September 2023
Ref. EUROGIP-180/E
ISBN 979-10-97358-67-9

Teleworking and accidents at work in seven European countries

Germany, Austria, Spain, Finland, France, Italy, Sweden

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Please note that in the event of any discrepancy between this version and the French one, the French version shall prevail.

Glossary

AKAVA	Korkeakoulutettujen työmarkkinakeskusjärjestö - Confederation of Unions for Professional and Managerial Staff in Finland (Finland)
AML	Arbetsmiljölag - Work Environment Act (Sweden)
ANI	Accord national interprofessionnel - National interprofessional agreement (France)
ArbSchG	Arbeitsschutzgesetz - Occupational Safety and Health Act (Germany)
ArbStättV	Arbeitsstättenverordnung - Workplace Ordinance (Germany)
ASchG	ArbeitnehmerInnenschutzgesetz - Employee Protection Act (Austria)
AStV	Arbeitsstättenverordnung - Workplace Ordinance (Austria)
ASVG	Allgemeines Sozialversicherungsgesetz - General Social Security Act (Austria)
AUVA	Allgemeine Unfallversicherungsanstalt - General Accident Insurance Institution (Austria)
AVRAG	Arbeitsvertragsrechts-Anpassungsgesetz - Employment Contract Law Adaptation Act (Austria)
BG	Berufsgenossenschaft(en) - Private-sector accident insurance fund(s) (Germany)
BSG	Bundessozialgericht - Federal Social Court (Germany)
CEEP	European Centre of Employers and Enterprises providing Public Services and Services of General Interest - now SGI Europe
CIFA	Confederazione Italiana Federazioni Autonome - Italian Confederation of Autonomous Federations (Italy)
CNI	Consiglio Nazionale degli Ingegneri - National Council of Engineers (Italy)
Confsal	Confederazione Generale dei Sindacati Autonomi dei Lavoratori - Confederation of Autonomous Trade Unions of Workers (Italy)
CPAM	Caisse primaire d'assurance maladie - Primary health insurance fund (France)
DGUV	Deutsche Gesetzliche Unfallversicherung - German Social Accident Insurance (Germany)
DSE	Display Screen Equipment
DUER	Document unique d'évaluation des risques - Single occupational risk assessment document (France)
ETUC	European Trade Union Confederation
EU	European Union
EUROFOUND	European Foundation for the Improvement of Living and Working Conditions
EUROSTAT	Statistical Office of the European Union
EU-OSHA	European Agency for Safety and Health at Work
FonARCom	Fondo Paritetico Interprofessionale Nazionale per la Formazione Continua - National Interprofessional Joint Fund for Continuing Education (Italy)
GG	Grundgesetz für die Bundesrepublik Deutschland - Basic Law for the Federal Republic of Germany (Germany)
ICT	Information and communications technology
INAIL	Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro - National Institute for Insurance against Accidents at Work (Italy)

INRS	Institut national de recherche et de sécurité pour la prévention des accidents du travail et des maladies professionnelles - French National Research and Safety Institute for the Prevention of Occupational Accidents and Diseases (France)
INSST	Instituto Nacional de Seguridad y Salud en el Trabajo - National Institute for Safety and Health at Work (Spain)
LGSS	Ley General de la Seguridad Social - General Law of the Social Security (Spain)
LO	Landsorganisationen i Sverige - Swedish Trade Union Confederation (Sweden)
LPRL	Ley 31/1995, de 8 de noviembre, de prevención de Riesgos Laborales - Law 31/1995, of 8 November 1995, on prevention of occupational risks (Spain)
LSG	Landessozialgericht - State Social Court (Germany)
OSH	Occupational safety and health
PTK	Privattjänstemannakartellen, a joint organization representing 25 private-sector trade unions (Sweden)
SGB VII	Siebtes Buch Sozialgesetzbuch - Seventh Book of the Social Code (Germany)
TFA	Trygghetsförsäkring vid arbetsskada - Workers' compensation insurance for private-sector employees (Sweden)
TICTM	Telework and ICT-based mobile work
TVK	Tapaturmavakuutuskeskuksen - Finnish Workers' Compensation Centre (Finland)
UEAPME	Union européenne de l'artisanat et des petites et moyennes entreprises - European Association of Craft, Small and Medium-sized Enterprises – now SMEunited
UNICE	Union of Industrial and Employers' Confederation of Europe - now BusinessEurope

1. Foreword

Based on its expertise concerning occupational safety and health insurance systems, EUROGIP analysed what would be the coverage for an employee suffering an accident at work when they are working from home.

The issue is becoming very important in a context in which, although this organization of work at a distance admittedly developed during a period of health crisis related to Covid-19, it has become a permanent feature.

What coverage is the employee entitled to? What are the prerogatives of the employer, who remains responsible for the employee's health and safety? What legislation has developed and applies at present? What established legal precedents exist? All these questions are examined in this report covering seven European countries: Germany, Austria, Spain, Finland, France, Italy and Sweden.

The study focuses mainly on teleworking and not on the other possible forms of remote work. Moreover, it considers this work organization "outside periods of emergency", i.e. which is not imposed as a result of exceptional circumstances such as lockdowns. Lastly, the study concerns waged employment with reference to the general occupational health and safety insurance regime by which it is covered in the seven countries studied.

2. Summary

Teleworking and mobile working started to develop from the 1970s. Despite technological progress, the phenomenon did not radically change society during the following decades. The year 2020 marked a huge change, with the introduction of lockdowns due to the Covid-19 pandemic and the use of remote work. The changes brought about in the habits of people and companies suggest that teleworking, and in particular the "hybrid model" combining work in the office and work at home, is here to stay.

At present, there is no European legislation specifically concerning teleworking. This is conceived as a form of work organization and not as a different employment contract, to which accordingly applies the body of social and labour legislation already applicable to European employees.

The 2002 European Framework Agreement on Telework, an autonomous agreement signed by the European social partners, gives a more detailed definition of teleworking. It has been adopted in various forms in the European countries, but since this document is not binding, the result and the effectiveness of its implementation vary significantly.

However, the situation could soon change. Indeed, **on 4 October 2022, European negotiations officially started between the European social partners** with a view to preparing an agreement and a proposal for a **Directive on teleworking,** which would be scheduled for 2023. This (binding) text would be designed to update the 2002 framework agreement and allow the harmonization of the implementation of teleworking on the European level.

It should be specified that teleworking is not the only existing form of remote work. There are a

multitude of definitions and variants in European countries. Eurofound, the European Foundation for the Improvement of Living and Working Conditions, groups all these forms under the acronym TICTM (telework and ICT-based mobile work). The main difference between "telework" and "mobile work" lies in the possibility in the latter case of working from several external locations, and not merely from a location defined by agreement with the employer (home, for example). However, **the definitions can be broken down in greater detail in the various national legislative systems**.

The increase in recent years in the number of teleworkers and mobile workers raises questions concerning occupational safety and health (OSH) issues at a distance, and especially regarding the potential coverage of work accidents occurring in the home or in any other remote work location. In this report, **attention is paid specifically to the issue of work accidents in telework and the challenges with regard to occupational safety and health**.

At present there are still numerous "grey areas" related to the difficulty of drawing clear boundaries in a domestic environment in which the worker is often alone. It is precisely to cope with these new challenges that **many countries have started to improve the regulation of teleworking**, on both the general level and more specifically with regard to coverage in the event of accidents in teleworking. There is no doubt that this process of adaptation to new forms of work at a distance will continue in the future. Any directive on teleworking would give no precise indications concerning the definition or conditions of coverage of accidents at work, which is the exclusive competence of the Member States. However, it could contain measures concerning the occupational safety and health of remote workers, with possible (indirect) consequences for countries' "occupational injury and illness" systems.

In this report, seven European countries were studied: France, Italy, Spain, Germany, Austria, Finland and Sweden.

In France

The legislative provisions applicable to teleworking appear in Articles L. 1222-9 to L. 1222-11 of the French Labour Code. The current framework (for the private sector) is supplemented by the new "Accord national interprofessionnel (ANI) pour une mise en œuvre réussie du télétravail" (national interprofessional agreement for the successful implementation of teleworking) of 26 November 2020, rendered compulsory by an "Arrêté" (official order) in 2021. Article L. 1222-9 of the French Labour Code extends the protection against accidents at work to teleworking employees: "accidents occurring at the place where teleworking is performed during the teleworker's working hours are presumed to be an accident at work within the meaning of Article L. 411-1 of the French Social Security Code". If these conditions are met (namely, an accident occurring in the workplace and during working time), the worker does not have to prove the causal relation between the accident and the work. Due to this presumption of imputability, it will be incumbent on the employer - in the event of disagreement with the employee - to prove the contrary. The retention of this presumption of imputability even in the case of an accident in teleworking poses problems, because the worker, at a distance, "eludes" the employer's supervision. In the case of commuting accidents, French law does not specify whether this coverage extends to teleworking employees.

In Italy

Two forms of remote work are commonly used: "telelavoro" (literally "teleworking") and "smart working". In teleworking, workers are tied to a fixed, pre-established remote work station, subject to the same time limits as those they would have complied with in the office. Smart working was introduced by Law No. 81/2017 in which it is defined as a form of embodiment of the employment relationship characterized by a lack of constraints of time or space and a work organization by phases, cycles and objectives. The Italian institute of occupational injury insurance, INAIL, emphasized that, during the pandemic, measures to combat Covid-19 often led to the application of a remote work model which stands on the boundary between teleworking and smart working, incorporating the essential and typical requirements of both models.

With regard to insurance against accidents at work and occupational diseases, the teleworker is protected by applying the general criteria valid for all other employees working at the company's premises. As a reminder, for an accident to be compensated by INAIL, it is not sufficient that the event occurs during work and in the workplace: it must occur because of the work.

In the case of smart working, Law No. 81/2017 stipulates that, outside the employer's premises, workers are entitled to protection against accidents at work and occupational diseases resulting from work-related risks; it also extends the coverage of commuting accidents to smart working, but on certain conditions. "The worker is entitled to protection against accidents at work occurring during the normal journey between the place of residence and the place chosen for the performance of work outside the company's premises, within the stipulated limits and conditions (…) when the choice of the place in which work is performed is dictated by requirements related to the work itself, or to the worker's need to reconcile private life and working life, and this choice meets criteria of reasonableness".

In Spain

The Covid-19 pandemic led the government to better regulate teleworking. In September 2020, Royal Decree-Law 28/2020 on remote work was approved, then translated into Law 10/2021 on remote work. These legislative acts apply only to the private sector.

Among the novelties, these texts define "remote work" and "teleworking" precisely (the latter is described as "a form" of remote work using ICT) and regulate "regular" remote work, established based on a time criterion. The legislation also goes beyond the phase of "emergency teleworking", because the provisions do not apply to remote work implemented in exceptional circumstances such as lockdowns. These texts also introduce new measures, including on OSH matters, concerning remote work and new obligations for both employers and employees. For example, new provisions concern the assessment of risks with regard to remote work (including teleworking). This assessment must now concern only the area designated for work, without extending to other areas (kitchen, terrace, etc.) of the home or the place chosen for work at a distance.

As regards accidents at work, Law 10/2021 does not alter the legal definition of the "conventional" accident at work found in Article 156 of the General Social Security Act. Also in Spain, there is a presumption of imputability (presunción de laboralidad) for any injury sustained by the worker during work time and in the workplace. In the event of an accident - in teleworking also - it is incumbent on the worker to demonstrate that the accident occurred during work time and in the workplace. Once these circumstances have been proved, if the Mutua or the company considers that this is not an accident at work, it will be incumbent on them to prove that the event which

caused the injury is not a consequence of the work or did not occur when performing work. Lastly, at present there is apparently little clarity concerning protection against commuting accidents in teleworking.

In Germany

Three expressions are used to refer to various types of remote work: Telearbeit (literally "telework"), mobile Arbeit ("mobile work") and the Homeoffice ("home office"). While Telearbeit is precisely defined and legally regulated, this is not the case for either mobile work or the Homeoffice (the latter form, used extensively during the lockdowns, was considered as "a form of mobile work" that is temporary and limited to employees' private premises).

Until very recently, there existed no specific measures or laws concerning insurance against accidents at work in teleworking and mobile working. Protection against accidents at work and occupational diseases, as defined in the seventh book of the German social code (abbreviated as SGB VII), applied. In the case of remote work, the main difficulty concerned the delimitation of the boundaries between domestic accidents (private activities that are not insured) and accidents at work (insured professional activity).

In addition to accidents at work proper (directly related to the insured activity), accidents occurring during so-called "operational/business travels" were insured in teleworking/mobile working. This means movement for work-related purposes (within the home, to reach the printer or the telephone to answer a work-related call, etc.). On the other hand, an accident occurring when going to fetch a glass of water in the kitchen or going to the toilet could not be covered by statutory accident insurance, because it was not strictly work-related.

In 2021, the Act on the Modernization of Works Councils came into effect, amending Article 8 of SGB VII on accidents at work by adding two new paragraphs. First, it is stipulated that "when the insured activity is performed in the home of the insured or in another location, insurance coverage applies to the same extent as when the work is performed on the employer's premises", thereby cancelling the division between "business travel" and travel of a private nature within the home/a third place. Fetching a glass of water or a coffee in the kitchen will now have to be covered in the event of teleworking. It is in fact necessary to apply a principle of equivalence between coverage at home and the coverage that one would have with physical presence in the office. Secondly, it is added that if the insured activity is performed in the place where the family household is located, direct travel to and from the place where the children are looked after is also covered by legal accident insurance.

In Austria

The Employment Contract Law Adaptation Act (AVRAG) was amended in April 2021 to add a legal definition of teleworking (called Homeoffice): "there is Homeoffice when an employee regularly provides work services from home". The term "home" includes not only the dwelling of the insured, but also a secondary residence or the dwelling of a close relative or a partner. The balconies, terraces and gardens belonging to the dwellings in question are also covered in the event of accidents at work. Outside locations and public spaces (a park, a coworking space, etc.) are not acceptable as a Homeoffice.

Until March 2020, no specific legal regulations existed concerning accident coverage during Homeoffice work. Protection in this respect was limited to the actual work activity, based on the

General Social Security Act (ASVG). Then, a special temporary regulation was introduced, which was replaced by a new Act in April 2021, permanently anchoring its provisions in a modified form.

This 2021 Act amends, *inter alia*, Article 175 of the ASVG Act, which defines the accident at work. Summarizing the new legislative features, in the Homeoffice one is entitled to protection:

- Inside the home: during the insured activity (the work performed); during travel (movements) for work-related purposes (to the printer, to answer a phone call from a colleague/employer, etc.); when satisfying basic needs (eating, drinking, going to the toilet) and during the movements needed to satisfy those needs.
- Outside the home: the employee is now protected in most of the situations foreseen for employees working at the employer's premises. In particular, one of the key novelties of the Act of 2021 in its amendment of Article 175 was to extend the concept of the "workplace" to also include the home (or better, all possible "homes" in *Homeoffice*).

In Finland

Act 459/2015 currently regulates protection against accidents at work and occupational diseases and its section 25 concerns, in particular, "accidents at work occurring in the home and in an unspecified workplace". It is therefore stipulated that the following are not covered:

- Accidents which, although they occurred at the workplace, did not occur within the strict framework of work, but following activities that are normally performed in the office (e.g. hurting oneself when preparing a cup of coffee).
- Commuting accidents between home and the workplace (with the possibility of a minor detour to pick up the children from school, to go grocery shopping and other similar movements) and accidents occurring during a meal or recreational break normally linked with work and taking place near the workplace.

Due to this partial protection in the event of accidents in teleworking, complementary private insurance policies are possible (for private-sector employees), but they are voluntary and optional. There are three types of such insurance:

1. Private voluntary accident insurance, taken out either by the employers for their employees at a distance, or by the latter independently, in which case it is up to them to bear the cost.
2. "Leisure-time" insurance, described in Act 459/2015: it can be taken out exclusively by the employers for their employees; meal and break times, which are not covered by law in the case of remote work, may be included in leisure/free time.
3. Telework insurance, taken out solely by the employers for their employees: it covers more specifically the characteristics of teleworking (need to protect travel to and from day-care centres/schools for children, accidents occurring during meals and breaks, or during any other movement inside the home, etc.).

In Sweden

In addition to basic coverage against accidents at work and occupational diseases as provided for by law, there is a complementary coverage, defined in the collective labour agreements between employers and employees' trade unions. This is managed by Afa Försäkring, which is a non-profit organization and is fully owned by national social partners. At present, 90% of employees are

automatically covered by these complementary insurance policies (for which the employer pays the premium) in accordance with their employment contract.

In teleworking, the interpretation of the accident at work is stricter than for a face-to-face work accident: it is required that the remote worker has injured themselves strictly when performing their work. Afa Försäkring mentions examples to clarify what can be covered in teleworking and what is not. Thus, the following are considered as accidents at work in teleworking:

- falls due to stumbling caused by cables of the work computer;
- falls/accidents occurring while the worker is walking about the house when speaking on the telephone with their employer/colleagues;
- accidents occurring during authorized travels: for example, to go to a business appointment with a customer, or to fetch on the employer's premises equipment that is essential for teleworking (computer, mobile phone, etc.).

On the other hand, all other accidents for which a direct link with work cannot be identified are not covered by the insurance policy. Generally, these are "domestic" accidents. For example, hurting oneself when preparing coffee in the kitchen, even during working hours, cannot be considered an accident at work.

3. Introduction

Teleworking and pandemic

Teleworking and mobile working started to develop from the 1970s, thanks to the advent of digitization technology and tools, but without radically changing society during the next four decades. The European Commission mentions that before 2019 and the Covid-19 pandemic, about 11% of employees in the European Union had worked from their home at least occasionally (compared with less than 8% in 2008) and only 3.2% of them had resorted to teleworking regularly [7].

