (e.g. an employee recruited in The Hague could have spent these days in Vienna). The Office has actually designed the future new Vienna building so that it offers more space than required by the actual number of Vienna-based employees.

However, management explained that there was early reluctance from the host states. In addition to that, with 60 days of telework in another territory and an additional 20 days outside the country of employment (plus weekends, annual and other leave etc) the employee would not meet the requirement to spend more than six months in the country of employment to be considered a resident and hence avoid taxation and social security issues. However, while currently not forming part of the Circular, the administration would not rule out a future discussion with the member states. According to management, an option could be a multilateral agreement within the host states, similar to the case of OECD.

1. Abolition of flexi-hours and core-time

The 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. However, all other provisions such as the obligation to work at least six hours per day still remain.

On flexi-hours

Management still did not give any explanation on the reasons for the pure abolition even for days worked on the Office premises. We adamantly protested again that management intends to suspend flexi-hours for all staff. In comparison, the PTHW guidelines only suspended accrual of flexi-hours to home workers on the days on which they worked from home.

On the matter of principle, flexi-hours (as they are called) are a means for flexibility in managing one's *working time/schedule*. Teleworking is actually a means for flexibility in *working location*. Hence, the two concepts are entirely different. Creating one and removing the other is not increasing flexibility, rather it replaces arbitrarily one form of flexibility with another wherein those benefiting from it are not the same.

From the numerous feedbacks we received, we understand that this is indeed a red line for staff and hence for the staff representation.

On core-time

The abolition of core-time may seem convenient at first glance. However, the Circular defines line manager's discretion for imposing meeting and events during working days (Article 15 2)) and an increased responsibility for the employee for aligning with their line manager on their availability during the working day (Article 8 1)(a)).

We explained that meetings and events should respect the conventional working day and that there must be limits set to the line manager's discretion for imposing availability during the working day.

2. Entry into force

The new circular is meant to enter into force as a pilot scheme on 1 February 2022. Upon our enquiry to this effect, management answered that in view of the rising number of infections the date of 1 February 2022 still remained open for reconsideration.

We insisted again that staff needed to be informed at least one month in advance before the entry into force, to allow everyone interested or returning to prepare accordingly.

Transitional measures with a grace period until 1 September 2022 are foreseen for colleagues who have enrolled a dependent child in an educational facility at pre-school, primary or secondary level in another territory.

We requested that this provision also be applied to colleagues having a dependent child under the age of four in need of a childcare facility.

3. Limitation, suspension or withdrawal of teleworking

Reduction of the period of notice compared to PTHW

The Circular defines that the decision to limit, suspend or withdraw the line manager's approval for teleworking 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.

We do not understand why the notice period has been reduced instead of increased.

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.

Management clearly stated that they were not convinced by our proposal and think that it is sufficient to refer such cases to our internal justice system. We are not convinced by the proposed alternative. Teleworking has a significant impact on personal and family planning which cannot be reconciled with long delays incurred by the management review and internal appeal systems, let alone the AT-ILO as ultimate end of any litigation. The workload of the Appeals Committee is such that the delay to issue an opinion still takes more than three years and is thus longer than the proposed time of validity of the present Circular itself.

Conclusion

We have requested again copies of the legal assessments on the basis of which the Circular has been drafted. Management still seemed reluctant to provide them for confidentiality reasons. We insisted that at least excerpts are provided so that staff can understand why the Circular is limited in comparison to the expectations originally raised at early stages of the consultation.

The Central Staff Committee

Annexes:

- Email from CSC nominees to management representatives (03-11-2021)
- Detailed comments of the CSC nominees

From:
Sent: 03 November 2021 17:06
To: Social Dialogue
Cc:
Subject: Working Group on Teleworking: Preparation of the meeting of 4 November 2021
Attachments: Circular_Teleworking_comments_WG_CSC.pdf

Dear Administration members of the WG on Teleworking,

please find attached our comments and suggestions on the individual articles of the proposed Teleworking Guidelines (TWGL), as well as additional observations of a more general nature.

