

Legal Preconditions for Sustainable Remote Work in EU in the Time of Emerging Technologies

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ABSTRACT

Sustainable work aims to create a work environment that promotes employee well-being and encourages long-term employment. However, emerging technologies can lead to an “always on” culture and impact work-life balance. This article examines the legal framework for remote work in the EU, and its suitability for sustainable employment practices. While remote work is embraced, there remain unresolved legal issues, such as the definition of working time and employee right to disconnect. Additionally, EU member states have varying attitudes in regulations towards promoting remote work, which could undermine employee rights and equality. As remote work becomes more customary during crises, it is crucial to address these legal issues to ensure the future viability of remote employees’ professional lives.

Keywords: Sustainable work, Remote work, EU law, Labour law

INTRODUCTION

The European Union (EU) has seen a significant rise in the prevalence of remote work because of technological developments and a desire for a better work-life balance. The COVID-19 epidemic has had a significant impact on employment, although remote work has been essential in preserving corporate continuity. Despite its advantages, remote work can also pose risks to employees’ physical and mental health, privacy, work-life balance, and general quality of time spent at the office, particularly when employment is not restricted to a particular physical place. Additionally, remote work has the potential to lower emissions associated to transportation, which benefit the EU’s efforts to battle climate change.

It is crucial to think about the legal preconditions required for sustainable remote work as the use of remote work increases. Making sure that employees’ rights are upheld and that they aren’t overworked, discriminated, or abused is one of the main problems with remote work. For remote work to be a viable and sustainable choice for individuals and businesses, legal frameworks that support a secure and healthy work environment, safeguard workers’ rights, and allow the right to disconnect are necessary. The move in the EU toward remote work has been significantly influenced by technological improvements. Technology development and the regulatory requirements necessary for future remote employment must be balanced, nevertheless. As

a result, remote work will be made possible and will provide workers a safe and healthy option. Legal preconditions must include access to a secure and healthy work environment that offers remote workers the same safeguards as those who work on-site in order to enable sustainable remote work.

Ensuring the right to disconnect is crucial in promoting sustainable remote work in addition to safeguarding employees' rights. While labour laws and employees' rights differ across EU member states, certain EU-wide regulations offer a degree of protection for remote workers. However, these regulations do not comprehensively address the unique features and challenges of remote work. Therefore, it is essential to establish legal frameworks that are specifically designed to promote sustainable remote work, with a focus on protecting remote workers' rights and creating a safe and healthy work environment.

The goal of the research is to provide a comprehensive analysis and identify legal obstacles to sustainable remote work in the EU, based on an examination of the legal framework in EU and case law of EU Court of Justice and to draw conclusions about the legal preconditions of sustainable remote work in EU.

The research employs thorough research methods including literature analysis, legislation analysis, case law analysis, and secondary data analysis. The author uses different legal research methods, such as analytical, comparative, deductive, and inductive to identify legal obstacles to sustainable remote work in the EU regulations.

DEFINING THE CONTENT OF SUSTAINABLE REMOTE WORK

Due to its potential to address some of civilization's most difficult global issues, such as poverty, inequality, climate change, environmental degradation, prosperity, peace, and justice, sustainability is a crucial concept that has gained significant momentum globally in various political and business arenas. However, attaining sustainable change and development presents intricate sociological, economic, and environmental problems that call for the cooperation and coordinated action of international bodies, organizations, and people (Brandt et al., 2022). Numerous studies stress the need of decreasing resource use in order to save operational expenses and show a sincere commitment to safeguarding society and the environment. In order to achieve organizational sustainability, experts have also acknowledged the necessity of encouraging pro-environmental behaviour in the workplace (Bharti et al., 2022). Therefore, sustainable work plays a critical role in the overall concept of sustainability, as it encompasses economic, social, and environmental aspects and has become increasingly relevant as organizations seek to balance their goals in these areas.

Creating conditions that allow people to work throughout their extended working lives is central to the idea of sustainable work (Eurofound, 2015). Organizations can gain from sustainable work practices by enhancing employee satisfaction, lessening their negative effects on the environment, and boosting efficiency. However, achieving sustainable work needs long-term preparation, financial commitment, and flexibility in response to shifting

conditions. The creation of new workplace innovations is required by the contemporary economic and social landscape, which is characterized by globalization, digitization, and labour market polarization. These developments are necessary for job quality, productivity, and growth (Abrahamsson, Ennals, 2022). An organization's value-creating objective, employee health, and a productive work environment should all be balanced in a sustainable workplace.