2020 was, without any doubt, a year of radical change: with the organization of severe lockdowns due to the Covid-19 pandemic, working from home became not merely a safety measure, but a real government obligation. This sudden change (made literally overnight) led to the use of teleworking even in companies and sectors ill-prepared for such a situation [6]. Accordingly, millions of workers had to adapt to working at home, trying to create a remote work station for themselves. What was initially planned for a limited period remained in place for a large part of 2020 and can be expected to persist in the coming years, more or less intensively.

Admittedly, with the easing of lockdowns and the improvement in the health situation, rather "cyclically" during these past three years, the use of teleworking has decreased significantly. As revealed by Eurofound, in its "Living, working and Covid-19" surveys and their successive updates, 48% of the 90,000 or so EU employees answering the survey asserted in 2020 that they had resorted to teleworking, versus 42% in 2021. Of those, 34% worked exclusively in teleworking. This figure decreased to 24% in 2021 [4].

At the same time, the number of people using a "**hybrid work model**", combining physical presence in the office and teleworking, increased from 14% in 2020 to 18% in 2021. This is a form

of work that employees like. According to the Eurofound surveys, in 2021 31% of employees wanted to continue - even after the end of the pandemic - to resort to teleworking "several times a week", versus 16% preferring to work at home "daily" [4].

In any case, teleworking seems to be becoming a permanent feature. Most employees (76% in 2021) who replied to the aforementioned surveys say they want to continue the telework experiment in the future. The changes brought about by the pandemic in people's habits and in the business model of companies (which can, for example, save costs thanks to teleworking) have apparently led to a gradual transformation of the world of work. This transformation will possibly be less drastic than in 2020, but it will persist over time, notably through use of the "hybrid model" which makes it possible to benefit from the advantages offered by both work in the office and telework.

Regulation and definition of teleworking on the Community level

At present, there is no EU legislation (Directive or Regulation) specifically concerning teleworking. It is conceived as a form of work organization and not as a different employment contract. Accordingly, the body of social and labour legislation already applicable to European employees, such as Directive 2003/88 concerning the organization of working time and Directive 89/391/EEC designed to ensure workers' safety and health at work, to mention just some examples, applies [1].

The European Framework Agreement on Telework [142] reached in 2002 by the European social partners[1] is a text, not legally binding, which allows each EU Member State to choose to transpose it into its national legislation or not. The text simply commits the affiliated national organizations to implement the agreement "in accordance with the specific procedures and practices of each Member State" [1]. While some countries have not transposed it into their legislation, they may have opted for application via collective agreements or voluntary measures such as guidelines or codes of good practice. Accordingly, the result and the effectiveness of its implementation vary significantly from one country to another.

However, on 4 October 2022, **European negotiations officially started** between the European social partners with a view to preparing an agreement and a possible Directive on teleworking, which would be scheduled for 2023.

In addition to updating the European framework agreement of 2002, the directive would focus on certain specific issues such as the access to and organization of teleworking, payment by the employer of teleworking equipment and expenses, the right to disconnect, the balance between private life and working life, and the need to strengthen collective bargaining in this area [143].

Moreover, the key novelty of this initiative is that it would be a directive, i.e. a binding document which would have to be transposed into the national legislation of the EU Member States. The aim therefore would be to harmonize the regulation of teleworking at the European level, which is not the case at present.

Pending the result of the negotiations, the 2002 framework agreement - which remains the European reference in this respect - defines teleworking as **"a form of organising and/or performing work**, using information technology, in the context of an employment

[1] Agreement signed by ETUC, UNICE (now BusinessEurope), UEAPME (now SMEunited) and CEEP (now SGI Europe).

contract/relationship, where work, which could also be performed at the employer's premises, is carried out away from those premises on a regular basis"[2].

It should be specified that teleworking is not the only existing form of remote work for employees. There are a multitude of definitions and variants in European countries, such as "smart working" in Italy, Homeoffice in Germany, etc. (cf. Chapter 4). Eurofound [6] groups all these forms under the **acronym TICTM (Telework and ICT-based mobile work**; ICT = Information and Communication Technologies). Thus, TICTM designates "any type of work arrangement where workers work remotely, away from an employer's premises or fixed location, using digital technologies such as networks, laptops, mobile phones and the internet". The main difference between "telework" and "mobile work" lies in the possibility, in the latter case, of working from several outside locations, and not merely from a location defined by agreement with the employer (home, for example) [5]. However, the definitions can be broken down in greater detail in the various national legislative systems.

Advantages and disadvantages of teleworking

Remote work in its broadest sense entails for the employee:

- a series of advantages: greater flexibility in the choice of workplace, greater autonomy in organization of the workday, possibility of working at a less demanding pace, elimination of travel time to and from the employer's premises, better work-life balance, with less stress, etc.;
- but also disadvantages, particularly with regard to occupational risks:
  - The so-called "autonomy paradox" [6]: the worker may feel more or less obliged (by themselves or by the company) to do overtime work or to work more intensely, coping with a greater quantity of work; this paradox is generally, but not solely, associated with firms where there are work cultures that are predominantly competitive, with processes aiming to heighten workers' performance.
  - No longer keeping regular working hours, with working time continuing also in time slots which should be devoted to private life, leading to an imbalance between private life and working life.
  - Being "connected" all day, whether by email or by phone.
  - Increased feeling of solitude and social isolation, due to the absence of everyday contact with colleagues, and moments of social interaction such as the coffee break or lunch break.
  - Increased level of stress and anxiety in the event of a failure to reconcile private life and working life, leading to spells of job burn-out.
  - Companies' use of software or systems with little respect for private life in order to monitor employees and keep watch on the work they actually do, and on their efficiency at work.

To this non-exhaustive list of specific disadvantages of teleworking can be added all the risks often resulting from the **lack of adequate occupational health and safety measures** in the location chosen to perform work at a distance, particularly the home. When working in places that are hardly or not at all up to standard in this respect, such as a kitchen or a private terrace, the risk of

[2] Article 2 of the European framework agreement on telework.

suffering an accident at work or developing musculoskeletal disorders, for example, increases.

Moreover, as Eurofound [6] stresses, mobile working and teleworking go more easily hand-in-hand with what is called "presenteeism", i.e. the fact of working when one cannot be fully productive because of an inappropriate physical or mental condition (e.g. in case of illness). When working remotely, a worker could convince themselves that they have sufficient energy to work despite the illness, with an increased risk for their health, instead of resting and recovering.

Finally, rather than speaking of a disadvantage, it is important to mention a fundamental problem posed by teleworking: the disparity between workers. Although teleworking is increasingly widespread among workers and companies, all jobs cannot be performed at a distance. This inevitably creates inequalities between those who can benefit from the convenience of teleworking and those who cannot.

Occupational safety and health challenges and new "interpretation" of the accident at work

In the various national legislative systems, an accident occurring on the premises of the company, whether it be in the office, the toilets or the corridor, is often considered as an accident at work. Indeed, if it were not for work, the employee would not have gone to the employer's premises. Moreover, in the office, the employer provides its employees with the appropriate equipment corresponding to the existing standards.

The situation is far more complex when working at home. There are numerous challenges in terms of ergonomics and prevention in the broadest sense aimed at preventing accidents at work. What is the case if one is working at home leaning on the kitchen table, sitting on a stool? In that case how can one make a distinction between a domestic accident and an accident at work?

Article 8 of the European framework agreement on telework stipulates that "**the employer is responsible for the protection of the occupational health and safety of the teleworker** in accordance with Directive 89/391 and relevant daughter directives, national legislation and collective agreements". But how can an employer make sure that OSH rules are complied with in the home or in coworking spaces?

The same article stresses that, when the worker uses their home for teleworking, the employer cannot organize inspections without prior notification and the agreement of the employee. Failing a visit to the home, what can the employer do? Does it have to buy appropriate ergonomic equipment for their employees working from home?

These are only some of the questions to which it is still difficult to answer. While the health emergency phase is a thing of the past, we are increasingly faced with a "stabilization" of teleworking. Against this backdrop, institutions, regulators and legislators are starting to intervene. Some countries (cf. Chapter 4) have indeed come out of the state of emergency and apply laws or measures relating to teleworking permanently, providing more responses to the challenges imposed by this form of work organization.

As regards the accidents at work in teleworking which are analysed in this report, the first thing to be noted is that there are many differences from one country to another concerning what is or is not covered by occupational injury insurers.

While it is true that generally an employee working from home enjoys extensive protection even in their home, this is not necessarily exactly the same as in the office, and some types of accidents

- which would be covered on the company's premises - are strictly excluded from the occupational health and safety insurance.

Moreover, diverse forms of work at a distance are often possible (with precise definitions registered in law), which show sometimes major differences in terms of protection against accidents at work and occupational diseases.

Today, there are still numerous "grey areas": it is hard to draw clear boundaries in a domestic environment where the worker is often alone. In this regard, established legal precedents will greatly help to understand the limits and the basic criteria to define an accident at work in teleworking, and it is possible that the number of judgments and rulings in this area - still limited - will increase in the coming years. It can also undoubtedly be expected that the legislator or the insurance organizations will take action again in future to provide greater clarity regarding the question.

4. Accidents at work in teleworking: analysis in seven European countries

For each of the seven countries studied (France, Italy, Spain, Germany, Austria, Finland and Sweden), the following are presented:

- an overview of the **regulations in force** and the OSH obligations regarding teleworking;
- the **current provisions with regard to accidents at work** occurring during teleworking (in particular the criteria to be used in the various countries) and, where possible, recent judgments and rulings which better frame the definition of the accident at work in teleworking;
- where applicable, **certain initiatives** adopted by enterprises and/or occupational injury insurers to prevent accidents in teleworking.

France

Definition of teleworking

The legislative provisions applicable to teleworking ("télétravail") appear in **Articles L. 1222-9 to L. 1222-11 of the French Labour Code** [12]. Teleworking is defined there as "any form of work organization in which work that could have been done equally well on the employer's premises is performed by an employee outside those premises voluntarily using Information and Communication Technologies".

Its framework is supplemented by the **new national interprofessional agreement-ANI** ("Accord national interprofessionnel") **for "the successful implementation of teleworking" dated 26 November 2020** [8]. (The previous ANI on teleworking dates back to 19 July 2005, transposing the European framework agreement on telework of 2002). The 2020 ANI, which originally concerned only the signatory organizations, is now binding for all employers and employees

included in its scope of application, pursuant to an "Arrêté" (official order) of 2 April 2021[3].

Among the key characteristics of teleworking in France, the following should be noted:

- This is always a voluntary agreement between the parties and not an obligation.
- The French Labour Code lays down no limit regarding the choice of the location for teleworking, which may be performed from several locations and not necessarily from the employee's home. Also, the ANI stipulates that teleworking can also be done in a "third place" such as a coworking space. In any case, the location (or locations) for teleworking is (are) defined and the employee cannot change it (them) at will without the prior agreement of the employer.
- A written agreement between the parties is always required; it may take the form of a collective labour agreement, a charter produced by the employer or, by default, a mutual agreement between the employer and the employee.
- The agreement must contain at least the following information:
    1. The conditions for switching to teleworking (and for returning to work in the office, because teleworking must be reversible);
    2. The modalities for the employee's acceptance of the conditions of implementation of teleworking;
    3. The modalities for checking working time or for regulation of the workload;
    4. Determination of the time slots during which the employer can regularly contact the employee in teleworking.

The provisions of the ANI apply to teleworking in the private sector. For the civil service (central government, regional or hospital entities), teleworking is covered by a special legal regime provided for by Decree No. 2016-151 of 11 February 2016[4].

Lastly, teleworking should not be confused with other existing forms of work at a distance in France, such as "nomad work" ("travail nomade") and "work at home" ("travail à domicile") which are not analyzed in this study.

The presumption of imputability of accidents in teleworking

In general, according to Article L. 411-1 of the French Social Security Code: "**Shall be considered as an accident at work, irrespective of the cause, any accident occurring due to or on the occasion of work** to any person employed by or working, in any capacity and in any place, for one or more employers or entrepreneurs" [11].

This provision does not eliminate the need to establish **a causal link between the work and the injury or disease** for it to be recognized as work-related. However, case law in France have considered that this link is presumed if the accident occurred during working hours and in the workplace, unless the employer can **provide evidence of a cause completely unrelated to the work**.

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[3] Arrêté du 2 avril 2021 portant extension de l'accord national interprofessionnel pour une mise en œuvre réussie du télétravail

[4] Décret n° 2016-151 du 11 février 2016 relatif aux conditions et modalités de mise en œuvre du télétravail dans la fonction publique et la magistrature

In the case of teleworking, Article L. 1222-9 of the French Labour Code extends the protection against accidents at work to teleworking employees also: "**accidents occurring at the place where teleworking is performed during the teleworker's working hours are presumed to be an accident at work** within the meaning of Article L. 411-1 of the French Social Security Code".

The retention of this **presumption of imputability** even in the case of teleworking, **and especially its judicial interpretation**, poses real problems of proof, because the worker, at a distance, "eludes" the employer's supervision: the elusiveness of the time and location of the accident and the lack of witnesses (except perhaps for members of the family or co-tenants) challenge this presumption [15].

During the ANI negotiations in 2020, the employers' organizations had asked for "an easing of the principle of presumption of imputability so as to take into consideration the difficulties for employers of ensuring that their employees were indeed in working hours and in the workplace" [16]. In October 2020, the Chamber of Commerce and Industry of Paris Ile-de-France published a study[5] calling, in a list of "proposals for changes in the regulatory framework for the expansion of teleworking", for:

- "a reversal of the presumption of imputability of the accident at work by posing the principle that an accident occurring in the employee's home is covered by insurance against accidents at work only when the employee proves its relation with performance of their work contract;
- at the very least, neutralizing the impact of the teleworker's work accident occurring in their home on the level of the company's insurance contribution and dismissing any liability action for inexcusable fault against the employer" [10].

The requests of the employers' organizations were rejected and the final version of the ANI of November 2020 does not alter the presumption, while recognizing the objective problem for employers. Section 3.4.3 of the ANI stipulates that "the presumption of imputability relating to accidents at work also applies in the event of teleworking. **Despite the practical implementation problems**, this is what is explicitly stipulated by the French Labour Code".

For the accident in teleworking to be able to be recognized as an accident at work, it must occur **"in the workplace" and "during work time"**.

- According to Article L. 1222-9 of the French Labour Code specifically concerning "accidents occurring in the place where teleworking is performed", the definition of the place remains vague. How to demarcate "the place where teleworking is performed"? In theory, it might be thought that the expression refers exclusively to the "restricted workplace", such as the corner of the home where the desk/work table is located, excluding the other rooms of the house. Thus, an accident occurring in the kitchen at lunchtime or when loading a washing machine in the bathroom would be within the domestic field.
- However, as stressed by Annie Chapouthier, legal expert in labour law specialized in occupational health and safety at the INRS, the question becomes more complicated if, during a break or in a location other than the "strict" location of teleworking, the employee remains in contact with the employer or can be reached by them. In that case, the accident occurring could be considered as an accident at work. For example, in the case of an accident occurring in the kitchen at lunchtime when the employee is answering a phone call from their employer, "the lunch place can be likened to the company canteen and will therefore be

[5] Chamber of Commerce and Industry of the Paris Ile-de-France region. *Du télétravail exceptionnel au télétravail régulier : quel encadrement juridique ?*

defined as the workplace" [16]. If, on the other hand, there is a clear disconnection from work (e.g. following the act of switching off the work computer or if it is stated in the telework agreement that the employer cannot contact the worker during the lunch break), an accident occurring when cooking or dealing with personal matters would be a domestic accident.

Finally, one last thought concerns **commuting accidents**. Article L. 411-2 of the French Social Security Code [11] stipulates a coverage for employees in the event of commuting accidents. In particular, workers are covered during to-and-from travel between:

1. Their main home or second home having a character of stability or any other location where the insured goes regularly for family reasons and the workplace. In this type of travel, a detour is possible, but only for reasons related to the basic necessities of everyday life (grocery shopping, taking children to school, etc.), or related to work (picking up a package for work, travel to go to a business appointment, etc.).
2. The workplace and the restaurant, canteen or, more generally, the place in which the worker customarily takes their meals.

In teleworking, is the employee covered in the event of a commuting accident? Unlike the case of certain other countries such as Finland or Austria (see Chapter 4), French law does not specify whether the coverage of commuting accidents extends to teleworking.

According to the INRS [14], in theory, "teleworking from home should not systematically rule out the coverage of certain accidents as commuting accidents, particularly when the accident occurs between the employee's home and an outside location where they regularly take their meals during their midday break". Furthermore, it is likely that legal decisions could in the future adopt an extensive concept of the commuting accident which would apply to teleworking, just as it has already done in the past in other work circumstances.

To conclude, for cases of accidents both "in the place where teleworking is performed" and during any travel, case law will **provide greater clarity in the coming years**. In the meantime, **the telework agreement remains an essential instrument** to try to define some limits, particularly the time slots in which the employee works and can be contacted by the employer. This agreement, "from a probative viewpoint", would be the "only way for the employer to prove that, when the accident occurred, the employee was no longer under the employer's authority, and thereby rule out a work-related nature of the accident" [16].

Lastly, it should be reiterated that, in case of doubt regarding the work-related nature of the accident reported by the employee, the employer can express reservations, which will lead the Caisse Primaire d'Assurance Maladie (CPAM: primary health insurance fund) to initiate an enquiry. In any case, it will be up to the employer to prove the cause completely "unrelated" to work.

Teleworking and occupational safety and health

In accordance with Article L1222-10 of the French Labour Code, **the adoption of teleworking does not change the employer's obligations** with regard to the employees, including, of course, those necessary to ensure the safety and protect the physical and mental health of their employees [14].

Firstly, the employer is required **to perform an assessment of the risks**, including those related to teleworking, and fill in the "document unique d'évaluation des risques" (DUER: single occupational risk assessment document). This document shall take into account both the "conventional risks" of the work activity in question (whether for face-to-face work or for teleworking) and the "specific risks" of teleworking. The latter may include the risks of social

isolation, of imbalance between private life and working life, and psychosocial risks.

But how to assess ergonomic risks in the home or even in coworking spaces or third places?