As a general request, any new or broad terminology used in a Circular (e.g. the term collaboration) should be explained as to its scope and meaning as visibly as possible, preferably in the Annex, at least however in the FAQs.

While some good points are seen, expectations raised by management with regards to the possibility of full teleworking (including abroad, cf scenario 5 in the New Normal Survey) and of working from another EPO site are not addressed. It is now up to management to sort things out, and to explain to staff these shortcomings of the guidelines, e.g. by providing the legal assessments drawn upon to all staff. We would furthermore like to have an overview of the savings due to telework per year so that we can evaluate over the mid- and longer term how the savings could be put towards the benefit of staff. A win-win situation could be envisioned.

For many of the issues raised in the circular we would like to reiterate that a joint conflict resolution panel be established for fast action in case of disagreement.

Looking forward to a fruitful discussion tomorrow at the meeting.

On behalf of the Staff Representation members of the WG on Teleworking

Teleworking guidelines Administration	Comments Staff Representatives
<p>Part I. Outline of teleworking</p> <p style="text-align: center;">Article 1 Geographical scope</p> <p>Teleworking can be performed at the following locations:</p> <p>(a) at the primary teleworking place at the employee's residence or at any other location within their country of employment.</p> <p>(b) at any other place within the territories of the Contracting States.</p>	<p>a) For clarity reasons, there should be a comma before <i>at the employee's residence</i> and a comma after <i>or at any other location</i>.</p>
<p style="text-align: center;">Article 2 Eligibility and general principles</p> <p>1) All employees are eligible for teleworking. Teleworking may be limited or excluded if incompatible with the nature of the tasks performed. The eligibility of newly recruited employees during their probation shall be assessed by their line manager with the aim to ensure their smooth onboarding.</p> <p>2) Teleworking is voluntary.</p> <p>3) Teleworking shall be reconcilable with the interests of the service, in particular the proper performance of the employees' duties, the smooth functioning of the Office and the effective team collaboration as well as with considerations of health and safety, information security and IT operations.</p> <p>4) The employee's choice to telework shall have no adverse effect on their entitlements to remuneration and leave or to their training, performance appraisal and career opportunities.</p> <p>5) The employee's choice to telework shall carry no costs to the Office unless otherwise foreseen in the present Circular.</p> <p>6) The President of the Boards of Appeals may adopt general guidelines for the application of the present Circular to the members of the Boards of Appeal.</p>	<p>1) Who decides on the limitation/suspension? If it is the line manager, different line managers may take diverging decisions for actually similar tasks. There is a risk of lack of harmonisation. We propose a fast conflict resolution panel.</p> <p>5) Teleworking produces savings for the Office and extra costs for the employee (e.g. electricity, Internet, water, heating and canteen subsidy, adaptation of the home). Especially when teleworking is mandatory, we believe the Office should offer a teleworking allowance.</p>
<p style="text-align: center;">Article 3 Modalities of teleworking</p> <p>Employees may telework in accordance with the following rules:</p>	

