EN

TELEWORK OR ICT-BASED MOBILE WORK (TICTM) IN THE POST-PANDEMIC WORLD OF WORK

DISCUSSION PAPER OF CESI'S WORKING GROUP ON THE FUTURE OF WORK

The European Confederation of Independent Trade Unions (CESI) is a confederation of more than 40 national and European trade union organisations from over 20 European countries, with a total of more than 5 million individual members. Founded in 1990, CESI advocates improved employment conditions for workers in Europe and a strong social dimension in the EU. CESI represents public and private sector workers.

CESI key demands

- A well-designed regulation responding to an increasing demand for work–life balance policies.
  - Implementation of the right to disconnect
  - Implementation of the voluntary criterium of smart working

- The definition of the limits of individual bargaining that could lead to a general misuse of contracts. Enhance the role of collective bargaining in order to avoid discrimination among workers and ensure fair working conditions.

- Ensuring access to workers and trade unions in order to avoid isolation, sponsoring co-decision, participation, information and consultation.

- The definition and implementation of adequate training and provision of equipment to "smart workers".

- Implementation of measures and training regarding OHS with particular attention to psychological health and data protection. Enhancing the use of OHS experts.

The impacts of the COVID-19 crisis on our ways to work: A catalyst for (already occurring) changes

The Coronavirus outbreak and the measures taken fights its spreading will have profound impacts on the society we live in and on the way we work. 'Smart working', initially rather a social experiment, has become, in just a few days, the norm for millions of workers. Those who were not used to the massive use of technology had to review their habits and adapt very quickly. According to some studies, transformation processes which would have taken approximately three years, occurred within just 3 months.

Automation, technological advancement, and the move towards green sustainability will further catalyse the reshaping of the way we work, the way tasks are carried out and the skills required to do so.

This trend is most likely irreversible, so it will be unthinkable to go back, and transformations will impact the traditional concept of 'the office being the workplace' in both the public and private sector. We will all be facing these transitions, and the new possibilities offered by ICT to work 'smarter' and 'more mobile' will require a 'reset' of the relationships and the (social) contract between workers and employers.

What will be the concrete consequences? How can we maintain and further guarantee quality standards of work under these new circumstances?

The case for a careful regulation: 'Smart Working' and the need for guidance

'Smart Working', or 'Agile Work', is one of the terms used for these new ways of work. It aims at giving people more flexibility and autonomy in the choice of spaces, times and tools to be used - in the face of greater responsibility for results.

It has direct impacts on the traditional frames of standard work: the organizational culture, enhanced flexibility with respect to schedules and workplaces, technological equipment and physical spaces.

As 'Smart Working' can and will find its way into any business or organisation -from large multi-national companies and the public sector to small businesses and the self-employed- the number of workers involved is only likely to increase.

'Smart Working' undeniably opens considerable opportunities for the improvement of living and working conditions: it may reduce travel time and costs, it may lead to greater possibilities to reconcile work and family life, it may allow more flexibility in the choice of working hours (e.g. extra breaks during the working period for family or personal reasons) and it may open new choices for the shaping of the work places (e.g. presence of elderly relatives in the house who cannot be left alone).

'Smart Working' could, if well regulated, be synonymous with enhanced workers' well-being, with improved productivity, and not least with a reduction of CO_2 emissions - as in this particular moment in time, choices leading to a green transition and sustainability should also have major impacts on the way we will design the future of our work.

Well-designed regulation could give more responsibility, control and ownership to 'Smart Working' workers, over the design of their working hours, the patterns and the ways of work. It would offer them the chance to improve their quality of life and reduce their levels of stress by cutting down on excessive hours, fitting other activities or responsibilities into their routine, and reducing unnecessary, time-costly and environmentally harmful journeys between home and office.

On the other hand, possible medium or long-term negative repercussions on workers must be anticipated and avoided: 'Smart Working' may lead to isolation, overload, stress, weakened job security and, not least, job losses. Due to the fact that 'Smart Working' decouples the worker from the traditional work place, from the colleagues and the employer, it may boost already existing trends to shift from traditional standard contracts to atypical ones, to increase outsourcing measures and to reduce standard employment schemes.

We have experienced that 'Smart Working' is possible, that not all workers have to be physically at the workplace to carry out their activities, that different concepts than only 'time' and 'hours' are suited to define 'work'. We can foresee that flexibility and the decoupling from the traditional workplace could allow more result-and-objective approaches as opposed to the classic and hierarchical command-and control concept. We have learned that reconciling career and family is possible if the working methods are 'smarter'. And we recognise that promoted and supported digital technologies offer a significant competitive boost to our economies and respond to key societal changes and challenges. Companies will require flexible workforces to adapt to rapid changes in a globalised and digital world.