The key issue both in France and in other European countries is the difficulty, or even impossibility, for the employer to check that private locations (main homes or second homes) comply with OSH standards. An inspection by the employer is possible only by agreement with the employee (as also stipulated in Article 8 of the European framework agreement on telework).

Several instruments assist French employers on this subject:

- "The collective labour agreement, charter or negotiated contract can **restrict the teleworking location** to the employee's home (address of the home or second home) or to another place chosen by the employer (télécentre)" [14]. This can make it possible to exclude locations that are potentially not very suitable or unsuitable from an OSH viewpoint.
- "Certain company-level agreements have **included in the conditions of eligibility for teleworking technical requirements** concerning the installation in the home (electrical conformity, existence of smoke detectors, etc.)" [14]. This is important given the intensive use of technological facilities in teleworking. The employee can provide an affidavit concerning the conformity of their installation or a certificate of conformity issued by an insurance company.
- As mentioned above, the ANI stipulates that the employee can choose coworking spaces for teleworking. However, it gives no information as to how the employer can ensure the suitability of those locations from an OSH viewpoint. Although coworking spaces are normally required to comply with the existing regulations - such as that relating to buildings open to the public, the French Building and Housing Code, etc. - the INRS [14] advises "the employers **to authorize telework only in third places for which they have been able to verify** the furnishings beforehand and for which the operator has agreed to ensure and maintain reception conditions similar to those stipulated by the French Labour Code with regard to work premises (ventilation, hygiene, lighting, thermal conditions, electrical safety, etc.)".

These measures can already allow initial - although limited - exclusion of premises that are not very suitable for teleworking. However, with regard to the private home, the aforementioned OSH problems are still not settled, because there is no way of practically checking whether the general furnishings of the space used for teleworking comply with the existing standards in this respect.

Regarding this, however, it is important to reiterate the provisions of Article L. 1222-10 of the French Labour Code concerning the obligation for the employer to organize an annual interview with the employee doing teleworking, notably concerning their working conditions and their workload. This is an "ideal time to hold discussions with the manager regarding the implementation of teleworking in light of the employee's specific situation", also covering "issues related to this method of work organization: relations with the work team, communication, reconciliation of working life and personal life, training needs related to teleworking, observance of the right to disconnect, etc." [14]. It is therefore an important time to review the experience of teleworking and inform the employer of any difficulties faced.

Lastly, **the law does not require that the employers provide their remote workers with equipment complying with ergonomic standards** (furniture, chairs, tables, etc.). Moreover, the French Labour Code also does not oblige the employer to provide all the information systems and technologies necessary for the implementation of teleworking. Article L. 1222-10 merely obliges the employer to "inform the employee of any restriction on the use of IT equipment or resources or electronic communication services, and the penalties in the event of failure to comply with such restrictions".

Of course, there is nothing to prevent the employer from providing equipment, including ergonomic equipment: "certain agreements, charters or negotiated contracts stipulate the provision by the company of furniture for teleworking or propose to remote workers a financial grant for installation allowing the purchase of certain equipment" [14].

The European Agency for Safety and Health at Work (EU-OSHA), in its study entitled "Teleworking during the Covid-19 pandemic: risks and prevention strategies" [2], mentions some examples of companies in Europe that adopted OSH preventive measures - for both musculoskeletal disorders and psychosocial risks - in teleworking. For France, it mentions the example of Orange, referring to the company's collective teleworking agreement signed in 2009, i.e. well before the Covid-19 pandemic. This document already at that time stipulated measures designed to minimize the risks of isolation and imbalance between work and personal life, and to prevent ergonomic risks. For example, the company decided to provide each employee with 150 euros to cover extra expenses related to the work station (including the possible purchase of ergonomic equipment).

Finally, the 2020 **ANI** [8] **stresses the importance, in teleworking, of the role of information and training of the employee**, including with regard to occupational safety and health. In section 3.4.2., it is stipulated that "the employer shall inform the teleworking employee of the company's occupational safety and health policy, and in particular the rules relating to the use of display screen equipment and recommendations regarding ergonomics. The teleworking employee is required to comply with and correctly apply these prevention and safety rules". In sections 3.1.6. and 4.2., other provisions concern training and the provision by the employer of practical guidelines on a huge number of subjects relating to teleworking.

A project of teleworking standard

A recent initiative in France regarding teleworking should be emphasized, namely work on the drafting of **an experimental French standard on teleworking** undertaken by the French standardization association AFNOR, to help firms better take into account in their prevention approaches the ergonomic risks involved in remote work.

Concretely, the standard will focus on two approaches:

- providing instructions concerning the tools and physical installation conditions for work stations both in permanent teleworking and in hybrid mode (alternation of face-to-face work and teleworking);
- proposing a methodological guide to assist in determining the conditions of teleworking and the procedures for implementation from the ergonomic perspective (focused on "teleworkable activity").

This experimental document will be intended for any organization (irrespective of its size, status and activities) wanting to establish or improve the organization of teleworking. It will target the actors involved in work organization (CEO, management personnel, human resources, staff representative bodies, etc.) and those involved with health, safety and working conditions (ergonomists, preventers, occupational physicians, etc.). This draft could be finalized in the second half of 2023.

Although technical standards do not have the binding value of a law (their application always remaining voluntary, except in some cases), they are an important reference for companies, especially in those fields where there are legislative or legal voids. For the employers, ensuring

ergonomic conditions for their teleworking employees is still hard to do at a distance, although this forms part of their responsibilities. Depending on its content, not yet made public, this future experimental standard could facilitate their work, and therefore enable them to better prevent accidents and occupational diseases at a distance.

Italy

Teleworking, smart working and hybrid model

In Italy, two forms of remote work are commonly used: "telelavoro" (literally teleworking) and "smart working", which is the common term for agile working (lavoro agile). Both forms are applicable within the framework of a salaried work relationship: they share common factors, and also have major differences.

For **teleworking**, the main reference documents are a 1999 decree[6] concerning the civil service and an "interconfederal agreement"[7] of 2004 concerning the private sector and transposing the European framework agreement of 2002. In this form of work organization, the teleworker must perform work in accordance with the precise instructions of the employer. Moreover, they are tied to a fixed, pre-established work station, subject to the same time limits as those they would have had to comply with in the office [31].

Smart working is characterized by far more flexibility than teleworking. Introduced by Law No. 81/2017[8] (the so-called "Agile Working Law"), it is defined as a form of embodiment of the subordinate employment relationship characterized by **a lack of constraints of time or space** and a work organization by phases, cycles and objectives. Established by agreement between the parties, agile working is designed to help employees reconcile working time and private life. One innovation is that the agreement between the parties must always indicate "rest times" and "the technical and organizational measures needed to ensure the worker's disconnection from the technological work equipment" (Article 19 of Law No. 81/2017).

Moreover, Law No. 81/2017 specifies that the work is performed:

- partly on the premises of the company and partly outside it, without a fixed work station;
- within the limits of the maximum daily and weekly working hours based on the law and collective labour agreements.

During the Covid-19 pandemic, smart working was used intensively (urgently, often without the signature of an agreement between the parties). In Decree-Law No. 18 of 17 March 2020[9] concerning measures designed to contain the spread of the pandemic (text subsequently

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[6] Decreto del Presidente della Repubblica 8 marzo 1999, n. 70. Regolamento recante disciplina del telelavoro nelle pubbliche amministrazioni, a norma dell'articolo 4, comma 3, della legge 16 giugno 1998, n. 191.

[7] Accordo interconfederale 09-06-2004 recepimento dell'Accordo-quadro europeo sul telelavoro concluso il 16 luglio 2002 tra UNICE/UEAPME, CEEPe CES.

[8] Legge 22 maggio 2017, n. 81 Misure per la tutela del lavoro autonomo non imprenditoriale e misure volte a favorire l'articolazione flessibile nei tempi e nei luoghi del lavoro subordinato.

[9] Decreto-Legge 17 marzo 2020, n. 18 Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da Covid-19.

converted into a law[10]), it was stipulated that "until the end of the state of epidemiological emergency (…), agile working becomes the ordinary way of working in public administrations". Subsequently, in December 2021, the Department for Public Administration expressed the need to step up smart working even after the health crisis: "it is necessary to go beyond emergency management, by identifying national collective bargaining as the ordinary way to develop agile working in public administrations"[11]. In the private sector too, the use of smart working more than doubled by comparison with the pre-pandemic period[12].

Despite these different definitions and legal frameworks for teleworking and smart working, INAIL [31] (the Italian Institute of Occupational Injury Insurance) stressed how, during the pandemic, it was often possible to witness the application "of **a way of working remotely which stands on the boundary between the two**, incorporating the essential and typical requirements of each of the models". According to INAIL, this "hybrid model […] cannot escape criticism given its inevitable impacts on health and safety".

OSH measures and responsibilities of employers and remote workers

In teleworking

In the case of teleworking, specific OSH-related measures are explicitly provided for in legislative decree 81/2008[13]. Known as "Testo Unico sulla Salute e Sicurezza sul Lavoro" ("Consolidated Text on Health and Safety at Work"), this text aims to reorganize and coordinate all the regulations relating to health and safety in the workplace in Italy.

Effectively, in teleworking, the provisions of Title III (work equipment and personal protective equipment - where they are provided by the employer) and Title VII (display screen equipment) of this Consolidated Text apply. More specifically, Article 3, paragraph 10 stresses that these Titles apply to "all employees who constantly work remotely via an electronic and telematic connection". It also stipulates that "**remote workers shall be informed by the employer of the company's occupational health and safety policies,** particularly insofar as concerns the requirements relating to display screen equipment, and they shall correctly apply the company's safety instructions". It is also indicated that it is possible, for the employer, the workers' representatives and the competent authorities, to have access to the telework location in order to verify the correct application of the OSH legislation. However, in the case of work at home, this access is subject to the prior notice and consent of the worker. The remote worker can also voluntarily ask for an inspection of their home to check the conformity of their work environment. Lastly, the employer is obliged to "**ensure that measures are taken to avoid the isolation of the remote worker** from the other workers in the company, by enabling them to meet their colleagues and obtain access to the company's information, in accordance with the company's regulations or agreements".

In order to better achieve the objectives of Title VII, Appendix XXXIV to the Consolidated Text gives in detail the "minimum requirements" for display screen equipment. Based on the premise

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[10] Legge 24 aprile 2020, n. 27 Conversione in legge, con modificazioni, del decreto-legge 17 marzo 2020, n. 18, recante misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da Covid-19.

[11] Dipartimento della funzione pubblica. *Linee guida in materia di lavoro agile nelle amministrazioni pubbliche*.

[12] Ministero del Lavoro e delle Politiche Sociali. *Protocollo Nazionale sul lavoro in modalità agile*.

[13] Decreto Legislativo 9 aprile 2008, n. 81 Testo coordinato con il D.Lgs. 3 agosto 2009, n. 106 - TESTO UNICO SULLA SALUTE E SICUREZZA SUL LAVORO.

that "the use of such equipment must not be a source of risk for workers", it lists the requirements regarding the size, resolution and luminosity of the display screen equipment and gives instructions concerning the keyboard and pointing devices, and rules concerning the minimum work surface and the characteristics of the office chair.

Moreover, with regard to the provision of the equipment needed for work (including furniture and an ergonomic chair) in the private sector, one may also mention the stipulations of the aforementioned "interconfederal agreement" of 2004, transposing the European framework agreement of 2002. In Article 6, it is stipulated that "as a general rule, the employer is responsible for supplying, installing and maintaining the tools necessary for the satisfactory performance of teleworking, unless the remote worker uses their own tools". The same article also states that "when teleworking is done regularly, the employer shall reimburse or cover the costs resulting directly from the work, particularly those related to communication".

This interconfederal agreement is applicable to all national collective labour agreements. Furthermore, each collective labour agreement can stipulate additional obligations for the employer concerning the coverage of costs related to telelavoro. To conclude, Silvana Toriello (INAIL) [41] thus stresses that in telelavoro the employer must ensure that the remote work station complies with the existing health and safety regulations.

In smart working

From the entry into force of Law No. 81/2017 which defined agile working, the application to smart working of the OSH measures stipulated for teleworking (particularly those contained in the aforementioned Titles of the Consolidated Text) has been a cause for debate, because this is not specified in the 2017 Law. The latter, in Article 22 on "Safety at work", merely introduces two factors:

1. The "information sheet": "the employer guarantees the health and safety of the worker performing agile work and, for this purpose, provides the worker and the workers' safety representative, at least once a year, with a **written statement ("informativa") identifying the general risks and specific risks** related to the particular method of implementation of the work relationship". This is a specific document which differs from the agreement between the employer and employee necessary for the implementation of smart working.

   The sheet must also contain a minimum of OSH information concerning both indoor and outdoor (open-air) environments; in the latter case, information must be included in the document recapping the risks due to prolonged exposure to the sun, due to the performance of work in areas where animals are present and areas which are not suitably maintained with regard to the vegetation, damage to the environment, the presence of wastes, etc.[14]

2. An **explicit responsibility of the worker** in compliance with OSH: "the worker is required to cooperate with implementation of the preventive measures prepared by the employer to cope with the risks due to work performance outside of the company's premises".

Some experts consider that it is unlikely that the provisions of Article 22 of Law No. 81/2017 aimed to exclude (and thus replace) the application of the Consolidated Text on OSH to smart working

[14] Model of the "Informativa" document elaborated by INAIL with a description of these risks, available on https://www.inail.it/cs/internet/docs/avviso-coronavirus-informativa-allegato-1.docx. INAIL gives a reminder there that "when working outside, the worker must adopt a conscientious and careful behaviour, excluding locations which would expose them to risks in addition to those inherent in their activity in closed spaces".

[25]. Indeed, the doctrine tends to emphasize that the provisions of Law No. 81/2017 and the Consolidated Text on Occupational Safety should be interpreted in terms of complementarity and mutual integration, especially since the worker in smart working remains an employee under the responsibility of the employer [26].

That said, the application of the measures stipulated by the Consolidated Text in smart working poses practical problems. For example, certain arrangements regarding the adaptation of the remote work station (contained in Title VII) would be difficult, or even impossible to implement, given - theoretically - the absence of a fixed workplace in smart working.

Concerning the private sector, the Interconfederal Agreement of 2004 was specific to telelavoro and therefore not applicable to smart working, which is governed by Law No. 81/2017. There is apparently therefore no explicit measure requiring that the employer cover the expenses related to installation of the equipment needed for work (including the ergonomic chair, for example) in the case of agile work. As a consequence, **whereas in *telelavoro* it is generally the employer who is responsible for providing all the tools for the employee, this is not the case in smart working** (unless otherwise provided in the agreement between the parties, for example[15]). Article 18 of Law No. 81/2017 merely states that "the employer is responsible for the safety and satisfactory operation of the technological facilities assigned to the employee to perform the work".

Lastly, even restricting the study to Article 22 of the law introducing agile working, the provisions of this article are subject to discussion, starting with the **objective impossibility of verifying and listing all the general and specific risks** of smart working, given the worker's freedom to choose their location. In theory, the law does not make it obligatory for the worker to inform their employer of the location chosen for work each day. Theoretically, a worker in smart working could work one day from a library, then the next day from a coworking space, etc.

Regarding this, the National Council of Engineers (CNI) [39], a national public organization, emphasizes to what extent the information sheet remains an inadequate instrument. It therefore suggests the establishment of even more extensive cooperation between the employer and the worker, who could themselves provide certain specific data concerning the locations chosen for smart working - which would be useful for producing a real risk assessment. This could be done, for example, using checklists and questionnaires developed by the employer.

A specific working group set up by the Ministry of Labour to analyse agile working noted, in its final report[16] of December 2021, "**the need to strengthen the rules relating to the health and safety of workers doing agile working**".

The same month, the social partners and the Minister of Labour signed a "**National protocol agreement on agile working in the private sector**". This takes into account the criticisms identified by the working group and issues more precise instructions with regard to OSH, particularly in Article 4 concerning the choice of smart working location:

- The worker is free to choose the location where they can do their work in agile mode, provided that this location has characteristics allowing regular performance of the service, in conditions of security and confidentiality, and also with specific reference to the processing of corporate data and information, and the need to be connected to the company's systems.

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[15] For example, in the smart working agreement that it signed in May 2020, the company SANOFI undertook, *inter alia*, to pay for the purchase of the equipment needed to perform the work (in particular an ergonomic chair, a lamp and other IT resources such as display screen equipment) and to reimburse workers' cost of connection to the internet. [19]

[16] Gruppo di studio Lavoro agile. *Relazione del gruppo di studio lavoro agile*.

- Collective bargaining can identify locations that are not suitable for agile working for reasons of safety or protection for users, or of data secrecy and confidentiality.

INAIL coverage in teleworking and in smart working

In teleworking

Regarding social welfare and insurance against accidents at work and occupational diseases (the latter being managed by INAIL), the teleworker is treated like workers of the same level and in the same sector working in the company [31].

The teleworker is protected by applying the **general criteria valid for all other employees** [40]. Just like in the case of face-to-face work, the only limitation is represented by the voluntary risk (rischio elettivo), i.e. any voluntary behaviour that is clearly abnormal and not due to a case of force majeure or a need on the part of the worker [42]. Thus, INAIL does not cover accidents resulting from behaviour unrelated to work, accidents simulated by the worker or the consequences of which are deliberately aggravated by the worker themselves.

As a reminder, the INAIL compulsory insurance covers all accidents due to a "violent cause on the occasion of work" and causing death, a permanent disability or an absolute temporary disability of more than three days [30]. By the expression "on the occasion of work", INAIL explains that what is meant is a concept different from the common spatio-temporal categories such as "at work" or "during working hours". Indeed, for an accident to be compensated, it is not sufficient that the event occurs during work or in the workplace: it must occur because of the work. There must therefore be a relation, even indirect, of cause to effect, between the work performed by the worker and the accident which caused the injury [30].