Both the terms "remote work" and "telework" describe a situation in which employees carry out their activities and duties from a different place of their choosing (ILO, 2020). Regardless of the technological means used, remote work is defined as work that is undertaken outside of the employer's physical facilities. However, in order for both remote and hybrid work cultures to operate sustainably, a new corporate footprint strategy is required. It is proven that with trusting remote employees can lead towards innovative thriving business culture and thus sustainability (Dash, 2022). The legislator and employer is required to set up and manage sustainable remote work in a way that protects employees. The same characteristics of sustainable work apply to sustainable remote work as well, but there are additional challenges, including higher workloads without increased pay, risk to work-life balance, privacy issues, discrimination, and little employee input into decision-making processes.

LEGAL FRAMEWORK FOR SUSTAINABLE REMOTE WORK IN EU

At the EU level, remote work is not governed by specific legal frameworks. Although several directives and regulations address topics that are crucial for ensuring that remote workers have acceptable working circumstances, no special directives specifically address remote work. Regulations concerning remote work could be: EU Working Time Directive (European Parliament and Council, 2003) and Framework Directive on Safety and Health at Work (European Council, 1989) as well as The General Data Protection Regulation (European Parliament and Council, 2016) that governs the handling of personal data, including the collection, use, and sharing of such data. It also outlines guidelines regarding data-processing activities, such as employee monitoring. The European Court of Justice (ECJ) has provided interpretation on the Working Time Directive. In a significant ruling in 2019 the ECJ mandated that EU Member States compel employers to implement an objective, reliable, and accessible system for documenting the hours worked each day by employees (such as a daily working time registry) (*Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE2019*). At the same time The EU Working Time Directive leaves it up to the EU member states to determine the best method for ensuring the calculation of working and rest time. However, with respect to remote work, the employer's obligation to record the employee's working hours is more intricate due to the employee's physical absence from the worksite and greater autonomy to manage their work schedule at home, so it is not supporting sustainable remote work regulation in the interest of businesses or employees. The need for employees to maintain constant availability to their employers has been lessened by the

widespread impact of digitalization. The important requirement is instead the successful fulfilment of duties, with employees being reachable for professional communication when necessary. As a result, remote employees might have more freedom to plan their work and personal time. However, in the absence of EU level regulations, this situation raises the possibility of unpaid overtime while also allowing for greater employee freedom. As a result, a major concern about the suitability of the traditional idea of working time in the context of remote work arises.

It is interesting to note that the jurisprudence of the ECJ has established that the Working Time Directive does not apply to self-employed independent contractors who among other rights can determine their own working hours (*B v Yodel Delivery Network Ltd*, 2020). This exception to the definition of “worker” is contingent on the independence being genuine and the absence of a relationship of subordination between the contractor and their putative employer. In the context of remote work, where it is appropriate for employees to set their own hours, the application of this ECJ ruling to employees could create a risk to their protection. Although remote employees are still subject to the Working Time Directive, the nature of their relationship with the employer may resemble that of self-employed or freelance individuals who are not protected by this directive. Even more in situations where remote employee has second job. Therefore, clarification is needed regarding the extent to which remote workers have the rights to fix their own working hours to be entitled to the protections.

Recently, the Transparent and Predictable Working Conditions Directive (European Parliament and Council, 2019) has tackled some of the difficulties concerning safeguarding the rights of remote employees. The directive mandates that the employment contract clearly specifies the location of work and work schedules, which helps establish more predictable work hours for workers. This measure could potentially improve remote employees work-life balance, but still rise challenges for defining “work time” in flexible remote work arrangement. The Work-Life Balance Directive (European Parliament and Council, 2019) provides a range of flexible working options, including remote work, for working parents and caregivers. Nevertheless, this directive does not specifically address the potential drawbacks of remote work, as pointed out by Eurofound (Eurofound, 2020).

The spread of digital technologies in the workplace has introduced new challenges and complexities to monitoring and surveillance practices. Despite this, the regulation of intrusive digital technologies in the workplace remains limited to a few Member States. In light of this, there is a pressing need to establish sustainable legal mechanisms that can effectively address the unique issues arising from remote work. Such mechanisms must be responsive to the evolving nature of work and technology, while also prioritizing the protection of employees’ rights and privacy. Failure to establish such mechanisms could lead to an erosion of trust between employers and employees, as well as potential legal and ethical issues. Therefore, it is imperative that policymakers and stakeholders collaborate to develop effective and sustainable legal frameworks that promote responsible and ethical practices in the remote workplace.