Generally speaking, the approach of TUs, social partners, management and lawmakers could therefore also be collaborative, innovative and based on a concept of flexibility - as opposed to a rigid approach which may bear the risk of "plastering" the use of ICT based work, possibly running counter to its potential benefits.

A well-designed (=smart) regulation and implementation, could indeed support and catalyse benefits for workers (such as improved work-life balance, occupational equality and opportunities, non-discrimination of workers with disabilities etc.), while avoiding malpractice, misuse or exploitation, and the undermining of workers´ rights and protection.

But these changes in working practices also mean concrete threats to the workers. As trade unions, we urgently need to modify, sharpen and adapt the underlying rules. And as TU we must decisively co-shape them – before facing the 'fait accompli'.

'Smart Working': The different categories

Smart Working' can best be described as ICT-based work which can be mobile, home-based or office-based – while these categories can overlap.

It is also important to point out that the potential for remote work depends on the mix of activities undertaken in each occupation and on their physical, spatial, and interpersonal context. There are

occupations and tasks where 'Smart Working' is not practical or feasible because not all job functions can be done outside the workplace. Therefore, it is useful to classify worker in categories and respond to their specific needs accordingly:

- Group A: those unlikely to be able to work away from the workplace;

- Group B: those likely to work partially away and in the office;

- Group C: those more likely to be able to work completely away from the work premises.

Professional occupations (e.g. economists, statisticians, etc.) are most likely to be able to be done away from the office. Such jobs, alongside management, technical and administrative jobs, involve relatively little face-to-face contact, physical activity or use of tools or equipment.

By contrast, physical occupations (e.g. cleaners, waiting staff, security guards, etc.) together with process, plant and machine operatives, are unlikely to be able to work remotely. Among the jobs least likely to be able to work from home are also frontline workers, many of which have been designated as "key workers" during the coronavirus pandemic. These include police officers, paramedics, nurses and firefighters.

Furthermore, it has been found that during the pandemic although some tasks can be done remotely in a crisis, they are much more effectively done in person. For example: coaching, counseling, and providing advice and feedback; building customer and colleague relationships; bringing new employees into a company; negotiating and making critical decisions; teaching and training; and work that benefits from collaboration, such as innovation, problem-solving, and creativity.

In addition to the above-mentioned classification, it might be useful to distinguish between the following schemes within the groups B and C (those who *can* work remotely because the work allows it):

- Those who (want, can or must) work *only* remotely.

- Those who (want, can or must) work *both* remotely and in the office.

This additional distinction may have an impact on the respective obligations of the employee or the employer. On the one hand, the more the voluntary element is in the foreground, the more obligations may be incumbent to the employee, whereas more stringent regimes may increase the responsibilities of the employer. For example, the obligations of an employer to provide the necessary equipment for a home office will certainly have to be far more pronounced when the employee must or can only work remotely. On the other hand, the employer may face less responsibilities in terms of equipment and OHS obligations when a fully equipped office remains available at the workplace and the worker voluntarily decides to work only or partially remotely.

Smart Working': The characteristics and the elements to be regulated

For all workers that fall under a 'Smart Working' regime, the following five main threats and risks are to be addressed:

1. '**decoupling threats**' with dimensions relating to misuses of contracts, unpaid working time, access to trade unions, access to colleagues/isolation, co-decision/participation/information/consultation, career rights, transparency issues, and precariousness

2. the excess of **working time** and the loss of control over working shifts

3. insufficient **health and safety** (OHS) provisions related to both equipment and psychological health

4. non-respect of **data protection**

5. **training**

Both EU and national level topics such as the right to disconnect, the protection of privacy, safe working conditions as well as abuse trough misclassifications of contracts and/or misclassification of workers must be tackled, leaving then ample scope for collective, corporate and individual bargaining, in order to best calibrate the specificities and needs of each individual sector and/or production sector.

1. **Decoupling threats**.

   Altogether, decoupling threats are to be taken very seriously. Profound impacts on mental health may result from isolation, loneliness and the general decoupling from the workplace, the employer, colleagues, career advisors and trade unions. However, the above-mentioned voluntary criterium, i.e. the fact that the employee can chose to work only or partially remotely despite the fact that an fully equipped office is available at the workplace, will have to be taken into consideration and be subject to a case-by-case assessment. Here, the question of a right to telework may also have an impact.

   a. **Misuse of contracts**. In many EU states, there is an individual agreement between the employer and the employee in order to begin one's activity through smart working. For the Union it is essential that the individual agreement between employer and employee does not replace collective bargaining, which must continue to constitute the prevailing normative source of the employment relationship.