Lastly, below are a few explanations concerning coverage in teleworking during travel, according to discussions with INAIL. In Italy, a **commuting accident**[17] can include, among other things and on the basis of precise criteria and conditions, a detour to pick up children from school and certain travels concerning the midday break. The same would apply in the case of telelavoro when workdays are completed entirely either in the company (in the event of alternation between face-to-face work days and days in teleworking), or in a third place (and not the home; as a reminder, in telelavoro the workplace outside of the employer's premises is fixed and pre-established – it may be the home but also a selected suitable third place). If the worker performs teleworking entirely from their home (thus implying that the home and the workplace coincide), there would be no possibility of having a commuting accident (nor detours). As a result, a teleworker having done their workday entirely at home and who went to fetch their children from school could not be compensated in the event of an accident on this trip.

Lastly, if a workday is performed partly in the company (e.g. morning) and partly in the worker's home (e.g. afternoon), an accident occurring during travel between the home and the workplace, and vice versa, should not be considered as a commuting accident but as an accident occurring as part of work (travel between two workplaces).

This is one possible interpretation of the commuting accident in teleworking, which is not

[17] For a complete definition of the commuting accident in Italy, consult Articles 2 and 210 of the Consolidated Text concerning compulsory insurance against accidents at work and occupational diseases - D.P.R. 1124/1965 on: https://www.inail.it/cs/internet/docs/alg-pubbl-testo-unico-disposizioni-assicuraz-obbligatoria.pdf
This INAIL factsheet summarizes all the conditions, criteria and detours accepted in the case of a commuting accident in Italy https://www.inail.it/cs/internet/docs/alg-infortunio-itinere_6443099708038.pdf

necessarily the same in other countries. Everything depends on whether, at the time of travel, the home is considered as a workplace or a private location.

In smart working

Article 23 of Law No. 81/2017 stipulates that, outside the firm's premises, workers are entitled to "**protection against accidents at work and occupational diseases resulting from risks related to the work** performed outside the company's premises".

It also extends the coverage of commuting accidents to smart working: "The worker is entitled to protection against accidents at work occurring during the normal journey between the place of residence and the place chosen for the performance of work outside the company, within the stipulated limits and conditions (…) **when the choice of the location** in which work is performed ***is* dictated by requirements related to the work or by the need to reconcile private life and working life, and meets criteria of reasonableness**".

In any case, with regard to commuting accidents, the considerations applying to telelavoro are also applicable to smart working. The journey covered is that between the home and an outside location where smart working is performed (library, coworking space, etc.). A commuting accident (and any detours according to the criteria and conditions stipulated in Italy) would not be acceptable when the worker performs their agile workdays entirely in their home.

An INAIL circular [29] published on 2 November 2017 provided greater clarity concerning the definition of an accident at work occurring in smart working:

- An accident occurring because of a "voluntary risk" (rischio elettivo) is excluded from coverage against accidents at work and occupational diseases;
- For an accident at work to be recognized as such, there must be a relation between the accident and the work: "as regards the specific aspects of agile working, accidents occurring while the worker is working outside of the company's premises and in the location chosen by the worker themselves are protected if they are c**aused by a work-related risk**";
- **The worker is protected** "not only for accidents related to the risks of their own work, but also **for the risks related to preparatory and/or accessory activities**, provided that these activities are relevant to the performance of the duties inherent in the job profile";
- The agreement between the parties, as provided for by the Law of 2017, remains an essential tool for identifying the occupational risks to which workers are exposed;
- The procedure to be followed in case of doubt concerning the work-related nature of the accident: "in the absence of sufficient indications that can be deduced from the agreement (…), for the purpose of compensation of the accident, specific enquiries will have to be made to verify the existence of the essential prerequisite conditions for protection and, in particular, to check whether the activity performed by the worker at the time of the accident is closely related to the work, insofar as it is necessary for and relevant to it, even though it is performed outside the company's premises".

Despite these stipulations and definitions, there are still many challenges concerning accidents at work in smart working, arising notably from the worker's theoretical great freedom of choice of their workplace.

Companies have therefore tried to find solutions in order to "limit" this choice and hence the

numerous problems that arise. The "Smart Working 2020[18]" survey commissioned by the CIFA confederation, the Confsal union and the FonARCom interprofessional fund and carried out by the InContra research centre, showed that:

- **Numerous company-level agreements define beforehand a limited number of locations** where smart working can be performed, such as another office of the company, the employee's home or a private location belonging to the employee other than their home, but also, where they exist, the company's coworking spaces.
- In other cases, on the other hand, the worker is free to choose the workplace(s), but **the agreement explains that this location must be appropriate**, allow the work to be performed in conditions of confidentiality and security and allow connection with the company's systems, thus excluding public places and places open to the public.
- In other cases, the employee is free to choose their workplace(s), but it is specified in the agreement that **each location must be indicated** in the schedule for days spent in smart working.

Finally, the InContra research centre [34] notes that **some companies**, perhaps considering the measures provided for by law and INAIL as insufficient, **have opted to subscribe to private complementary accident insurance policies**. This is the case, for example, of:

- Crédit Agricole banking group: the agreement of March 2017 [20] stipulates that the company will take out an appropriate insurance against accidents occurring in the context of smart working;
- UBI Banca Group: the agreement of August 2018 [28] specifies that "for greater protection and as an additional guarantee for the worker, the possibility of operating in smart working is subject to a verification that the worker is also registered for insurance against accidents of a non-occupational nature provided for by the job contracts".

These examples therefore point to **an objective difficulty in implementation of smart working**, with a sort of conflict between the good intentions highlighted by the Law of 2017 and the objective reality of companies.

On the one hand, one can observe the legislator's will to develop the potential of the digital era (a computer suffices to work anywhere) and to grant great freedom to the salaried worker, by allowing them to perform their work "without constraints of time and space".

On the other hand, this great freedom definitely comes up against the companies' intentions, requirements and difficulties: the question of data protection in the event of Wi-Fi connection in public places, the difficulty of implementing preventive measures, coverage against accidents, etc.

Limiting smart working - within the framework of a company-level agreement - to the home or obliging workers to indicate the chosen workplace in advance substantially reduces the innovative scope of smart working introduced in 2017, while blurring the thin line of difference with teleworking. This is undoubtedly contributing to the development of a "mixed" form of work at a distance in Italy, on the boundary between teleworking and smart working.

[18] InContra. *L'Indagine sullo smart working 2020, capire il presente per progettare il futuro.*

INAIL: the first accident at work recognized in smart working and future initiatives

From the laws and from INAIL documents, it is clear that the key feature to define an accident at work in smart working is that the accident be work-related. It must be demonstrated that the accident occurred because of a necessary activity or a preparation activity (attività prodromica) and/or an activity that is accessory but relevant to the performance of the work. As a result, an accident occurring in the kitchen or when dealing with personal matters does not come within the definition and would be classified as a domestic accident. Thus, a fall or an injury due to stumbling in the home must mandatorily be related to the work activity in order to come within INAIL's scope of coverage.

However, the boundaries between a domestic accident and an accident at work may sometimes remain vague. Regarding this, we may mention the case of an employee in smart working who, in 2020, fell in the stairway of her home while she was speaking on the phone (via the mobile phone provided by the company) with a colleague and had suffered fractures. Initially, INAIL had opposed recognition as an accident at work, considering that the accident had no relation to the work activity [18]. However, the worker, an administrative employee of a metallurgy company, filed an administrative appeal in September 2020. The appeal was then accepted by INAIL which changed its mind, which is why the case did not go to court and no ruling was issued on this subject. No doubt, the detail that made a difference is the fact that the employee fell during a phone call with a fellow worker. It is of course easy to imagine that if the phone call, even though it occurred during the workday, had been of a personal nature, the accident would have been classified as "domestic". The employee therefore received €20,000 in compensation for the accident at work, and is able to undergo examinations and therapies free of charge during the next ten years [43].

This is the first time that INAIL has recognized an accident at work in smart working, and this case represents a major precedent in this respect.

Like in other countries, legal cases in this area are still not very numerous. It is possible that they will be increasingly numerous in the future, thus providing more clarity regarding the concept of the accident at work in smart working.

Lastly, we should mention the research currently carried out by INAIL in the OSH area concerning, in particular, the new forms of work organization at a distance, which are increasingly common in Italy. In its 2022-2024 Planning Report adopted in May 2021, INAIL stresses among its strategic objectives the importance of "**stepping up research activities aimed at preventing accidents at work and occupational diseases due to the use of new technologies and new forms and methods of work organization**" [32].

Spain

A new legislative framework for "teletrabajo" in 2020 and 2021

A government bill designed to regulate it was rejected in 2010 [53], and it was only in 2012 that teleworking officially entered the Workers' Statute (Estatuto de los Trabajadores), a legislative code applicable to employees that was established in 1995. Indeed, Law 3/2012[19] introduces a new wording of Article 13 of the Statute, now entitled Trabajo a distancia - "work at a distance", providing a

[19] Ley 3/2012, de 6 de julio, de medidas urgentes para la reforma del mercado laboral.

definition of it and some basic rules for its implementation: need of a written agreement between the parties, equality of rights between remote workers and in-person workers, etc.

However, the Covid-19 pandemic changed the situation. In order to better define and regulate teleworking, used intensively during the lockdowns as of the first wave, **Royal Decree-Law 28/2020**[20] **on remote work** of September 2020 gives new definitions and updates in detail the rules on this subject.

Less than one year later, it would be repealed and replaced, in July 2021, by **Law 10/2021 on remote work**[21] (performed in the private sector). This law keeps most of the provisions of the **Royal Decree-Law**, but introduces a few changes and novelties, concerning in particular: the protection granted to disabled workers, the obligation for employers to avoid any form of discrimination, direct or indirect, in the implementation of remote work, occupational risk prevention (see following pages), a new timeline for signature of the agreement on remote work and, finally, stiffer penalties for companies in the event of infringements [64].

This legislation is important due to the following features that it introduces:

- **Precise definitions of remote work** (trabajo a distancia) and teleworking (teletrabajo): the former refers to a form of work organization or execution of work which stipulates that the work is performed regularly in the worker's home or in a location chosen by the worker, throughout all or part of the workday. The second is defined as "a form" of remote work, performed through the exclusive or predominant use of information, telematic and telecommunication resources and systems (ICT). Thus, in Spanish law, teleworking and remote work are not exactly synonymous.
- **A desire to further regulate "regular" remote work**, established on a "time" criterion: the provisions contained in the Royal Decree-Law and then in the Law of 2021 only concern work relations regularly performed remotely. Remote work is considered regular if, in a 3-month reference period, a minimum of 30% of the workday, or an equivalent proportional percentage depending on the duration of the employment contract, is performed at a distance. Remote workers who do not achieve this 30% rate are not concerned by this law. If the specific measures of Law 10/2021 do not apply to non-regular remote workers, the latter nevertheless continue to be entitled to appropriate protection in terms of occupational safety and health, as stipulated by Law 31/1995[22] on occupational risk prevention (abbreviated as LPRL).
- **Overcoming the "emergency teleworking" phase**: the provisions of both the Royal Decree-Law and the Law of 2021 do not apply to remote work implemented in exceptional circumstances such as lockdowns due to the spread of Covid-19. In such cases, "the ordinary work regulations will continue to apply"[23].
- **New measures, including on OSH matters,** concerning remote work (including teleworking), and new obligations for both employers and employees.

The measures explained below are those of the Law 10/2021.

The use of remote work (including teleworking) remains voluntary and reversible. The signature of a written agreement between the parties is essential to ensure its implementation. Articles 5-8

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[20] Real Decreto-ley 28/2020, de 22 de septiembre, de trabajo a distancia.

[21] Ley 10/2021, de 9 de julio, de trabajo a distancia.

[22] Ley 31/1995, de 8 de noviembre, de prevención de Riesgos Laborales.

[23] Disposición transitoria tercera de la Ley 10/2021.

describe the characteristics of this agreement, which shall mandatorily provide, *inter alia*, for the following aspects (Article 7):

- **An inventory of all the resources, equipment and tools needed** for the implementation of remote work, **including consumables and furniture**, and their service life or the maximum period before their replacement.
- **The list of expenses** which the worker may face because of their remote work activity, and the method for calculating the compensation that the company has to pay and the time and method of payment, which will correspond, where applicable, to the arrangement provided for by the applicable collective labour agreement.
- The employee's working hours and, where applicable, the rules of availability.
- The percentage and distribution between face-to-face and remote work, where applicable.
- The location chosen by the worker to perform remote work.
- The employer's means of control to monitor the work activity of the remote worker.
- The procedure to be followed in case of technical problems preventing the normal performance of remote work.

It is important to note the specific features of the Spanish teleworking agreement by comparison with what exists in other countries. In fact, it is necessary to indicate specifically the furniture and tools used for teleworking (information that is also important for risk assessment) and the maximum period of their useful life, because in the long-term certain equipment could need to be replaced for several reasons, notably ergonomic reasons.

Assessment of risks in teleworking

Remote workers are entitled, like any other worker, to **suitable occupational safety and health protection**, in accordance with the provisions of Law 31/1995 on occupational risk prevention. However, in the case of regular remote workers, other special measures and arrangements apply. Among the **innovative aspects**, **there are rules concerning risk assessment**, which is a fundamental stage for the implementation of OSH preventive measures.

Thus, according to Article 16 of Law 10/2021, we note three novelties in particular: types of risks to be identified in teleworking, the worker's responsibility for cooperation and the delimitation of the location to be assessed.

Regarding the first aspect, the law stipulates that "risk assessment and the planning of prevention activities in the case of remote work must take into account the characteristic risks of this form of work organization, by paying **special attention to psychosocial, ergonomic and organizational factors** and to the accessibility of the real working environment. It is essential, in particular, to take into account the breakdown of the workday, periods of availability and the guarantee of breaks and disconnections during the workday". The wording "psychosocial, ergonomic and organizational factors" is very powerful, because it indicates clearly that issues of mental health, ergonomics and the "new" problems typical of remote work (a potential imbalance between work and personal life, for example) must be included in the assessment.

That being so, we come back to the problem of doing a risk assessment "at a distance" in every sense: how can the employer assess the risks of a location to which they do not have access (i.e. the employee's home)? More specifically, Law 10/2021 emphasizes, in Article 16, that when, to obtain useful information for risk assessment, an inspection must be made by the person in charge

of prevention on the location of teleworking, if the latter is the worker's home it is absolutely essential to obtain the employee's authorization.

To overcome this problem, the law introduces major new features. It is stipulated that, where it is impossible to perform inspection in the home, "the prevention activity may be performed by the company based on **identification of the risks resulting from the information obtained from the worker,** in accordance with the instructions of the prevention department".

Law 10/2021 gives no further indications concerning the method of the worker's cooperation, leaving the "door open" to several ways of cooperating. On this subject, it is possible to consult the **Technical Note of Prevention ("Notas Técnicas de Prevención - NTP") No. 1.165 of the INSST** (Spanish national institute for occupational safety and health), entitled "Teleworking: criteria for its integration into the occupational safety and health management system"[24]. Published in 2021, this guide to good practice, hence non-binding, concerns regular remote work outside of exceptional circumstances (pandemic). It also aims to update the information contained in the previous technical notes on the same subject, taking into consideration the recent Spanish legislation on remote work.

Recalling that "occupational risk assessment is the key activity for gathering the information necessary for the company to define optimal preventive measures to manage teleworking", the INSST stresses that "**the process of gathering this information is fairly flexible** and one or more specific methods can be chosen for this purpose". For example, in the specific case of remote work (including teleworking), the INSST suggests using technology to allow the employer to view the remote work station and gather important information, such as a video call from a mobile phone. At the same time, the worker can cooperate quite simply by transmitting the necessary information by phone (e.g. by describing the arrangement of their work station), by taking photos of their work environment, by taking simple measurements (of the size of their desk, etc.), or else by replying to a questionnaire/check-list.

Finally, the third aspect to note is the **delimitation of the teleworking "location"** to be taken into consideration in risk assessment. Law 10/2021, again in Article 16, asserts very clearly that "risk assessment should only concern the area designated for the work activity and **must not extend to the other areas of the home or location chosen for working at a distance**".

As the INSST stresses in its aforementioned technical note, in the case of a work station consisting of a chair, a table, a computer and a telephone located in one room of the house, "the risks existing in the kitchen which could result from a cleaning or cooking activity" would be excluded from the assessment. Therefore, "this delimitation is essential to be able to determine precisely the scope of the risk assessment and hence the scope of implementation of the preventive measures".

The risk assessment must also take into account both the working conditions (as stipulated by Article 4 of the LPRL) and the psychosocial, ergonomic or other characteristics of the worker, gathered directly from the worker.

Accidents at work in *teletrabajo*

Law 10/2021 does not change the definition of accidents at work, nor does it introduce new criteria to define accidents at work occurring when teleworking. **Therefore, one must refer**

[24] INSST. *Teletrabajo: criterios para su integración en el sistema de gestión de la seguridad y salud en el trabajo.*

to Article 156 of the General Social Security Act (LGSS) concerning accidents at work.

From this perspective, Spain is different both from France, which has introduced a definition of accidents at work when teleworking in its Labour Code, and from Italy, which has legally outlined the criteria for recognizing accidents at work in smart working.

In paragraph 1 of Article 156 of the LGSS, the accident at work is defined as "any bodily injury incurred by a worker during or as a consequence of work performed for others". In paragraph 3, it is specified that "**the injuries incurred by the worker during work time and in the workplace are presumed to constitute an accident at work, unless proved otherwise**", with exceptions such as injuries due to an intentional fault or gross negligence of the worker.

Like in France, **there exists in Spain a presumption of imputability** (presunción de laboralidad) for any injury incurred by the employee in the workplace and during work time.

In the event of an accident - even in teleworking - the worker must first demonstrate that it occurred in the workplace and during work time. Once these circumstances have been proved, if the Mutua or the company considers that this is not an accident at work, it will be incumbent on them to prove that the event which caused the injury is not a consequence of the work or did not occur when performing work [66].

