

# Teleworking: challenges to social security

Kostas Zografidis  
Stilpon Stergiou  
Christos Vasileiou



# The regulation of telework in Greece

- Clause 1 of the European Framework Agreement on Telework (EFAT): *Telework is a form of organising and/or performing work using information technology within the context of an employment contract/relationship, whereby work, which could also be performed at the employer's premises, is carried out elsewhere on a regular basis.*
- Clause 3 of the EFAT: *Telework is **voluntary** for both the worker and the employer concerned.*
- National Law 3846/2010: lackluster provisions on some labour law aspects of teleworking.
- National Law 4682/2020: during the COVID pandemic, the employer is entitled to **unilaterally** impose remote working on employees.
- **No special social security provisions are in place.**

# Aspects of telework that challenge national social security systems

- Working **outside the traditional workspace**
- **Irregular work patterns** – fragmented daily schedules and careers
- Working for a **low wage**
- Legal **classification** of teleworkers as **employees** or **self-employed persons**

# The geographical aspect: working outside the traditional workspace

- The employer does not dictate the employee's workspace:
  - But where national provisions entitle employers to unilaterally impose teleworking to prevent COVID transmission, the employer essentially does.
  - Should an **accident** that has taken place or a **disease** contracted during teleworking be classified as '**occupational**'?
  - Is the employer responsible for observing **occupational health and safety standards**?

# The temporal aspect: irregular work patterns

- Fragmented daily schedules: periods of work interrupted by periods of personal/leisure time:
  - How to determine whether an event (e.g. an accident) took place **during working hours**?
- Fragmented careers: periods of economic activity interchanged with periods of low or no activity
  - Exclusion from social security schemes subject to certain **thresholds**, such as having worked or having paid contributions for a given period within a longer reference period (e.g. **pensions, unemployment benefits**)

# The financial aspect: working for a low wage

- A low income, which is often a result of frequent interruptions of work, leads to:
  - Exclusion from social security schemes that require a certain amount of income to have been generated within a given reference period
  - Lower contributions and consequently **lower benefits** from contributory schemes

# The notion of 'employment' in the context of teleworking and crowdworking

- Fluidity of legal status of teleworkers
- Strict approach to employment
- Financial dependency on the employer
- Indications of employment or self-employment
- Proof of employment in the context of social security law
- Teleworkers – or homeworkers – independent activity

# Legal classification of platform workers

- Uncertainty of legal status
- Complete absence of regulations
- New approach to employment
- New labour law regulations to find a social security solution