   What is needed today is a "light" EU and national regulation, not based only on individual agreements but challenges should be dealt through national bargaining and with decentralized bargaining, so that the organizational models that must change are respected, considering that each workplace has a different work organization.

b. **Unpaid overtime**. The organisation of working time is changing and the relevant legislation must take this into account. In particular, the issue of the use of IT tools outside working hours (which could be considered unpaid overtime) and compliance with the minimum rest period should be addressed.

Way too often, flexitime, and smart working, are associated with an increase in unpaid overtime hours of workers. This is especially true for professional workers without children, especially those working full-time, and part-time working mothers.

It is essential to enhance the role of collective bargaining in regulation of smart work in order to avoid discrimination between workers and ensure same and fair working conditions.

c. **Access to trade unions**. The involvement of TUs, through their workplace representatives, can in fact prove useful in guaranteeing smart workers further and more detailed rules than those conditions set by regulations, and establish fair objective methods and procedures of selection of personnel allowed the chance to choose a smart working option.

The lack of human interaction in the workplace has even more negative consequences on the relationship between workers and the correct fulfilment of trade union rights and prerogatives. Social dialogue and collective bargaining at all levels are key to ensuring quality standard and better working conditions.

"Physical" assemblies could be constantly deserted by those who carry out their work outside the company premises. Furthermore, smart workers could remain extraneous to the collective claims put forward by colleagues or, more generally, by the trade union.

Therefore, companies must encourage the return of smart workers, guaranteeing the actual participation in trade union meetings regularly convened within the company premises.

In any case, it deems necessary to provide for ad hoc regulation in the national collective bargaining: a concrete hypothesis is to provide a suite of link and an electronic bulletin board made available by employers who intend to activate the agile working mode.

The use of the so-called *electronic bulletin board*, in particular, would also make it possible to implement the principle of equals opportunities between agile workers and colleagues in the company, through clear information and prompt of any training, extra-work or professional initiative that occurs within the company context.

European Confederation of Independent Trade Unions • Confédération Européenne des Syndicats Indépendants • Europäische Union unabhängiger Gewerkschaften • Confederazione Europea dei Sindacati Indipendenti • Confederación Europea de Sindicatos Independientes

Avenue des Arts 19 AD • B-1000 Brussels • T.: +32 2 282 18 70 • F.: +32 2 282 18 71 • info@cesi.org • www.cesi.org

Page | 6

d. **Access to colleagues/isolation**. Specially for those workers who are home based, the adoption of the way of working can configure in medium and long-term criticalities that can no longer be underestimated: the lack of "contact" between colleagues denies the opportunity to get to know each other better and to socialize with each other, if not in rare and hypothetical occasions of business meetings. The virtual modality that binds the relationship between worker and his team highlights the risks of social and psychological isolation.

For this reason, meetings between employees who work in the company's premises and employees smart working should be set up frequently. Collective bargaining must identify formulas that go from this perspective.

e. **Co-decision, participation and information and consultation**. Workplace socialisation is widely recognised as a critical component of workplace learning and the transfer of knowledge. Due to their physical absence from their work's premises, TICTM workers may feel excluded from information sharing and informal learning that growths work-related skills. This can lead to their disconnection from important sources of professional development and career advancement.

The use of electronic bulletin boards and information passed on also through TUs becomes crucial.

f. **Career rights**. Not all workers benefit equally from TICTM. For example, while it can facilitate access to employment for vulnerable groups, there is a risk that regular home-based teleworkers are seen by colleagues and managers as having less commitment. This, combined with lack of visibility, could jeopardise their career development opportunities.

On the other hand, TICTM requires workers to develop specific capabilities that could improve their prospects, such as the skill to handle high levels of responsibility, autonomy and self-management. Furthermore, it is important that no worker should be prevented from participating in employer-paid training or on-the-job training.

g. **Transparency issues**. In order to avoid the issue of transparency towards workers, provided that information should be available and given to the worker at all times, it could beneficial to implement workers commissions, joint verification and examination systems for monitoring work performance in smart working mode. In this participation system, TUs play a key monitoring role that will help tackle any arising issues for workers within the new organizational system.

h. **Precariousness**. Not all workers benefit equally from smart working. Many experience precarious employment conditions (such as job insecurity, low earnings and a lack of prospects), and this includes medium-skilled and high-skilled workers.

2. **Working time**. TICTM offers workers more autonomy, which is an advantage. Autonomy, however, can also lead to an intensification of work when combined with heavy workloads which may blur the boundary between rest time and working time. If the main benefits of smart working are found in a better organization of time, in the increase of the quality of work and productivity, in the growth and emergence of talent, it is however necessary to deal with the disadvantages, first of all the right to disconnection which requires better regulation in order to avoid burn-out phenomena. The subjective right of 'disconnection' of the individual worker should be punctually defined.