The following remarks can be made concerning accidents at work in teleworking:

1. **During work**: because of the need for a link between the work and the accident, injuries resulting from domestic incidents (cut with a knife, burns, etc.) caused by activities not related to the work activity will not be considered as an accident at work [44], even if the accident occurs during working hours [54].
2. **Workplace**: due to the fact that risk assessment concerns only the part of the home where remote work is performed, in principle the accidents occurring in other rooms would not be covered by OSH insurance [65].
3. **Working time:** the working hours must be indicated clearly in the teleworking agreement. Any accident occurring outside these working hours is not covered.

However, the situation is not always so clear, given the often-vague boundaries concerning the teleworking framework: rooms used for both private and professional purposes, irregular working hours, etc.

Regarding this, it is important to mention the potential importance of **collective labour agreements**. For example, we may mention the **recent case law concerning the *pausa del bocadillo*** (literally the "sandwich break"). Despite its name, this break does not refer to the lunch break but to a rest time during the day. It is defined in the Workers' Statute [56], in Article 34 on the workday. In paragraph 4, it is stated that "when the length of a continuous workday exceeds six hours, **a rest period of at least fifteen minutes** shall be provided for during the workday. This rest period is considered as effective working time when it is provided for or stipulated by a collective labour agreement or an employment contract."

In 2020, the Supreme Court (Tribunal Supremo) had to give a decision concerning the case of an accident at work occurring during the "pausa del bocadillo". The worker was in the company canteen and suffered a syncope, which led to a cardiac arrest and a fall to the ground. In the end, the Supreme Court[25] considered the cardiovascular injury suffered by this worker as an accident at work, because the break was included in the workday according to the collective labour

[25] Tribunal Supremo, Sala de lo Social. 15 enero 2020, Sentencia núm. 25/2020.

agreement of the worker's company. Furthermore, the ruling specifies that this break "must necessarily be taken at a given point in time in the middle of the workday, as that corresponds to its nature as a pause in the work in order to recover from fatigue and resume work in better physical condition, but not at the start or the end of the workday, because in that case it would no longer be a rest period, but a mere reduction in the workday" [45].

In October 2021, a similar ruling[26] was handed down concerning a worker who, in August 2016, had been struck by a car after leaving her workplace, during the 15-minute break period. In this case too, the Tribunal Supremo recognized it as an accident at work, and specified that, in the "pausa del bocadillo", "**the injury-work causal link is not broken**, because the break was necessary and the use of the fifteen minutes' break by the worker was completely normal".

Although the cases in question did not concern remote workers, it has been noted [52] that the recognition of the accident at work occurring during this break could also apply to working at a distance. Thus, although theoretically a remote worker who cuts their hand in the kitchen or is injured when smoking a cigarette on their terrace could not obtain recognition as an accident at work, the fact that the accident occurs during the "pausa del bocadillo" could change the situation, because this time would be included in their workday [65].

Admittedly, there are still "grey areas" regarding the recognition of accidents at work in teleworking, and "unique" situations can occur, where it may be hard to define the boundaries between domestic accidents and accidents at work. Whenever the circumstances are in doubt, it will be incumbent on the Mutua and the company to give an opinion on the accident claimed by the employee [54].

Established legal precedents in this area will also help to provide greater clarity. Regarding this, we may mention **a very recent case concerning an accident in teleworking**. On 26 October 2022, the Juzgado de lo Social de Cáceres n°1[27] (Social Court) ruled in favour of a remote worker who suffered an accident while working at home [47]. This telemarketing employee had stumbled in the corridor just after using the toilet in her home. The fall injured her elbow and the right side of her thorax, entailing a temporary work incapacity. Initially, this incapacity was determined as being the consequence of a non-occupational accident, since the Mutua did not recognize it as an accident at work. For the insurance organization, the accident had not occurred "in the workplace", given that the employee was not in front of her computer at the time of the accident. As a reminder, theoretically the protection in the event of work accidents in teleworking should not extend to other parts of the home beyond the area designated as the workplace.

In its reasoning, the Social Court recalls the definition of the accident at work, contained in Article 156 of the LGSS. However, it also recognizes that **"during the coronavirus pandemic, teleworking increased significantly, and this circumstance makes it necessary to reconsider or relativize certain consolidated legislative and judicial aspects**".

The Court partially recognizes the viewpoint of the Mutua, asserting effectively that certain accidents in the home, not occurring in the workplace, are not accidents at work, even if they occur during the workday: this is the case, for example, of someone who injures themselves in the kitchen with a knife. However, the workplace and work time are not the only conditions characterizing an accident at work. The other key aspect is in fact the analysis of the causal link between the accident and the injury. Obviously, someone who injures themselves in the kitchen with a knife is not in the process of performing work-related activities.

In the case in point, "**the need to go to the toilet** in response to a physiological need, constant

[26] Tribunal Supremo, Sala de lo Social. 13 octubre 2021, Sentencia núm. 1008/2021.

[27] Juzgado de lo Social n° 1 Cáceres. 26 octubre 2022, Sentencia núm 273/2022.

during the workday, **may not call into question legal presumption**". Thus, there would be **no obvious interruption of the causal link** at the time of the injury.

For the judge, finally, "the aim here is not to improve the situation of the remote worker; on the contrary, the objective is to prevent a lack of protection for the worker". More specifically, the judge feels that "no one would call into question the appropriateness of considering as an accident at work the accident suffered by an employee in identical circumstances if they worked in a factory, office or shop". The judge thus recalls the **need to have an equality of working conditions between remote workers and in-person workers**. As stressed by the workers trade union USO (Unión Sindical Obrera) when commenting on this ruling, this principle of equality of working conditions is clearly mentioned in Law 10/2021 on remote work, although this principle does not refer explicitly to the accident at work [63].

Lastly, as regards protection from **commuting accidents in teleworking**, the Spanish law does not clarify whether it also applies to remote workers, nor does it lay down criteria or limits. Article 156.2 of the LGSS stipulates that the following are considered as commuting accidents:

- accidents incurred by the worker when going to or returning from the workplace;
- in the case of activities "on the occasion of or as a consequence of the performance of elected mandates of a trade union nature", accidents incurred during travel to and from "the location where the specific functions of those mandates are performed".

In teleworking, the main problem lies in the fact that the home corresponds to the workplace. Jorge Vilanova, Secretary General of Mutua Asepeyo (Barcelona), makes the following remarks [66]: it is possible to imagine that when the worker combines teleworking and face-to-face work, those accidents which occur between the workplace and the home would be considered as commuting accidents; on the other hand, **when the remote worker performs their workdays entirely at home, there would in theory be no possibility of suffering a commuting accident.**

It should be noted that, according to what is stated in Article 156.2 of the LGSS, suffering an injury when taking the children to school before going to work does not, de facto, come within the definition of the commuting accident, and established legal precedents had to be called on to settle such cases. In 2018, for example, the Higher Court of Justice of the Canary Islands[28] considered as an accident at work the fall suffered by an employee when dropping her daughter off at school, twenty minutes before the start of her workday [59].

Going back to the situation of teleworking, Jorge Vilanova explains that in the case of a remote worker who had injured herself after taking her children to school, Mutua Asepeyo did not recognize this as a commuting accident. The worker was about to start her workday completely in teleworking, with no need to travel to the employer's offices. The Mutua organization did not consider that this accident in the morning could be called a commuting accident on the way to the workplace. It considered instead that this accident had occurred "for private reasons", as the employee returned from school to her own home after carrying out a personal activity [66].

Doubt also persists [52] when a remote worker, "on the occasion of or as a consequence of the performance of elected mandates of a trade union nature", is injured during travel to and from "the location where the specific functions of those mandates are performed". While, in the case of an accident occurring between home and the workplace, the correspondence of the two locations can hardly be disputed for teleworking, the same cannot be said for the performance of mandates of a trade union nature.

[28] Tribunal Superior de Justicia de Canarias, Sala de lo Social. 24 julio 2018, Sentencia núm. 812/2018.

Therefore, also on the subject of commuting accidents in teletrabajo, future case law will provide greater clarity on the matter.

To conclude, in order to know whether an accident occurring in teleworking can be considered as an accident at work in Spain, the essential texts to be consulted are:

- the "conventional" definition of the accident at work and the commuting accident as established by the General Social Security Act;
- the details contained in the remote work agreement (in particular the working hours);
- the content of the risk assessment;
- the content of the collective labour agreement and/or the worker's employment contract.

Germany

Three forms of remote work: Telearbeit, mobile Arbeit and Homeoffice

These three expressions are used to refer to various types of remote work:

- **Telearbeit** (literally "teleworking"): the term was legally defined in 2016, in the Ordinance on Workplaces[29] (ArbStättV). It has precise characteristics: the employee must perform the work at a distance from their home, permanently, using display screen equipment, following a specific agreement with their employer (see following pages). The teleworking in question can also alternate (hybrid form) between office and home.
- **Mobile Arbeit** ("mobile working"): In this case the worker can do their work from several outside locations, which they determine independently [78]. It is not officially regulated by law (and does not appear in the ArbStättV Ordinance).

In the past three years, mobile working has increased in Germany. During the pandemic, the SARS-CoV-2 Occupational Safety and Health Ordinance[30] and the SARS-CoV-2 Occupational Safety and Health Rules[31] had come into effect, and were then repealed in May 2022. According to the latter rules, mobile working was defined as "a form of work which is not performed in a workplace in accordance with […] the ArbStättV, but in which employees work in any other place (e.g. in the customer's enterprise, in means of transport, or in a house). Mobile working implies the use of electronic or non-electronic work equipment"[32].

- **Homeoffice** (literally "office at home"): Until recently, according to the SARS-CoV-2 Occupational Safety and Health Rules, the term was defined as "a form of mobile work" allowing employees, "following the prior agreement of the employer, to work temporarily on private premises"[33].

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29 Arbeitsstättenverordnung (ArbStättV).

30 SARS-CoV-2-Arbeitsschutzverordnung. (Corona-ArbSchV). Version of 21 January 2021 and successive amendments until May 2022.

31 SARS-CoV-2-Arbeitsschutzregel. GMBl 2020, S. 484-495 (Nr. 24/2020 v. 20.08.2020) zuletzt geänd.: GMBl 2021 S. 1331-1332 (Nr. 61/2021 V. 24.11.2021)

32 Article 2.2. „Homeoffice als Form mobiler Arbeit" of the SARS-CoV-2-Arbeitsschutzregel.

33 Cf. 32

Thus, the working from home that was temporarily introduced during the lockdowns due to Covid-19 was not teleworking within the meaning of the ArbStättV, but a form of mobile working.

The aforementioned legislation on the measures to contain Covid-19 having been repealed, it is at present hard to know how temporary work from home will be regulated [69].

As the DGUV (the German Social Accident Insurance) stresses, the term Homeoffice has no precise definition in law [72]. However, this expression has become commonplace in everyday language to refer to work at home generally, both for highly regulated situations as in Telearbeit and in work-at-home situations imposed occasionally or in emergencies (as in the case of lockdowns).

In this report, the focus will be on Telearbeit, a permanent and highly regulated form of teleworking, and not on the emergency Homeoffice system used during the Covid-19 pandemic. However, the comments concerning accidents at work are valid for both forms.

Telearbeit and its characteristics

As seen earlier, the legal definition of Telearbeit is given in the ArbStättV Ordinance which applies to neither mobile working nor the Homeoffice.

In its article 2, paragraph 7, it is indeed stipulated that: "**Telework stations** (Telearbeitsplätze) are work stations with display screen equipment, installed permanently by the employer **in the private sphere of the employees**, for whom the employer has determined, in cooperation with the employees, weekly working hours and the length of the installation period. Teleworking is implemented by the employer only when the employer and the employees have specified the conditions of teleworking in the employment contract or within the framework of an agreement and when **the equipment needed for teleworking, namely furniture and work tools** (including communication equipment) **has been provided by the employer** or by a person appointed by the employer".

Thus, according to this definition, teleworking requires an agreement between the parties. Unlike in other countries, here both the work tools and the furniture needed to implement teleworking must be provided by the employer. This wording concerning furniture in teleworking has been interpreted as entitling the remote worker to an arrangement of the remote work station "equivalent" to that in the company office [72].

However, company-level agreements can govern the provision of work equipment and furniture on a case-by-case basis, providing, for example, for recognition of the furniture provided privately by the employee [91]. However, if the employer considers that the employee's existing furniture is not suitable, it must provide them with new equipment [72].

For teleworking in Germany, unlike the Italian example of smart working but like other countries, **clearly defined working hours** are stipulated, with no possibility of any great flexibility. As regards the workplace, it is clearly specified that it must be the worker's home, or at least a "private location" of the worker, thereby excluding coworking spaces, for example.

Finally, another aspect of German teleworking is its "permanent" nature. For the ArbStättV provisions to apply, the teleworking must be performed regularly and on the basis of an agreement, and not occasionally. Furthermore, the work station is therefore permanently located in the employee's private sphere and not on the premises of the employer [80].

In Germany, **alternating teleworking** (alternierende Telearbeit) also exists: as its name indicates, this is a possible alternation between work at home and work in the company (from several hours

to several days a week), thanks to an agreement between the employer and the worker. This is a possible variant of teleworking as described in the ArbStättV [91].

OSH measures and responsibilities of the employer in Telearbeit

For the teleworker, including the alternating teleworking employee, the general labour legislation applies, with all its protective provisions (including, for example, those stipulated by the Occupational Safety and Health Act[34] and the Working Time Act[35]).

In addition, certain measures of the ArbStättV apply to Telearbeit. In this text, **risk assessment and its implementation** are described in detail in Article 3. Like for any occupational situation, and in accordance with Article 5 of the Occupational Safety and Health Act (ArbSchG), the employer must "check whether workers are or could be exposed to risks during the arrangement and operation of workplaces. If this is the case, the employer must assess all possible risks for the workers' safety and health and, in so doing, take into account the effects of the work organization and work processes on the workplace". Finally, for risk assessment, the employers must take into account "physical and mental constraints" and, based on the results of the assessment, they must "provide for measures to protect the workers".

Once again, it remains difficult to make such assessments in workers' private locations, i.e. in their home. Like in the other countries, **the employer does not have a right of general access to the home** due to the inviolability of this type of location, in accordance with Article 13, Paragraph 1, of the Constitution, or Basic Law[36] (GG).

The right of access requires the agreement of all the major occupants living in the household [79]. If the worker or any other person in the household does not accept the inspection, the employee is required to provide the employer with the necessary information regarding the workplace, e.g. by means of **a questionnaire or photos** [78]. As a general rule, according to Article 16, Paragraph 2 of the ArbSchG Act, the employee is obliged to cooperate in the implementation of occupational safety and health measures. It is stated explicitly that "**employees must**, […], **help the employers to ensure the safety and health protection** of employees at work and to fulfil their obligations in accordance with the requirements of the authorities. […]. **Employees must also report on the safety and health hazards noted** by them and the defects of protection systems to the qualified person with respect to occupational safety, to the occupational physician or to the safety representative".

The question as to whether an inspection of the telework station in the home is necessary for purposes of risk assessment or whether this can be replaced by photos/questionnaires is still "controversial" in Germany, and it "has not yet been settled by the highest court" [78].

In Article 6 of the ArbStättV, it is stipulated that "**the employer shall provide workers with sufficient and appropriate information** based on the risk assessment, in a form and a language understandable by the workers, regarding:

1. the satisfactory functioning of the workplace;
2. all health and safety issues related to their work;
3. measures to be taken to ensure workers' safety and protect their health;

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[34] Arbeitsschutzgesetz (ArbSchG).

[35] Arbeitszeitgesetz (ArbZG).

[36] Grundgesetz für die Bundesrepublik Deutschland (GG).

4. measures specific to the work station, particularly in case of work on construction sites or the **use of display screen equipment;**

and instruct them on the basis of this information".

The ArbStättV also contains appendices, including Appendix 6 titled "Measures for the design of DSE work stations" (DSE being the acronym for Display Screen Equipment). This also applies to Telearbeit.

Among the most interesting aspects, the following may be mentioned:

- **Ergonomic principles** must be applied to DSE work stations, to the required work equipment and to the necessary display screen equipment.
- The employer shall ensure that the activities of workers using display screen equipment are interrupted by other activities or by regular recovery periods.
- Sufficient space shall be provided so that **workers may change their work position** and their movements.
- The display screen equipment shall be installed and used in such a way that the **surfaces are not reflective or dazzling**.

To conclude, while Telearbeit is highly regulated by law (particularly in terms of arrangement of the remote work station), this is not the case for temporary work from home, the Homeoffice. However, the DGUV proposes on its website several recommendations and practical tips for its satisfactory installation, particularly in terms of ergonomics[37].

Moreover, DGUV has also prepared checklists, called "CHECK-UP Homeoffice", that could be very useful in remote risk assessment. This is because, in the case of mobile working and the Homeoffice (the latter in the sense of a form of mobile working), the employer must carry out a risk assessment. It should be remembered that while the specific measures contained in the ArbStättV do not concern mobile working, on the other hand the provisions of the Occupational Safety and Health Act (ArbSchG) and the Working Time Act are applicable to it [81].

The DGUV's checklists concern several subjects: work equipment, the workstation, the work environment, the work assignment and work organization. The questionnaires are available in German and English, in long and short versions[38].

Insurance against accidents at work in teleworking and mobile working: a new law in June 2021

Until very recently, there existed no specific measure or law concerning insurance against accidents at work in teleworking and mobile working.

Protection against accidents at work and occupational diseases is defined in the seventh book of the German Social Code[39] (abbreviated SGB VII). Article 8 gives in detail the definition of accidents at work, namely "accidents incurred by the insured due to **an activity justifying insurance coverage** in accordance with Articles 2, 3 or 6 of SGB VII (insured activity)".

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37 For example, see https://www.dguv.de/de/mediencenter/pm/pressemitteilung_385472.jsp

38 Checklists on https://publikationen.dguv.de/forschung/iag/weitere-informationen/4065/work-from-home-checklist-long-version

39 Siebtes Buch Sozialgesetzbuch (SGB VII).

In the case of in-person work, the insured is protected on all the employer's premises throughout the workday - provided that the accident be related to the activity justifying the occupational injury coverage (work in particular).