<p>(a) Within the limitations foreseen in the present Circular, employees may perform their duties through any combination of work at their site of employment and teleworking which suits better their work-life balance.</p> <p>(b) Employees may telework in blocks of full or half working days.</p> <p>(c) Working at a site of employment other than at their place of employment shall be subject to the capacity of said site.</p> <p>(d) Teleworking under Article 1 (b) of the present Circular cannot exceed 60 working days a year.</p>	<p>b) We understand that there the principle of proportionality would be applied to part-timers.</p> <p>d) Staff should be provided with the calculation and the legal reasoning for the limitation.</p>
<p style="text-align: center;">Article 4 Sense of belonging</p> <p>1) To safeguard the staff's sense of belonging and to ensure a smooth and efficient team collaboration, a minimum attendance of 40 working days a year at the employee's site of employment will be required. Up to 20 days of these may be at another Office site of their country of employment.</p> <p>2) Up to 20 working days of the minimum attendance mentioned in paragraph 1 above shall be defined by the Office either uniformly for all staff or for groups thereof in periods of common presence.</p> <p>3) For employees working part-time the minimum attendance shall be calculated proportionally, but in no case can it be less than 20 working days per year.</p> <p>4) In case of total absences for any type of leave exceeding 125 working days a year, the minimum attendance mentioned in paragraph 1 shall be reduced to 20 days of attendance at the employee's site of employment.</p>	<p>1) Staff should be provided with the legal reasoning for the limitation to another Office site of their country of employment. Duty travel should not accrue to this limit of 20 days. Hardship cases should be exempted.</p> <p>2) These 20 days should be announced well in advance (minimum delay to be defined).</p>
<p style="text-align: center;">Article 5 Exceptional circumstances</p> <p>1) Where the interests of service so require, and notwithstanding the provisions set out in the present Circular, employees may exceptionally be required to be present on the Office premises, on days they had scheduled to telework. In such cases, employees shall reach the Office premises within two working days. If the employee is away from their country of employment, travel costs shall be reimbursed by the Office as duty travel.</p> <p>2) In exceptional cases, the Office may request or instruct employees to telework.</p>	<p>2) In cases where the Office requests or instructs employees to telework, the duties of the employee should be different (e.g. not be held responsible for different performance and adaptation of the home to teleworking). The responsibilities in terms of H&S lies within the Office.</p>
<p>Part II. Roles and responsibilities</p>	

<p style="text-align: center;">Article 6 Teleworking equipment</p> <p>The Office shall provide standard teleworking equipment for the employee's primary teleworking place.</p>	
<p style="text-align: center;">Article 7 Considerations and responsibilities for line managers</p> <p>1) Line managers' responsibilities are as follows:</p> <p>(a) Ensuring business continuity, in particular the proper discharge of the team's duties and the smooth functioning of the Office.</p> <p>(b) Maintaining regular contact with their employees, ensuring team collaboration, efficiency and smooth functioning of the unit and fostering the sense of belonging.</p> <p>(c) Discussing and reviewing with their employees on a regular basis their teleworking plans with view to agreeing general arrangements that suit individual needs for flexibility while maintaining connection with the team, including common on-site presence at regular intervals as necessary.</p> <p>2) Line managers shall have access to the information regarding their employees' working locations.</p> <p>3) Line managers may request the support of Human Resources and/or Health and Safety for decisions pertaining to the present Circular.</p> <p>4) Teleworking may be limited or suspended, or the approval as per Article 10 (2) below withdrawn, in cases of:</p> <p>(a) Non-adherence to the minimum attendance requirements;</p> <p>(b) Negative impact of teleworking on the employee's performance;</p> <p>(c) Any behaviour which is not compatible with the needs of effective team collaboration;</p> <p>(d) Other operational needs.</p> <p>5) A decision as per para. (4) shall be taken with at least one month's notice.</p>	<p>1) c) Common on-site presence should not be only at the manager's discretion but agreed with the team. It is understood that this common on-site presence falls within the 20 days of Article 4(2).</p> <p>2) We assume that the postal code is the only detailed information needed.</p> <p>4) Who decides on the limitation/suspension? Criteria need to be defined to avoid arbitrariness. More clarity is needed. We propose a fast conflict resolution panel.</p> <p>b) How can this be assessed and which are the criteria?</p> <p>c) Examples (for team collaboration and other operational needs) should be added as visible as possible and at least in the FAQ.</p> <p>5) A decision shall only be taken after consulting the fast conflict resolution panel. The notice period for PTHW was two months.</p>
<p style="text-align: center;">Article 8 Considerations and responsibilities for employees</p>	