Towards to sustainable regulation of remote work is initiative from EU parliament in 2021 to introduce a legal right to disconnect (European Parliament, 2021). The right to disconnect has emerged as a critical issue in the new digital era, where the boundaries between work and personal life have become increasingly blurred. The Resolution recognizes the right to disconnect as a fundamental right and an essential social policy instrument at the EU level to safeguard employees' rights. The right to disconnect is a crucial component of sustainable remote work because it encourages a positive work-life balance, boosts creativity and productivity, and contributes to the development of an environment where respect and trust are valued. Ultimately, recognising the right to disconnect can contribute to a more sustainable and equitable future of remote work. In light of the ongoing digitalization of the workplace and the evolving nature of employment relationships, it is crucial to ensure that remote workers and freelance workers are adequately protected by EU law. Given the precedent set by the ECJ, it is important to establish a clear and inclusive definition of the term "worker" under EU law, which encompasses remote work and other emerging forms of employment. Such an understanding would be essential in developing effective policies, such as the directive on the right to disconnect, which aim to safeguard employees' rights in the digital age. By ensuring that these policies are comprehensive and adaptable to the changing realities of the modern workplace, the EU can foster a more sustainable and equitable approach to work, benefiting workers and employers alike.

LEGAL OBSTACLES AND PRECONDITIONS FOR SUSTAINABLE WORK

The absence of direct regulation of remote work or telework by the EU can lead to divergent interpretations and fragmentation among EU member states, which can negatively impact the protection of employees who work remotely or have hybrid work arrangements. The situation is more complex for cross border remote employees and their social security. The regulatory landscape regarding social security for cases where employees work remotely in another state is also still in change, placing responsibility on EU member states. To address this issue, Article 16 of Regulation (EC) 883/2004 offers some solution for cross border remote work, ranging from an agreement between two member states in an individual case to an EU-wide agreement on teleworking, or agreements for a specific group of employees or between several member states.

Another challenge to sustainable remote work development is the diverse approaches to remote work among EU member states, with the most significant difference being the regulation of the right to disconnect. While France has incorporated this right into the law for a long time, some other EU member states have not yet addressed it at all. Therefore, EU-level social dialogue is essential to identify solutions to the issues associated with these developments and evaluate whether existing definitions of telework meets the needs of businesses and workers in the era of digitalisation and emerging technologies. Shared standards are critical to safeguard remote work across the EU

equally. Despite some common ground, national-level regulation on remote work differs between member states, with notable disparities in health and safety, working time, and the right to disconnect. Based on legal analysis, the primary legal barriers to sustainable remote work are the ambiguous understanding of remote work or telework at the EU level, the lack of action by the EU to regulate the right to disconnect, and the different approaches taken by EU member states towards remote work. Following an examination of remote work regulation, it is recommended to define remote work or telework, considering digitalization and its widespread use, incorporate the right to remote work into EU regulations, and regulate the right to disconnect at the EU level.

It is crucial to hold in-depth discussions about the relevance and effectiveness of the traditional “working time” idea as the best way to protect remote workers in light of the particularities of remote work and its potential impact on their protection. Organizations are currently responsible for monitoring and controlling the working hours of their remote employees, which poses serious privacy risks. It is recommended that determining wages for remote workers based on their output may be a more suitable method.

In promoting sustainable remote work, engaging with social partners is necessary. It is critical that companies also consider sustainability principles, which include not violating employees’ privacy when using track and trace systems, developing guidelines for decent remote work, and incorporating the right to disconnect for all employees. Legal requirements are expected to change as a result of recent trends, such as the rise in remote work among employees and the widespread availability of technology that facilitates remote work.

CONCLUSION

The rise of remote work has brought new challenges for the regulation of labour relations. Today, remote work is increasingly seen as an essential means of inclusion and work without discrimination. Policymakers must monitor the developments of remote work in member states, including issues related to different remote work arrangements, psychosocial risks, working time organization, the right to request remote work, gender equality, work-life balance, and well-being.

As the number of employees working remotely for a company outside their country of residence continues to increase, addressing regulatory challenges such as tax legislation and social security coordination is necessary to facilitate cross-border sustainable remote working. Defining remote work at the EU level, providing the right to disconnect for remote workers, and promoting social dialogue can play a critical role in creating sustainable and decent remote work.

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