On the other hand, during work from home (here and in the following pages this expression is used in the broad sense, covering both Telearbeit and mobile working from home), questions arose concerning the delimitation of the "insured activity" in the home, or in other words, the boundaries between accidents related to non-insured private activities and those related to an insured work activity. Thus, in the case of an accident in the home, it was necessary to see whether there was a link between the event which had led to the accident and the work activity performed by the employee at the time of the accident.

What about movements inside the home? In accordance with this approach, the link between the accident and the work activity had to always be present. As emphasized by the Bundestag in a study on teleworking and mobile working published in 2017[40], in the case of work performed in the home, accidents during "movements" (between rooms, for example) were acceptable, but on certain conditions.

The Bundestag mentions the existence of "**operational travel" (also called "business travel"[41]),** which is travel performed as part of the insured activity, i.e. the work activity (such as business travel, travel to an appointment with a customer, etc.). The accidents occurring during such travels are covered by accident insurance, because they come within the definition of the accident at work within the meaning of Article 8, Paragraph 1 of SGB VII. This operational travel should not be confused with commuting accidents on the way to and from the workplace which, in the case of face-to-face work, are covered in accordance with Article 8, Paragraph 2 of SGB VII.

The Bundestag [80] stresses that operational travel could "in exceptional cases be envisaged in the domestic field" if it was performed "as part of the insured activity". This is the case, for example, for movements to the printer, or when going into another room to answer a phone call from a colleague or from the employer. Thus, **in addition to accidents at work proper** (directly related to the insured activity), **accidents occurring during this "operational/business travel" were insured in teleworking/mobile working**. On the other hand, an accident occurring when going to fetch a glass of water in the kitchen or going to the toilet could not be covered by accident insurance, because it was not strictly work-related [82].

Thus, although as a general rule there existed a coverage for accidents at work extended to the home, "movements" within the home (between rooms, from the kitchen to the toilet, etc.) were not all systematically covered [82].

The distinction between "operational travel" and "private travel" within the home was not always clear and easily identifiable. The pandemic and the significant increase in the use of teleworking (and especially Homeoffice) led the government to intervene in order to better regulate the coverage of accidents at work both in teleworking and in mobile working.

Accordingly, on 18 June 2021, **the Act on the Modernization of Works Councils**[42] came into effect, **amending Article 8 of SGB VII** with regard to accidents at work. Now, two new paragraphs have been added, which stipulate as follows:

- When the insured activity is performed **in the home of the insured or in another location,**

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[40] Deutscher Bundestag. *Telearbeit und Mobiles Arbeiten. Voraussetzungen, Merkmale und rechtliche Rahmenbedingungen.*

[41] *Betriebs- oder Arbeitswege* in German.

[42] Betriebsrätemodernisierungsgesetz.

insurance coverage applies in the same way as when the activity is performed on the company's premises.

Thus, an employee in teleworking ("permanent" or alternating) or in mobile working (including Homeoffice) is covered in the event of an accident occurring anywhere in their home (or in any other location chosen for mobile working), exactly as they were at the office. In theory, the distinction between "operational travel" and "private travel" within the home no longer applies, but the principle of "equivalence" must be considered. In the case of an accident occurring in the home (or in a third place), if the same type of accident is covered in the office, then it must also be covered in the case of work at a distance.

Accordingly, taking a glass of water or going to the toilet now become activities/movements that are also covered during work at a distance, because the same situations would be covered in the case of face-to-face work. On the other hand, activities such as retrieving a private package or loading a washing machine would be excluded from insurance, just as they would be at the office. Generally, there is now a principle of equivalence between coverage at the office and coverage at home, but, as specified by the German Ministry of Labour, the demarcation between activities that are insured and those that are not insured in the event of accidents when working at a distance must nevertheless be assessed case by case [75].

- If the insured activity is performed in the **location where the family household is located**, **"direct" travel to and from the place where the children** (who live with the employee in the same household) **are looked after is also covered** by legal accident insurance.

This is an important new feature, because travel between home and school was not covered in the case of Telearbeit and Homeoffice.

Before the entry into force of this 2021 Act, German employers often had to take out private collective accident insurance policies for their employees working from home (permanently or temporarily), in order to assure them of complete coverage against accidents. From now on, this will no longer be necessary [74].

The role of case law in interpreting accidents at work in the home

In Germany, national legal authorities have had to give decisions on matters concerning accidents at work in the home. Two cases are examined here.

1. Decision of the Bavarian State Social Court (LSG) of 12 May 2021

This case concerned a Homeoffice worker in 2015, who, noting a fall in the temperature in his home, decided to regulate his boiler. During this action, the boiler exploded, injuring him severely.

Initially, the competent accident insurance institution and the Munich Labour Tribunal[43] (Sozialgericht München) rejected the worker's request for this event to be recognized as an accident at work.

On a second examination, the Bavarian State Social Court (Landessozialgericht, abbreviated LSG)[44] likewise denied this recognition. In its reasoning, it explained that at the time of the accident, the worker was in a situation of so-called "mixed motives", because his action of

[43] Sozialgericht München. Urteil vom 4.10.2018, S 33 U 325/17.

[44] Bayerischen Landessozialgericht (LSG). Urteil vom 12.05.2021, L 3 U 373/18.

performing servicing on the boiler had two purposes: a private purpose and another work-related purpose ("the plaintiff also used the heating for the private rooms and he thus pursued not only his work interests, but also personal economic interests"). However, the direct link between the accident and the work activity could not be proved. More specifically, the LSG established that the main cause of the accident was not the insured activity (the work activity), but a hazard for his family, the need to raise the temperature (hence, a private interest, which did not come within the coverage provided by the accident insurance organization).

Also, the LSG asserted "that it would not be appropriate, […] to establish an obligation of responsibility of the defendant based on a specific hazard in the plaintiff's home, when the defendant had in fact no possibility of intervening through preventive measures, especially since, in the case in point, the heating system did not even form part of the plaintiff's work station".

This ruling was handed down on 12 May 2021, i.e. before the Act on the Modernization of Works Councils came into effect on 18 June 2021. According to this Act, domestic risks should now be covered by legal accident insurance [85]. By virtue of the "equivalence" in terms of insurance coverage between the premises of the company and the remote workplace, as the DGUV notes, the explosion of a boiler in the home should be recognized as an accident at work, given that the same explosion at the office would undoubtedly be covered by insurance. The LSG indeed mentioned the existence of this 2021 Act in its ruling. However, it stressed that the Act on the Modernization of Works Councils has no retroactive validity for accidents occurring before it came into effect.

The worker entered an appeal against the ruling handed down by the LSG, and the case will go before the Federal Social Court (Bundessozialgericht, abbreviated BSG).

2. Decision of the Federal Social Court (BSG) of 8 December 2021

One morning in September 2018, a Homeoffice worker went from his bedroom to his work station located one floor lower, to begin his workday. As he went down the spiral staircase, he slipped and broke a thoracic vertebra.

For the BG[45] Handel und Warenlogistik (trade and logistics) by which the worker is covered, the accident has no direct relationship with the work (the fall occurred in the sphere of domestic activity), nor did it occur in the room of the home used as a remote work office.

Challenging this opinion, the worker brought the case before the Aachen Labour Tribunal[46], which, in contrast, recognized the job-related nature of the accident and classified this event as a "business travel" accident (according to this Tribunal, "the worker's propensity to act aimed at performing an activity which served their employer").

In appeal, the State Social Court of North Rhine-Westphalia[47] (LSG) overturned the ruling of first instance, considering that the criteria of an accident at work were not met. It defined this episode as neither a commuting accident on the way to the workplace (defined in Article 8, Paragraph 2, subparagraph 1 of SGB VII), nor as an "operational/business travel" accident in the home: it was an act of preparation for the workday, not covered by the legal accident insurance organization.

Finally, the case went before the Federal Social Court (BSG), which handed down its decision on

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45 *Berufsgenossenschaft(en),* Private-sector accident insurance fund(s) in Germany.

46 Sozialgerichts Aachen. Urteil vom 14.06.2019, S 6 U 5/19.

47 Landessozialgericht Nordrhein-Westfalen (LSG). Urteil vom 09.11.2020, L 17 U 487/19.

8 December 2021[48], rejecting the ruling of second instance and confirming the ruling of first instance. The accident in question was clearly an accident at work; in particular, it was an accident that occurred during "business travel", travel for work-related purposes.

The BSG did not recognize this accident as a commuting accident on the way to the workplace. In particular, it referred to the established legal precedents on this subject, according to which, in the event of an accident on the way to or from the workplace, "**the travel only starts and only ends when passing through the exterior door of the housing unit in which the employee's home is located**". But, when a worker performs their work at home, this act of "passing through the exterior door of the housing unit" cannot take place, because the workplace coincides with the home.

For the BSG, "in the interest of judicial security", there is "no reason to discard or amend the current established legal precedents concerning the exterior door as the boundary between the domestic area and the insured travel, when the workplace and the home are located in the same housing unit, i.e. when the employee works at a work station in their home".

The question is different, however, concerning "business travel". Specifically, the BSG mentions that "in exceptional cases, business travel is also conceivable in the domestic area, when the home and the workplace are located in the same housing unit". Once again, the aim is to demarcate the boundaries between domestic travel and travel of a job-related nature. As stressed by the BSG, "the question as to whether travel is performed in the direct interest of the company and whether it is therefore materially related to the insured activity is determined, even in the case of work from home, **according to the objective tendency of the insured** […] **to perform an activity in the service of the company** when performing the act that led to the accident, and whether this tendency **is confirmed by the objective circumstances of the case in point**".

In this specific case, "the only purpose of going down the stairs was to allow the plaintiff to start working in their home office (Homeoffice) located on the third floor of their house".

In this case, the Act on the Modernization of Works Councils, although cited, is not taken into consideration. Even though it was already in force at the time of the BSG's decision, as we saw, this law - "in the absence of an explicit transitory provision" - has no retroactive validity for accidents that had occurred before it came into effect. In this legal case, the classification as an accident at work was possible by again considering the difference between "private travel" and "operational travel" within the home. A distinction which, according to the rewording of Article 8 of SGB VII, should no longer apply for accidents at work occurring during work from home.

Another point to be stressed in this case concerned the fact that the worker had not taken their breakfast. When going from their bedroom to the room of their remote work station, the worker did not plan to make a detour in the kitchen. In the ruling of the court of second instance, it is accordingly specified that "the plaintiff also constantly declared that they were going directly to their home office without having breakfast or having coffee beforehand". This aspect is repeated by the BSG: "[the worker] generally starts work immediately, without having breakfast beforehand". It is not clear whether and how the fact of not having had breakfast influenced the recognition as an accident at work. It is possible to imagine that the act of having coffee could break the job-related nature of the "business travel". In any case, this should no longer concern present-day remote workers, at least insofar as concerns coffee breaks/visits to the kitchen during the workday.

As the German government explains [76], thanks to the entry into force of the 2021 Act on the

[48] Bundessozialgericht (BSG). Urteil vom 08.12.2021, B 2 U 4/21 R.

Modernization of Works Councils, "accident insurance coverage in the case of work from home is extended - from so-called business travel, e.g. to the printer, **to travel to the coffee machine** or outside the home to or from child care centres".

Austria

Homeoffice and its characteristics

For sake of clarity, a brief explanation of the terms used in Austria is given below:

- Teleworking, which requires an agreement with the employer and which is carried out from a fixed workplace (the home in Austria), is called **Homeoffice**.
- In **Mobile Working**, the employees are free to choose their workplace, which is not restricted to the private home.
- Lastly, the term **Telearbeit** is generally used to indicate both Homeoffice and mobile working [102].

Until recently, there were no specific legal arrangements for teleworking. On 1 April 2021, the Employment Contract Law Adaptation Act[49] (abbreviated AVRAG) was amended to add to it a legal definition of the Homeoffice (but not of mobile working).

At present, in its Article 2h, it is stipulated that "there is work from home (Homeoffice) when an employee **regularly provides work services at home**". For this to be implemented, "the work from home must be agreed in writing between the employee and the employer".

Occasional and/or irregular teleworking is therefore not concerned by this definition nor by the other measures stipulated by the AVRAG Act on Homeoffice.

Article 2h stipulates that "**the employer shall provide the digital work tools needed for regular Homeoffice work.** It is possible to derogate from this rule by agreement if the employer covers the reasonable and necessary costs for the digital work equipment provided by the employees themselves for the performance of their work services. These costs may also be compensated by a lump-sum payment". Thus, "digital tools" are mentioned explicitly, which includes, for example, the computer, the mobile phone, but also the Wi-Fi connection as emphasized by the Austrian Trade Union Confederation [105], but there is no obligation for the employer to buy or provide ergonomic furniture (chairs, desk, etc.).

According to Article 2h, the Homeoffice agreement may be terminated by one of the parties, subject to one month's prior notice, if there is an important reason. It may contain a limitation of the duration and other provisions relating to the termination.

Apart from this information, the AVRAG Act gives no further details for Homeoffice.

As employees, Homeoffice workers are subject to the existing labour legislation [103], such as the Working Time Act (Arbeitszeitgesetz), the Work Rest Act (Arbeitsruhegesetz) and the Employee Protection Act (ArbeitnehmerInnenschutzgesetz, abbreviated ASchG). However, due to the fact that the location of the Homeoffice (the private home) is legally considered as an external

[49] Arbeitsvertragsrechts-Anpassungsgesetz (AVRAG).

workplace[50], the **provisions relating to workplace regulations[51] and the Workplace Ordinance[52] (AStV) do not apply to work-from-home situations** [102].

That is why the employer is not required to provide furniture for its Homeoffice employees [106]. These provisions do not apply either to all the other locations where it is possible to work in a mobile working context (e.g., parks, restaurants and accommodation establishments) [99].

OSH measures, risk assessment and ergonomic equipment in Homeoffice

All the provisions of the labour legislation generally apply in Homeoffice, which includes occupational safety and health measures (contained chiefly in the ASchG Act), such as the **employer's obligation to assess risks[53] and to provide employees with information, instruction and training regarding OSH[54]**. In general, the employer remains responsible for protecting the remote worker's health and safety in the remote workplace.

Although the regulations relating to workplaces do not apply to work-from-home situations (given that it is impossible for the employer to be responsible for the precise furnishing of a private location like the home), matters related to lighting and the temperature of the work environment must be taken into consideration in the risk assessment [94].

Once again, one is dealing with a private location, the home, inaccessible to the employer. In Austria also, access in this case is possible only following the explicit agreement of the employee [94]. Regarding this, in a brochure published by the Austrian Ministry of Labour titled "Working ergonomically in Homeoffice"[55], it is recommended to establish an "assessment template" for work stations in the home and to make it available to employees. The results of the identification and assessment of risks and the preventive measures to be taken must then be appended to the safety and health protection documents that the employer must keep up-to-date [102].

The AUVA insurance organization (general accident insurance institution) has posted online **a useful questionnaire for risk assessment** in Homeoffice[56]. Generally, it has published several tools and documents concerning the satisfactory implementation of "healthy teleworking"[57].

Lastly, concerning Homeoffice ergonomics, we should mention an important initiative on this subject promoted by the Austrian government. Now, the employer is not required to provide or finance ergonomic equipment for their employees in teleworking. However, advantageous tax regulations were introduced by the government in 2021, valid until the end of 2023. In particular, each Homeoffice

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50 As defined in Article 2 (3) of the ASchG Act.

51 In particular, Articles 19 et seq. of the ASchG Act, which mainly concern the employer's obligations with regard to office furnishing and design, construction sites, etc.

52 Arbeitsstättenverordnung (AStV).

53 Articles 4 and 5 of the ASchG Act.

54 Articles 12 and 14 of the ASchG Act.

55 Bundesministerium für Arbeit. *Ergonomisches Arbeiten im Homeoffice - Leitfaden und Checkliste für ein sicheres und gesundes Arbeiten zu Hause.*

56 https://www.auva.at/cdscontent/?contentid=10007.865552&portal=auvaportal. Questionnaire can be accessed at the bottom of this page, by clicking on: "Ergänzende Checkliste speziell für „Arbeiten im Homeoffice": Evaluierung Homeoffice".

57 Existing materials published by AUVA on https://www.auva.at/cdscontent/?contentid=10007.860914&portal=auvaportal. For example, the web page on "Teleworking - AUVA advice for employees" has a wealth of information and images on the satisfactory implementation of teleworking: https://www.auva.at/cdscontent/?contentid=10007.860915&portal=auvaportal

employee is entitled to the **reimbursement of up to €300 per year for all purchases of ergonomic equipment** made within the framework of teleworking (chairs, tables, etc.) [104]. These expenses must be reported individually by the worker in their tax return and will then be deducted as income-related expenses. Having a Homeoffice agreement is a prerequisite to be able to enjoy these tax benefits.

Insurance against accidents at work in Homeoffice: a new law in April 2021

Until 10 March 2020, there existed no specific regulations concerning insurance against Homeoffice accidents [100]. Protection in this respect was limited to the actual work activity, based on the General Social Security Act[58] (ASVG).

Then, to cope with the sudden, massive adoption of teleworking due to the spread of the pandemic, a special temporary regulation was introduced concerning Homeoffice accidents. It remained in force from 11 March 2020 to 31 March 2021. From 1 April 2021, this regulation was replaced by a new law[59], anchoring its provisions, in a modified form, in the permanent law. This 2021 Act amends, *inter alia*, Article 175 of the ASVG Act, which defines the accident at work.

First, a definition of the accident at work in Homeoffice is officially added in the law: "(1a) **Accidents which occur in the home (Homeoffice) in temporal and causal relation with the activity justifying insurance shall also be considered as accidents at work**."

As AUVA specifies [100], the term "home" includes **not only the main home of the insured, but also a second home and the dwelling of a close relative or partner**. Moreover, the **balconies, terraces and gardens** belonging to the dwellings in question **are also covered** in the event of accidents at work. External locations and public spaces (a park, a coworking space, etc.) are not authorized in Homeoffice.