<p>1) Employees shall be responsible for:</p> <p>(a) Aligning with their line manager on a regular basis on their general working arrangements and their availability during the working day, notably also with regard to minimum attendance determined by the Office under Art. 4.</p> <p>(b) Keeping their line manager apprised of their teleworking location and correctly registering their location and teleworking instances in the appropriate tool, and ensuring that their line manager and colleagues have means to contact them;</p> <p>(c) Ensuring performance, respecting work priorities, objectives and deliverables when teleworking;</p> <p>(d) Actively maintaining regular contact with their line manager and colleagues equally while working remotely or on office premises;</p> <p>(e) Ensuring that their workplace is conducive to work and to concentration;</p> <p>(f) Reaching the Office premises in time when required under Article 5 (1);</p> <p>(g) Taking good care of all equipment provided by the Office for teleworking;</p> <p>(h) Contacting without delay the Office in case of any technical problem or damage or loss of teleworking equipment and following the instructions to resolve it;</p> <p>(i) If in case of (h) above no solution has been found and technical reasons prevent teleworking, employees must explore alternative options to ensure the delivery of their work by coming to Office premises without undue delay or taking leave or any other arrangement agreed with their line manager.</p> <p>2) With regard to data protection and security employees' shall be responsible for:</p> <p>(a) Complying with applicable policies, procedures and guidelines such as the EPO data protection rules;</p> <p>(b) Preventing unauthorised access to non-public information, for instance, by not keeping any printed non-public documents to their teleworking places.</p> <p>(c) If employees are unsure whether a piece of information is non-public, they must ask their line manager for instructions. If there is a risk that a non-public document has entered or could enter the public domain, they must inform their line manager immediately and ask for instructions.</p>	<p>1)</p> <p>a) Contradicts the principle of added flexibility. Availability during the working day was previously limited to core time. Meetings should respect the conventional work day. We propose to delete 1) a).</p> <p>b) It should be “<u>by</u> correctly registering”.</p> <p>c) In cases of mandatory teleworking, ensuring performance etc should be limited to the extent possible.</p> <p>i) The term “undue delay” should be clarified (see e.g. Article 5(1)). The employer’s responsibility in such cases needs to be clarified.</p>
<p style="text-align: center;">Article 9 Health and safety</p>	

<p>1) The Office provides all employees with guidance on occupational health and safety, ergonomics and office furniture, related to telework.</p> <p>2) Employees shall ensure that their place of telework complies with the safety and health requirements established by the Office and that it is safe and conducive to their own well-being. To that end, they:</p> <p>(a) shall regularly check the ergonomics and safety of their workplace in accordance with the Office's guidance and maintain an adequate level in these areas.</p> <p>(b) in case of doubt, shall seek advice from the Office's Occupational health and safety experts.</p>	<p>1) Virtual visits from ergo-WUCs should be made possible.</p> <p>2) Not all employees can be expected to have a home adapted to teleworking. Teleworking is voluntary.</p>
<p>Part III. Workflow, benefits, costs and working hours</p> <p style="text-align: center;">Article 10 Workflow and registration</p> <p>1) Employees shall declare in advance their working/teleworking plans in the online tool and ensure at all times that all registrations are updated and reflect the actual working mode.</p> <p>2) A request for teleworking under Article 1 (b) shall require the prior authorisation of the line manager.</p>	<p>2) For the employee's personal planning, the line manager should have a specified period of notice after registration by the employee to give the approval for teleworking in another EPC territory.</p>
<p style="text-align: center;">Article 11 Remuneration and leave when teleworking</p> <p>Teleworking shall have no adverse effect on the employee's entitlements to remuneration and leave. Specifically an employee's entitlements to expatriation allowance and/or home leave shall remain unaffected by their decision to telework under Article 1 (b).</p>	
<p style="text-align: center;">Article 12 Teleworking costs</p> <p>1) Employees are responsible for arranging a suitable workplace for teleworking, including the provision and general upkeep of a suitable internet connection. They bear all costs associated with teleworking in so far as not otherwise described in the present Circular.</p>	<p>1) In the case of mandatory teleworking and for colleagues normally not teleworking, this should not be expected.</p>