3. **Occupational health and safety (OHS)**. An important challenge is the difficulty of verifying whether work environments outside the company follow the principles of prevention in the field of health and safety at work. Several faults with regards to occupational health and safety (OHS) structures and instruments have been identified. On a company level, organization of flexible work arrangements, as well as their risk assessments need to be addressed. On an institutional level, there is concern on how regulations can be enforced. There is an increasing invisibility of occupational health and safety in the digitized world of work, because there is an increasing loss of access to employees who were previously situated at the work's location. Also, fractured labour markets (including home-based work or multi-employer worksites) create difficulties in ensuring standards, allocating accountability, and enforcing regulations.

   a. **Equipment**. Mobile work heavily relies on the use of ICT, and mobile workers are challenged to increasingly organize themselves. Thus, tools for collaboration, as well as adequate ICT equipment, are essential and should be provided. However, outside of telework agreements, workers often have to rely on their private ICT, which is a grey area not only in terms of product safety but, also, in terms of information security. A higher level of protection could be achieved by explicitly considering smart work in the regulation. In order to implement smoothly an efficient smart working system every employer needs to ensure the proper technical equipment and preparation of the employees. Firstly, the employer must supply the workers with the tools, like laptops or mobile phones, which will be used to perform the job. For those workers who are mobile or home-based, in principle, the employer must provide working equipment; this applies to telework and mobile working. However, it should also be possible for the employee to provide his own work equipment, for which there must be a one-off monthly subsidy from the employer. The employee's investment must be tax deductible. In the case of smart workers who can work both from home and in the office, the employer must also provide facilities at the location of the business. Insurance to cover for accidents at work during mobile working or telework should be set in place. However, the above-mentioned voluntary criterium, i.e. the fact that the employee can chose to work only or partially remotely despite the fact that an fully equipped office is available at the workplace, will have to be taken into consideration and be subject to a case-by-case assessment. Here, the question of a right to telework may also have an impact.

b. **Psychological health**. We have identified a lack of suitable tools and understanding of psychosocial problems, because the traditional perspective of OHS in terms of physically measurable risks and technical solutions is still prevailing. In this context, psychosocial risk assessments are an important means of occupational prevention. Enhancing the use of professional OHS experts and strengthening the advisory and control capacities of the OHS inspection authorities in the area of psychosocial risks would be advantageous.

4. **Data protection**. The performance of work outside the company premises makes inevitable what, as a rule, constitutes an anomaly both in terms of labour law and the protection of personal data, i.e. the remote control of workers' activity.

Controls must concern only and exclusively company assets and cannot be excessively invasive (for example, unlike in the work's premises, it will not be possible to install cameras at the home of the smart worker).

It is necessary to address all the technical solutions needed to reduce the risk of illegal abduction or duplication of documents. Similarly, it is suggested, the adoption of policies aimed at formulating rules of conduct with reference to the use of IT tools that could well be accompanied by the provision of specific confidentiality clauses within contracts that regulate relation within the workplace. This is a discussion that should see Trade unions actively involved.

- Adequate information should be delivered to workers indicating, on the one hand, the methods of use of the tools and controls that can be carried out and, on the other, all information related to the processing of personal data required by current legislation.
- Compliance with the principles and rules established by the privacy legislation for the processing of personal data related to the use of control tools.

5. **Training**. To fully exploit the potential of smart work and improve the working conditions of the workers involved, training and awareness-raising initiatives are needed for both employees and managers on the effective use of ICT technologies and best practices. In this process the involvement of trade unions is essential.

The essential element is the training which will prepare the employees to work in the new system, use digital tools and programmes. It is important to take into consideration the different levels of digital literacy among the employees and therefore different needs they might have while getting ready for smart working.

The technology, the skills and the regulations, which will be necessary for any changes to take effect, need to be reassessed. The cultural shift of how to organise work will require different managerial approaches and new training for managers to address these changes.

Therefore, the different approach to management should be based on greater autonomy and responsibility for employees, relying on good access to information, knowledge and experience and working relationships based on trust. Therefore, moving from command and control towards an approach based on accountability for results and objectives. Here the role of TUs is key because we also have to participate in the cultural shift assuming a more co-shaping role in the organisation of work.

Conclusions

The coronavirus pandemic has transformed the way people live and work in Europe and around the world, affecting health, social relationships and economic stability. The full impact on the labour market is only now becoming apparent but it is inevitable that the way work is organised will change permanently. Collective bargaining plays an important role for making flexible work arrangements such as mobile work accessible to representation, protection, and specific forms of regulatory supervision. The future must be built on equality, solidarity and collective decision-making.