In Paragraph 2 of Article 175, specific accident situations (mainly travel) are listed. In the past, these provisions applied only in the case of face-to-face work, and the expression "workplace" mentioned several times in these provisions corresponded merely to the company's premises (or the locations for training provided by the employer).

One of the key novelties of the Act of 2021 was to **extend the concept of the "workplace" to also include the home**, or better still, all possible "homes" in Homeoffice. At present, most of these work accident situations which were possible only in the case of face-to-face work are now also acceptable and covered in teleworking.

Below is a summary of the accidents covered in Homeoffice in Austria. For sake of clarity, the distinction between protection inside the home and protection outside the home is proposed here, as formulated by AUVA [100].

Thus, the Homeoffice accidents covered are accidents which occur:

- **Inside the home**, in the following circumstances:

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[58] Allgemeines Sozialversicherungsgesetz (ASVG).

[59] Full title: Bundesgesetz, mit dem das Arbeitsvertragsrechts-Anpassungsgesetz, das Arbeitsverfassungsgesetz, das Dienstnehmerhaftpflichtgesetz, das Arbeitsinspektionsgesetz 1993, das Allgemeine Sozialversicherungsgesetz und das Beamten-Kranken- und Unfallversicherungsgesetz geändert werden. "Federal Act amending the Employment Contract Law Adaptation Act, the Labour Constitution Act, the Employee Liability Act, the Labour Inspection Act 1993, the General Social Insurance Act and the Civil Servants' Health and Accident Insurance Act".
It is therefore the same Federal Act that introduced a definition of Homeoffice in the Employment Contract Law Adaptation Act (AVRAG).

- during the insured activity (the work performed);
- during travel (movements) inside the home, for operational purposes, related to the work activity (movement to reach the printer, to answer a phone call from a colleague/employer, etc.);
- when satisfying basic needs (eating, drinking, going to the toilet). This protection concerns both the activity in itself, and the movement to perform it (e.g., movement between the living room where the employee teleworks and the kitchen).

- **Outside the home**, in the following cases of travel:
  - to or from the workplace, which includes the possible teleworking "homes": the employee's main home and second home, the home of a close relative or partner. For example, if an employee moves from their apartment to the house of their parents, for the purpose of teleworking there, and they injure themselves on the way, that accident will be considered as a commuting accident. In this situation, the parents' house will be considered as being the workplace;
  - between the home and a medical consultation or treatment centre (independent doctor, clinic, hospital) provided that the visit be reported by the employee to their employer beforehand;
  - between the home and outside locations relating to the storage, transport, maintenance and refurbishment of work equipment and tools, even if the latter are the property of the insured if they are regularly used for teleworking;
  - to consult, in the context of work, a legal business representation or professional associations;
  - to satisfy basic needs (fetching something to eat, doing grocery shopping for lunch, etc.), provided that the locations be near the home and reached during working hours, including legal breaks and breaks agreed by a collective labour agreement or by the company. The protection is also valid at the very time of satisfying these basic needs;
  - between the home and a bank, in order to collect payment of a large part or all of the salary. However, as AUVA notes, considering the existence and frequent use of current accounts and cashless payment transfers, this is practically no longer the case;
  - between the home and child care facilities, day nurseries, schools, to take/pick up the children, on condition that the insured has an obligation to care for them.

Finland

The role of private companies in the insurance against accident at work and occupational diseases

Although insurance against accidents at work is handled by private insurers, this insurance clearly forms part of the statutory Social Security system and the types of accidents covered are legally

specified, in particular in the Workers' Compensation Act[60] (Act 459/2015).

The private companies shall mandatorily be members of the TVK, the Finnish Workers' Compensation Centre (Tapaturmavakuutuskeskuksen in Finnish). The TVK is thus the statutory cooperation body of the insurance, whose main task is to coordinate the implementation of this social insurance. These insurance companies, although private, act as public authorities in this case [118].

Each company lays down its own criteria for determining the amounts of premiums. In fact, Act 459/2015 simply lays down the principles with which the companies must comply (for example, to calculate premiums, allowance must be made for factors such as the risk of accidents at work and occupational diseases), but not the precise amounts of premiums. Moreover, the bases for calculation of insurance premiums are not public.

Every private-sector employer is obliged to take out occupational injury and disease insurance for the employees with one of these accredited private companies. However, this obligation does not concern the State. Although the latter is in theory the "employer" of public civil servants, it cannot take out insurance with a private company. In the event of an accident at work, it is the State Treasury that pays compensation to the victims [118].

Act 459/2015 defines the accident at work at the employer's premises and in teleworking

Act 459/2015[61], which currently regulates accidents at work and occupational diseases in Finland, came into effect on 1 January 2016, repealing the previous laws on this subject. It makes a distinction between:

- an accident that could occur to the employee in any work-related situation (including commuting accidents): an "occupational accident" (Section 20);
- and more specifically an accident occurring strictly because of work or in the course of work: "accident at work" (Section 21).

Below is the (unofficial[62]) translation of Sections 20 to 25 concerning accidents at work in Finland, which will be useful to understand what is covered in teleworking:

- **Section 20 "Occupational accident**": Occupational accident refers to an accident that has happened to an employee at work, in the location of the working area, or outside the location of the working area as provided in sections 21-25.
- **Section 21 "Accident at work"**: Accident at work is considered an accident that has happened to an employee during the course of work. Performance of the duties of a local union representative, occupational safety representative or other employee representative in accordance with law or a collective agreement and performance of work-related tasks assigned by the employer are comparable to work. Travel related to a work assignment is also comparable to work. A minor deviation from the itinerary referred to in section 23(1) is also considered travel.
- **Section 22 "Accident in the location of the working area"**: Accidents that take place in the

[60] Työtapaturma- ja ammattitautilaki 459/2015.

[61] Act 459/2015 is available in English on the TVK website, although it is an unofficial translation. https://www.tvk.fi/document/85990/D8E3F5AE3F502A3FFE315E116E0898D5D51554F5DD0F8FC9195C9BAD2EED3C72

[62] These are the unofficial English translations of the original Finnish text.

location of the working area but not in the course of work are considered occupational accidents if they occur during the course of activities normally associated with being in the working area.

- **Section 23 "Accident outside the location of the working area"**: An accident that happens to an employee outside the location of the working area is considered an occupational accident in the course of activities normally associated with the following conditions:

  1- the travel between home and the workplace associated with normal commuting to work, which is deemed to include a minor deviation from the itinerary due to childcare, visit to a grocery store or any other similar reason;

  2- a meal or recreational break normally associated with work and taking place in the vicinity of the location of the working area.

- **Section 24 "Accident in special circumstances**": This concerns accidents at work which are due to special circumstances. Accidents that are not subject to compensation under sections 21 or 22 are considered occupational accidents if they have happened to an employee in one of the eight precise circumstances mentioned. For example, an accident which occurs due to "activities carried out in the course of work-related training if the event is provided by the employer" or else if it is due to "exercise during working hours if the exercise is approved by the employer and its purpose is to meet specific requirements regarding the employee's physical condition" is considered as an accident at work.

- **Section 25 "Accident at home and in the course of work performed in an unspecified place"**: this section does not explicitly mention the term "teleworking" and does not give its definition, but it stipulates that the provisions of sections 22 and 23 will not apply when the employee works at home or in a location other than that provided and specified by the employer.

In short, in the course of work from home (or any other outside location such as a coworking space), Act 459/2015 does not provide for protection in the event of accidents occurring:

- in the workplace and which, although they are not strictly related to the work activity, are consequences of activities that are "normally" performed in the office. For example, it could be imagined that a remote worker who injures themselves when fetching a cup of coffee - an activity not strictly work-related but typical and normal in an office - is not entitled to compensation, whereas the same accident in the office would be covered [111];
- during travel to and from the workplace;
- during the deviations mentioned in Article 23(1) (taking children to school or picking up them, doing shopping in a supermarket, etc.);
- during breaks and lunch.

Another way to sum up coverage in teleworking is as follows: the law provides for coverage for accidents in the home which occur within the strict framework of work (Section 21) and in a limited number of specific circumstances (Section 24). However, a remote worker is not entitled to compensation in the case of an accident due to "normal office" activities, not strictly related to the act of working and occurring in the workplace (Section 22) and outside the workplace (Section 23).

Possible complementary private insurance policies in teleworking

Due to this partial protection in the event of accidents, it is possible to take out complementary private insurance policies to provide greater coverage for work from home. These insurance policies have been in strong demand and heavily subscribed to during these past three years, notably due to the Covid-19 waves and the intensive use of teleworking.

On the TVK website [110], three types of complementary insurance policies, which are voluntary and optional, are mentioned:

1. **Private voluntary accident insurance** (yksityistapaturmavakuutus), in accordance with the law on insurance contracts[63]. It can be taken out by several parties: private individuals, enterprises and organizations. More specifically, if the employer does not provide this complementary insurance for the employees, the employee can subscribe to it themselves, but in this case they will have to bear the cost. The insurance policy may cover accidents occurring during working hours and during free time ("leisure time") or can also be more limited and only cover leisure time.

2. **"Leisure-time" insurance** (vapaa-ajan vakuutus), in accordance with Act 459/2015 and, in particular, as described in Title VI. Section 199 stipulates that "an employer who has taken out compulsory insurance for his or her employees may include in the insurance a voluntary leisure-time accident insurance. The insurance compensates for accidents […], provided that they have not occurred in the circumstances referred to in sections 21-25". Leisure/free time can therefore include meal and break times, which, as we have seen, are not covered by Act 459/2015 in the case of work at home.

   Unlike the first type of insurance policy, this one can only be taken out by the employers with the same insurance company that they chose to cover accidents at work and occupational diseases for their employees, and not by the employee directly [113].

   Furthermore, according to Section 187 of Act 459/2015, "the insurance company cannot extend the voluntary insurance coverage", but it can "limit the insurance terms and conditions […] to accidents that happen during recreational exercise, exclude certain recreational sports from the insurance policy or limit the persons being insured".

   During the pandemic, a large number of employers resorted to this leisure-time insurance to provide greater protection for teleworking employees. According to the TVK's statistics, in September 2020 about one-quarter of employers had taken out this type of insurance either for all or only part of the personnel [115]. In 2022, about half a million employees were covered by a leisure-time insurance policy taken out by their employers (equivalent to one-fifth of active employees in the country) [117].

3. **Telework insurance** (etätyövakuutus), the scope of which - indicated in the general insurance conditions - may vary, covering, for example, travel to and from day-care centres/schools for children, accidents occurring during meals and breaks, or during any other movement inside the home. This insurance can be taken out solely by the employers for their employees.

[63] Vakuutussopimuslaki 543/1994.

Current discussions and recent initiatives to extend accident insurance coverage in teleworking

Discussions and actions are underway concerning accident insurance coverage in teleworking, concerning both the public and private sectors.

Regarding the public sector, the main problem is due to the fact that the State cannot take out any insurance with private companies. This means that numerous employees of private companies currently enjoy complementary insurance in the event of accidents in teleworking, which is impossible for civil servants.

As a consequence, in a press release of 12 January 2022 [122], the Ministry of Finance stated that it was going to initiate legislative work to improve the protection against accidents at work for civil servants in teleworking (working from the home or from another outside location). For this purpose, a working group, whose mandate expired in April 2022, was tasked with preparing a draft law on this subject. It comprised members of the Ministries of Finance, Social Affairs and Health, and the Treasury. It submitted its proposal to the Minister of Local Government on 20 April 2022 [121]. A draft law was opened for consultation until 1 July 2022 [109]. Discussed in the Finnish parliament in the autumn of 2022, the new law came into effect on 1 January 2023.

This Act[64] ("Act to compensate government employees for accidents at work caused by remote work") apparently provides civil servants with fairly generous protection in remote working, covering accidents at work which occur both inside and outside the remote workplace (the home or another outside location).

In Article 5, it is specified that "an accident related to remote working by civil servants is a sudden unforeseen event, caused by an external factor, which causes an injury or illness to a person and which occurs on the premises of the remote workplace in the course of an activity normally related to work, other than in the course of work". This wording therefore seems to include the accidents described in Section 22 of Act 459/2015, such as injuring oneself when preparing coffee.

Article 6 states that, for civil servants working remotely, accidents at work shall also include accidents that occur "outside the remote workplace in an activity normally associated with the following conditions:

1. during travel between home or the workplace and a remote work site or during travel for work-related reasons between remote work sites;
2. near the remote work site during the meal break or the recreational break and during the travel that is directly related to it;
3. during regular travel between the home or any other remote workplace and childcare locations, with the possibility of a minor detour (to go to a supermarket or for any other similar reason)".

Regarding the private sector, demands have been made to improve the coverage of accidents in teleworking. In 2021, for example, Akava, the Finnish confederation of associations of employees with higher-education degrees and trainings, had published on its website a press release [107] demanding better protection of teleworking, for both the public and private sectors, making the following requests and proposals:

- Add an official definition of teleworking in the legislation. Moreover, the laws relating to

[64] Laki valtion henkilöstölle etätyöstä johtuvissa olosuhteissa sattuneiden tapaturmien korvaamisesta - Eduskunnan päätöksen mukais 1012/2022.

working time, occupational health and safety and accidents at work should specify the rights and obligations related to teleworking.

- Extend the scope of application of Act 459/2015 (on accidents at work and occupational diseases) to provide better coverage of accidents in teleworking, or at least make it compulsory for the employers to take out complementary teleworking insurance for their employees (at present voluntary).
- Include in the law on occupational health and safety the obligation for the employer to also ensure work station ergonomics in teleworking so that the work station causes no physical or mental stress that is harmful or dangerous for the health of the employee, and to ensure the purchase and operation of the work equipment necessary to perform teleworking.

Following the publication of the new law on coverage against accidents at work in teleworking for state personnel, Akava [108] noted the introduction of far more extensive protection in remote working for civil servants than that currently applying to numerous private-sector employees. Given that taking out complementary insurance for private-sector employees remains voluntary and at the discretion of employers, according to Akava, this new law on civil servants places "employees in an unequal position with regard to insurance coverage in remote working".

Limited protection in the event of an accident in teleworking: examples of accidents not recognized

As mentioned above, protection is far more limited in teleworking for private-sector employees, unless complementary insurance is taken out. Although many private companies have resorted to these complementary insurance policies, this does not yet apply to all employees.

At present, there are not yet established legal precedents concerning accidents at work in teleworking [116]. At the level of the insurance companies, however, some cases of teleworking accidents have not been recognized as accidents at work.

As a reminder, the interpretation of the accident at work is a legal interpretation [114] made in accordance with the provisions of Act 459/2015, and not on the basis of the insurance policies and conditions of private companies, except in the case of complementary insurance policies which are not compulsory and not described in detail by the law. When managing compulsory occupational injury and illness insurance for employees, private insurance companies act as public authorities.

Below are a few examples of accidents in teleworking which were not recognized as accidents at work:

- In 2020, a remote worker took part in a remote meeting from her tablet while at the same time walking in her garden. During the meeting, she stumbled in her garden and injured her wrist. Although there is apparently a link with work (this was a work meeting), the insurance company in question considered that the decision to walk in the garden during the meeting had been taken by the worker independently and that it was not an activity imposed by/or due to the work [116]. In the home, Act 459/2015 provides merely for coverage for accidents strictly related to work.
- In 2020, according to a first example documented by ERTO [113], a trade union of private-sector professionals, a teleworking employee had run from his bathroom to his remote work station to answer a call (it is not specified whether it was a business or private call. Given that the worker was moving towards his remote work station, it seems plausible that it was his

work mobile that was ringing). During this brief run, the worker slipped on a carpet and injured himself. The insurance company did not recognize this event as an accident at work, because it had not occurred "strictly in the course of work", but during a break which is not covered in teleworking by Act 459/2015.

- The second example documented by ERTO [113] concerns a remote worker who fell in the staircase when he was going to retrieve the charger for his work computer, located on the second floor of his house. Given that the worker had placed the charger and the computer in different rooms of the house, he had to move about. The accident was not recognized as an accident occurring strictly in the course of work, because there had been an "interruption" in the work activity. The employee was nevertheless compensated, not within the meaning of Act 459/2015, but because his employer had taken out telework insurance for him.

In light of these examples, the main difficulty lies in distinguishing between accidents occurring "strictly in the course of work" (i.e. the work activity in itself) and during activities which, although they are indirectly work-related (e.g. retrieving a charger in another room), do not in themselves constitute work.

So **there is a sometimes "vague" boundary between sections 21 and 22 of Act 459/2015 in the case of remote work**. However, according to Mari Karttunen, lawyer with the Employment Accidents Compensation Board (Tapaturma-asiain korvauslautakunta[65]), this distinction (valid only for work at a distance, because these two types of accidents are completely covered in face-to-face work) can be explained by the fact that "the employer's right to the direct management and supervision of work does not extend to the home", and "an employer cannot dictate how and where the work is performed, […] the work environment and […] the risks incurred" in the home [116].

Lastly, it should be remembered that a worker (or the employer) may dispute the decision taken by the insurance company. In particular, the worker may appeal to the Accident Appeal Board (Tapaturma-asioiden muutoksenhakulautakunta). The Board's decision can be appealed before the Insurance Court (Vakuutusoikeus), then before the Supreme Court if it authorizes the appeal [114]. At the end of 2020, only 11 decisions had been issued by the Accident Appeal Board concerning accidents occurring during remote work. In 2021, the Board issued more, but only one case reached the Insurance Court. At the start of 2023, no case concerning an accident at work occurring during remote work reached the Supreme Court [108].