<p>2) Employees bear the costs associated with traveling between the teleworking and the Office premises in so far as not otherwise described in the present Circular.</p>	
<p style="text-align: center;">Article 13 Insurance and liability</p> <p>1) Employees are responsible for ensuring that teleworking is permitted from their teleworking workplaces and allowed by their home insurance. Any costs resulting from home insurance are borne by the employee.</p> <p>2) Without affecting the provisions on social security benefits for employees, the Office will not be liable to employees for any damage, material loss or injury suffered by them because of teleworking, unless such damage, loss or injury was caused by equipment supplied by the Office.</p> <p>3) Employees hold the Office harmless regarding any costs or compensation for any damage, material loss or injury suffered by any third party and attributable to teleworking, unless such damage, loss or injury was caused by equipment supplied by the Office. This does not apply to any payments due:</p> <p>(a) under any social security scheme of the Office.</p> <p>(b) otherwise under the Service Regulations, the Pension Scheme Regulations, the New Pension Scheme Regulations or other secondary law.</p> <p>(c) under any implementing regulations, guidelines or decisions relating to the Service Regulations, the Pension Scheme Regulations, the New Pension Scheme Regulations or other secondary law.</p>	<p>1) In the case of mandatory teleworking and colleagues normally not teleworking, this should not be expected.</p> <p>2) Reduces to the bare minimum the responsibility of the Office in terms of Occupational Health.</p> <p>3) How will hacking of any sort be treated?</p>
<p style="text-align: center;">Article 14 Duty travel</p> <p>1) Duty travel is not considered as teleworking.</p> <p>2) Duty travel expenses are normally calculated on the basis of travel from the place of employment. By way of exception the primary teleworking location may be taken into account for the purposes of calculating travel expenses for duty travel where this results in a lower total cost of travel.</p>	<p>1) Duty travel time should continue to be considered as working time</p> <p>2) If duty travel is granted, the staff member should be allowed to travel from the teleworking location or place of employment, according to his work pattern.</p>
<p style="text-align: center;">Article 15 Working hours</p>	

<p>1) All provisions of the Guidelines on arrangements for working hours concerning the accrual of flexi-hours and the establishment of core time are suspended.</p> <p>2) Paragraph (1) shall not affect the line managers' discretion to define the times of meetings and events during working days.</p>	<p>1) Accrual of flexi-hours should only be suspended on days of teleworking.</p> <p>2) Meetings should respect the conventional work day.</p>
<p>Part IV. Entry into force</p> <p style="text-align: center;">Article 16 Entry into force and review</p> <p>1) The present Circular shall enter into force as a pilot scheme on 1st February 2022 until 31st December 2024. A review of this Circular shall take place not later than 3 years after its entry into force.</p> <p>2) The present Circular supersedes the Guidelines for part-time home working at the EPO which entered into force on 15th May 2018 and the Emergency teleworking guidelines applicable between March 2020 and 31st January 2022.</p> <p>3) Should the implementation of the present Circular conflict with any regulation governing the conditions of employment, the conflict is to be resolved having regard to the hierarchy of norms, reasonableness and the purpose of this pilot.</p>	<p>1) The new Circular should not supersede the Emergency Guidelines before the end of the pandemic is declared in the host states. We request an explicit and binding announcement at least one month before the entry into force, to allow everyone interested or returning to prepare accordingly.</p> <p>In addition to the review, we appreciate that the Office promised a continuous evaluation tool on teleworking available to staff on the Intranet.</p>
<p style="text-align: center;">Article 17 Transitional provisions</p> <p>For employees who on 1st February 2022 have enrolled a dependent child in an educational facility at pre-school, primary or secondary level at a place in another Contracting State than the country of employment, the limitation of Article 3 (d) and the requirement for minimum attendance of Article 4 of the present Circular shall apply as from 1st September 2022. For the period between 1st September 2022 and 31st December 2022 these employees may not telework under Art. 1 (b) and shall perform a minimum attendance of 15 working days.</p> <p>Done at Munich, [date]</p>	<p>As it is also difficult to find childcare facilities at short notice, we consider it necessary to extend these provisions to children below the age of 4</p>