Sweden

The role of AFA Försäkring in the system of insurance against accidents at work

Protection against accidents at work and occupational diseases is a compulsory pillar of the country's Social Security system, managed by the Swedish Social Insurance Agency (Försäkringskassan). To this basic legal protection is added **a complementary coverage**, determined in the **collective labour agreements** between employers and employee trade unions. This complementary coverage is managed by Afa Försäkring, which is fully owned by the following social partners: the Confederation of Swedish Enterprise (Svenskt Näringsliv), LO (the Swedish Trade Union Confederation, Landsorganisationen i Sverige) and PTK (Privattjänstemannakartellen,

[65] Abbreviated as Tako, this Board is concerned with promoting the uniformity of compensation practices in accordance with the Workers' Compensation Act (459/2015). Tako issues general guidelines and opinions.

a joint organization representing 25 private-sector trade unions). Afa Försäkring is a non-profit-making organization and insures employees of the private sector, municipalities and county councils [124].

The Afa Försäkring insurance policies provide protection not only for accidents at work, but also in cases of illness, job loss, death and parental leave. The exact extent of the insurance policies for employees varies from one case to another, depending on the collective labour agreement in question. [129]

At present, **90% of employees are automatically covered by these complementary insurance policies** (for which the employer pays the premium) in accordance with their employment contract [129].

In Sweden, insurance against accidents at work is called (and abbreviated) differently according to the category of those insured:

- TFA (Trygghetsförsäkring vid arbetsskada, literally "insurance against accidents at work") for private-sector employees;
- TFA-KL for the employees of municipal and regional authorities, the Church of Sweden and certain municipally-owned companies;
- PSA for government employees.

Protection against accidents at work in teleworking

As stressed on the Afa Försäkring website [125], for an accident occurring in teleworking to be recognized as an accident at work, **a direct link between the accident and the work activity** must be identified.

Unlike accidents occurring during face-to-face work, there is a stricter interpretation of the accident at work in teleworking: it is required that the worker has injured themselves **strictly when performing their work**. Afa Försäkring mentions examples to clarify what can be covered in teleworking and what is not.

Thus, the following are considered as accidents at work in teleworking:

- falls due to tripping on the cables of the work computer;
- falls/accidents occurring while the worker is walking about the house when speaking on the telephone with their employer or colleagues;
- accidents occurring during authorized travels: for example, if the remote worker moves to go to a business appointment with a customer, or to fetch on the employer's premises equipment that is essential for teleworking (computer, mobile phone, etc.).

On the other hand, all other accidents for which a direct link with work cannot be identified are not covered by the insurance policy. Generally, these are "**domestic" accidents**. Afa Försäkring mentions the following examples of accidents not covered when working remotely: hurting yourself when preparing coffee in the kitchen - even during working hours - or when going out for private reasons, e.g. to go for a walk (note that the latter case would not be covered in the case of face-to-face work either).

Regarding **commuting accidents**, according to Afa Försäkring, these are defined as occurring during customary direct travel to or from the workplace. Two types of detours are possible [127]:

1. to take or pick up children at kindergarten (in Swedish förskola, "pre-school establishment", which receives children aged between 2 and 5 years);
2. in the case of carpooling if this takes place regularly and if the route chosen is natural for carpooling [128].

Travel starts and ends when the employee goes through the door of their home. A special feature of commuting accidents in Sweden should also be stressed. Specifically, insurance against accidents at work does not apply when a vehicle - subject to compulsory road traffic insurance - is involved in the accident. In that case, the injured employee is not compensated by Afa Försäkring, but only by the Social Security system (Försäkringskassan) in the event of sick leave following the accident and by the road traffic insurance organization.

As Afa Försäkring emphasizes, some travels performed in the course of work such as business travel are considered as work activities; any accidents in this case would therefore be accidents at work and not commuting accidents [127].

Going back to the examples of accidents that are compensable in the case of teleworking mentioned by Afa Försäkring, accidents due to travel for the purpose of a business appointment would probably be considered as accidents at work. Similarly, going to the workplace to retrieve the equipment required to work could be considered as work activity. The insurer's website does not specify whether the coverage in the event of an accident when taking children to kindergarten or picking up them extends to teleworking situations. In any case, as mentioned above, the involvement of vehicles could also change the situation.

However, based on discussions between EUROGIP and Afa Försäkring, it seems impossible, in theory, to have a commuting accident when teleworking in Sweden. And in any case, Afa Försäkring stresses that the decisive factor in the recognition of an accident at work in teleworking will be the **precise analysis of the individual circumstances that led to the accident**.

Ergonomics, risk assessment, responsibilities of the employer in teleworking

EU-OSHA [2] ranks Sweden and Finland in the list of countries which at present do not have legal definitions and/or specific legislation concerning teleworking.

Regarding the 2002 European framework agreement on telework, Sweden - just like Finland - implemented it through national framework agreements providing general guidelines and recommendations.

The Swedish Work Environment Authority (Arbetsmiljöverket), which ensures compliance by companies and organizations with the applicable legal provisions [133], emphasizes that the Work Environment Act (AML)[66] also applies in the case of work at a distance. Therefore, in accordance with these provisions, the employer remains responsible for the work environment in teleworking also, and it is generally required to provide the remote worker with the tools required for their work, such as a computer, a mobile phone and technical support [131]. Companies and collective labour agreements can further regulate teleworking, or provide guidelines on this subject [138].

However, there are limits to the employer's liability concerning the remote work environment. More specifically, the employer is not responsible for the precise furnishing of remote work rooms. The employer is indeed responsible for **identifying occupational risks** in conjunction with the

[66] Arbetsmiljölag (AML).

employee, but **most of the provisions contained in the Workplace Design Regulation**[67] (AFS 2020: 1), amended in 2020, **do not apply** [132], because the employer cannot control a private location like the home.

In Chapter VI, the Work Environment Act (AML) stipulates that **the employer and employees must work together to create a good work environment.** This collaboration becomes very important in the case of work from home due to the difficulty for the employer of identifying, managing and swiftly resolving problems related to the work environment. Concretely, this involves constant, clear communication between employees and the employer. First, it is up to the worker to report on the potential risks for their health and safety encountered in the home (or in their remote workplace), and generally to point out if anything does not function in the implementation of teleworking. As the Swedish Work Environment Authority emphasizes [131], for someone working from home, "close, regular dialogue between employers and employees is simply necessary to detect signs of problems and poor health".

To satisfactorily carry out remote risk assessment, a checklist[68] **was developed** and made available by Prevent as of 2020, with questions concerning the professional, organizational and social environment of teleworking. Prevent is a non-profit organization owned by the Confederation of Swedish Enterprise, LO and PTK (the same ones who own Afa Försäkring), and aims to "transfer knowledge which will help companies improve the work environment" [139]. The checklist for work at a distance was produced in accordance with the provisions of the Work Environment Act (AML) and the existing work regulations of the Swedish Work Environment Authority.

As indicated by Prevent, **means other than traditional safety inspection** [138] **are needed to identify the risks for work from home,** due, once again, to the private nature of the home, generally inviolable without the employee's agreement. In Sweden also, the employer is not entitled to make visits to the home of the employee without the latter's consent. Regarding this, the Swedish Authority explains the importance of dialogue between employer and employee: "if a person does not want to show their workplace at home, they may simply describe it" [131].

Regarding this, in October 2020, Susanna Stymne Airey, head of the Prevention Unit at Afa Försäkring, also suggested that employees use photographs to illustrate the state of their own work environment in the home; or again, that employees themselves measure certain fundamental parameters for a healthy workplace, such as the light exposure of the remote work office. "Everyone must take responsibility with regard to the work environment", she asserted [137].

Finally, for prevention purposes, both Prevent[69] and the Swedish Work Environment Authority[70] have made available on their websites brochures, documents, videos and other materials to help employers and employees suitably implement "healthy teleworking", especially in terms of ergonomics.

Moreover, Afa Försäkring, in an article published on its website [136], considering the future of teleworking in the post-Covid-19 era, emphasized the importance of ergonomics in teleworking. If society wants to continue to maintain teleworking in the coming years, "the ergonomics of the remote office must be re-examined. But who should pay for the furniture, the employer or the

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67 Arbetsplatsens utformning (AFS 2020:1), föreskrifter.

68 On https://checklists.prevent.se/checklist/answer/222 or on https://www.prevent.se/globalassets/.prevent.se/jobba-med-arbetsmiljon/osa/distansarbete/distansarbete_ifyllningsbar.pdf (in PDF format)

69 https://www.prevent.se/jobba-med-arbetsmiljo/osa/distansarbete/tips-och-rad-vid-distansarbete/

70 https://www.av.se/halsa-och-sakerhet/sjukdomar-smitta-och-mikrobiologiska-risker/smittrisker-i-arbetsmiljon/coronaviruset/arbetsmiljon-vid-hemarbete/

employee? **A discussion on labour legislation will probably arise after the pandemic**".

Research projects on teleworking and other initiatives in this area

In the past three years, Afa Försäkring has invested heavily in research to investigate the effects of the pandemic on employees' physical and mental health. In 2020 alone, 37 research projects related to Covid-19 were funded, for a total of around €9.1 million [123].

Among the projects announced, two specifically concern teleworking and the impact of this new form of organization on employees' well-being [126]:

- "Teleworking and psychosocial health during the Covid-19 pandemic". At the end of 2020, the University of Mälardalen received the equivalent of €182,000 to study managers' and employees' experience regarding work at a distance during the Covid-19 pandemic. The project, which was carried out until September 2022, concerns psychosocial health, well-being, new working conditions, work/life balance, and productivity. The results could contribute to "the establishment of healthy and productive remote work in the future".
- "Voluntary teleworking - how does it affect health at work?" In this case, the University of Gävle received around €237,000 to investigate how the employees of an industrial firm and a municipality experienced their physical and psychosocial work environment, in the recommended teleworking periods during the Covid-19 crisis. The study will also investigate the effects of teleworking on the productivity, work/life balance and well-being of these workers. The project is being carried out until September 2023 and the results could lead to changes in the recommendations concerning the implementation of teleworking.

Finally, it should be mentioned that in 2021 **the government published the new work environment strategy 2021-2025** titled "A good work environment for the future[71]", which was developed jointly with the Swedish Work Environment Authority and the social partners.

When presenting this new strategy, the Minister of Labour underlined [135] the extent to which the pandemic radically changed the working life of millions of workers, which led the government to intervene in order to find answers and solutions to the new challenges, arising in particular (but not only) from teleworking.

In the Ministry of Labour's press release announcing the publication of this strategy, a reminder is given that anyone working in Sweden is entitled to a work environment that is pleasant and safe. In light of the pandemic and technological change, "whether services are provided via applications or whether work is done in the home from the kitchen table", the breakdown of responsibilities among the various parties must be clear. For this reason, the Ministry announced that "**the regulations on the work environment will be revised** in order to clarify who is responsible for the work environment in situations where there is currently uncertainty". As a general rule, "the regulatory framework regarding health and safety should be adapted to the working life of today and tomorrow" [140]. **Legislative measures in this respect are therefore expected** in Sweden in the near future.

[71] Sveriges regering. *En god arbetsmiljö för framtiden - regeringens arbetsmiljöstrategi för 2021–2025.*

5. Conclusion

This report has presented an overview of the coverage of work accidents in teleworking in seven European countries (France, Italy, Spain, Germany, Austria, Finland and Sweden).

Although teleworking has existed for decades, until very recently it was not used intensively. The Covid-19 pandemic radically changed the situation, leading millions of workers towards new teleworking realities that they had never experienced before. Three years after the start of the pandemic, even now many workers resort to teleworking or forms of mobile working, which are increasingly being transformed into a hybrid model combining presence at the office and work from home.

Such an increase in the number of remote workers raises **questions concerning occupational safety and health issues when working remotely**, and in particular concerning the potential coverage of accidents at work occurring in the home. There are many questions to which it is not always easy to answer, notably how to ensure compliance with OSH measures in an environment to which the employer does not have access, namely the home.

It is precisely to cope with these new challenges that many countries have started to take action in order to better regulate teleworking, both in general and more specifically with regard to the coverage of accidents in teleworking. There is no doubt that this process of adaptation to new forms of work at a distance will continue in the future, since the current pandemic is not yet ended and it is essential to step up preparations for possible future health crises, as stipulated by the European Commission in its Strategic Framework on Health and Safety at Work 2021-2027[72].

A potential directive on this subject, for which negotiations officially started on 4 October 2022, would make it possible to harmonize the framework for teleworking, minimizing the current differences between countries on a large number of issues concerning its implementation (including the very existence or not of legal definitions of teleworking in national law).

It is not possible at present to say whether this directive would merely cover teleworking, as in the case of the 2002 framework agreement, or also other possible forms of work at a distance (such as mobile working), which increased greatly during the Covid-19 crisis.

Moreover, regarding the subject of this report, it should be specified that the directive could give no precise indications concerning the definition of work accidents in teleworking or the conditions of coverage, given that most of the occupational injury and illness insurance provisions are the exclusive competence of the EU Member States.

However, **the directive could specify measures concerning the health and safety of remote workers**, because according to the EU Treaties, this field is an integral part of "social policy" where the EU has shared competencies with the States, with (indirect) consequences for the countries' occupational injury and illness systems.

Takeaways from the analysis produced in this report

- Most of the countries studied here (France, Italy, Spain, Germany and Austria, but not Finland or Sweden) have **legal definitions and/or specific legislation relating to teleworking** (and sometimes also other forms of mobile working, such as smart working in Italy), and regulate it in

[72] Cf. https://eurogip.fr/wp-content/uploads/2021/10/Focus-Eurogip-cadre-strategique-SST-2021-2027.pdf

detail, requiring certain precise conditions (duration, agreement with the employer, choice of a precise teleworking location, etc.).

- The employer is generally responsible for the health and safety of workers, even at a distance, in accordance with the European framework directive on health and safety at work. A first important step in risk prevention is to assess the risks. But, in all the countries examined, **the employer is not entitled to inspect the remote worker's home without their consent**, which is also stipulated in the European framework agreement on telework. Some countries such as **Spain, Germany, Austria and Sweden have developed strategies** (use of webcams, questionnaires/checklists, photographs, telephone descriptions, etc.) to overcome this problem, while France teleworkers are often required, under telework agreements, to provide a sworn statement or certificates from their home insurance companies regarding the conformity of certain equipment, including electrical installations for example.
- As regards **ergonomic equipment,** the employer often has no obligation to provide it for remote workers (France, Italy for smart working, Finland, Sweden). In Spain, however, it is required to state in the teleworking agreement all the furniture and tools used, the costs incurred by the employee, and the maximum service life of the furniture and tools, which must be changed in the case of wear (and for which the employer will contribute to the cost). In Germany, the definition of teleworking includes the obligation for the employer to also provide the necessary furniture (we deal here with the specific case of Telearbeit and not Homeoffice intensively used during the pandemic). In Austria, although there is no obligation for the employer to provide ergonomic equipment, the government has introduced a system of tax benefits to help employees deduct from their income tax the expenses involved in the purchase of such equipment for Homeoffice.

  Note that there is nothing to prevent companies, within the framework of teleworking agreements or collective labour agreements, from providing their teleworking employees with ergonomic equipment or from providing extra financial aid for those employees to purchase such equipment.
- As regards **accidents occurring in teleworking** (or in other forms of mobile working, or in general "work at a distance" as in Finland), some countries have explicit legal definitions, more or less detailed, in their national legislation (France, Italy, Germany, Austria, Finland). This is undoubtedly a fundamental starting point to understand the criteria and conditions for recognition of an accident occurring in remote work outside the employer's premises, but also what is and what is not covered in teleworking/mobile working.
- Other countries (Spain) provide **no specific definition of work accidents in teleworking** and currently use the traditional definition of accidents at work. This was also the case, until very recently, in countries such as Germany and Austria.
- There is a **presumption of imputability** for accidents at work in France and Spain, that applies also in the case of teleworking. Any accident occurring in the (tele)workplace and during working hours is presumed to be an accident at work. It is incumbent exclusively on the employer (or the Mutua in Spain) to prove the non-work-related cause of the accident, even in the case of an accident in teleworking (in the home or another location such as a coworking space). This is apparently not the case in other countries (Italy, Finland, Sweden) where, in order to receive compensation, there must be a clear link between the accident occurring when working at a distance and the work activity being performed at the time of the accident. In Austria, there is fairly broad accident coverage inside the home (covering work activity in itself, work-related movements in other rooms of the house and for basic needs), while in Germany there is now accident coverage inside the home equivalent to that applicable during face-to-face work.
- **It is not obvious that commuting accidents** (including travel during the midday break or any

detours, e.g. to pick up children from school) **are covered in the case of teleworking**. In some countries, the law or the insurance organizations stipulate this explicitly and extend it to teleworking/mobile working, in a manner practically equivalent to face-to-face work (Austria) or on certain conditions (Italy for smart working, Germany regarding the possibility of accompanying children to school or picking up them). In Finland, this coverage is formally ruled out in the case of work at a distance, unless a complementary insurance policy is taken out (private sector). In other countries, the coverage of commuting accidents in the context of teleworking is not clearly defined by law (France, Spain, Sweden).

- Finally, **some countries intend to adopt (or are currently in the process of adopting) legislative measures** to improve the coverage of accidents in teleworking (Finland, for the public sector) or to better regulate the remote work environment (Sweden). **Some countries have already adopted significant legislative measures** regarding teleworking (Spain) and accidents at work in the home (Germany, Austria) in the course of these three years of pandemic. France has not opted for a law on teleworking in recent years, but it strengthened collective bargaining in this respect with the ANI (national interprofessional agreement) of 2020, subsequently made compulsory by an official order ("Arrêté").

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Teleworking and accidents at work in seven European countries

Germany, Austria, Spain, Finland, France, Italy, Sweden

EUROGIP - Paris

September 2023 - 69 pages

Ref. EUROGIP-180/E

ISBN 979-10-97358-67-9

Cover picture Nataliya Vaitkevich https://www.pexels.com/fr

Publication Director: Raphaël HAEFLINGER

Author: Annarita PIAZZA

Created in 1991 by the "Assurance Maladie-Risques professionnels",
EUROGIP is an observatory and resource centre on
occupational risk prevention and insurance in Europe

51 avenue des Gobelins, F-75013 Paris

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