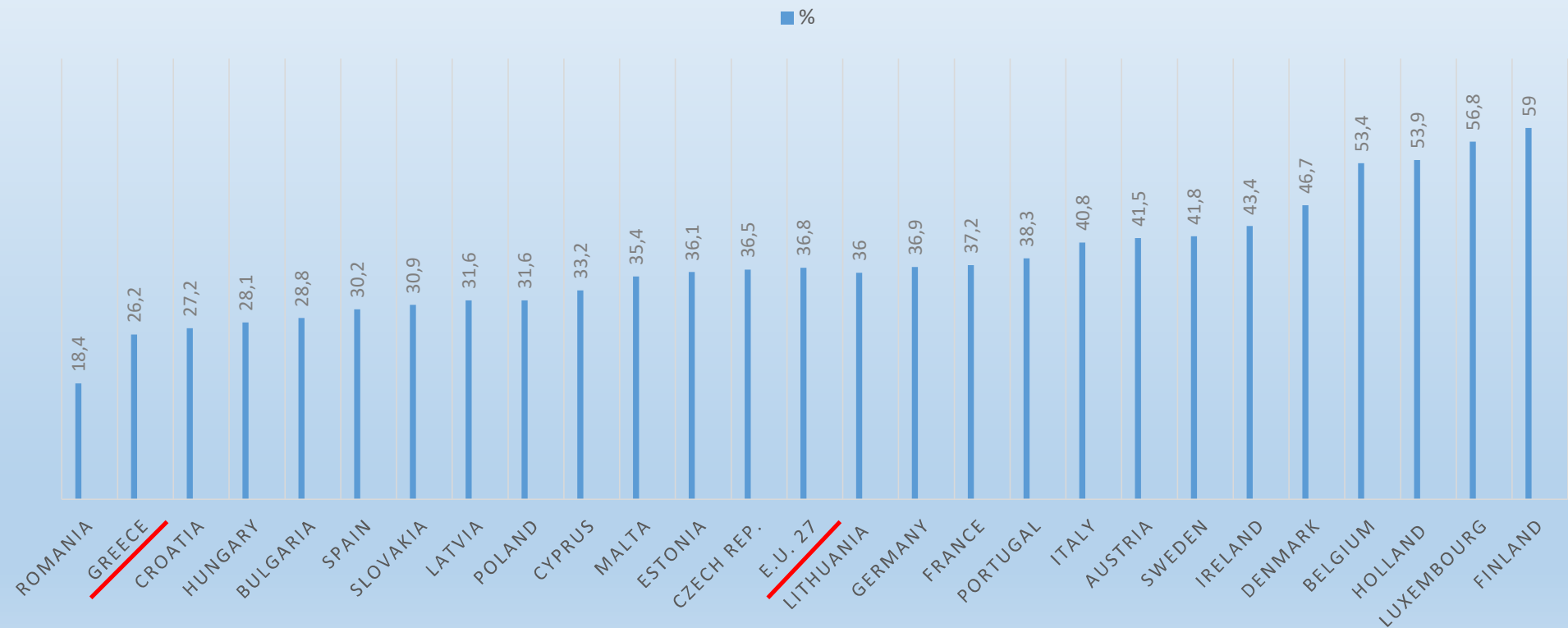


# % of employees and self-employed who regularly teleworked in the E.U. in 2019



Source: Eurostat

# % of workers in the E.U. who joined the telework scheme as a result of the coronavirus pandemic



Source: [eurofound.europa.eu](https://eurofound.europa.eu)

# Telework and the coordination of social security systems (Regulation 883/2004)

- The choice of place of employment as a rule for determining the applicable law is being challenged as a result of several factors. These include cross-border teleworking.
- E.g: a person who is insured in the Greek system, which is his place of employment. However, this person lives and teleworks in Sweden. → The **lex loci laboris** cannot be directly applied in this case, while at the same time, the Regulation does not specifically regulate the issue of teleworking. →
- **Negative consequences for teleworkers:**
  - a) creation of a loophole in legislation => the teleworker is not be covered by any social security system.
  - b) the law of two Member States apply at the same time => the teleworker will be required to pay a double contributions.

# Proposed solutions

- The case of teleworkers could be resolved in the same way the Regulation addresses the issue of **posted workers** in Article 12.
  - A special provision could be added, stipulating that in the case of teleworkers, the law of their place of employment applies, regardless of where they live and where they telework (**lex loci laboris**).
    - a) The safest criterion for determining the applicable legislation (legal certainty).
    - b) Ensures that the employee will in any case be covered by at least one country's social security legislation and will not be left uninsured.
  - However, a derogation from the *lex loci laboris* rule may be justified for certain benefits, such as sickness, maternity, invalidity and unemployment benefits. The law of the teleworker's place of actual residence (**lex loci domicilii**) will therefore apply to these benefits.
- A corresponding provision for **frontier workers** exists, whose activity entails elements of cross-border work.

# Selected bibliography



- Kiriakoulis P., Telework in Europe before and after the Coronavirus pandemic, National Institute of Employment and Human Resources, November 2020 (in Greek)
- Kountouris N., Technological change and work relations, Sakkoulas Publications, Athens-Thessaloniki, 2020 (in Greek)
- Lane M. (2020), "Regulating platform work in the digital age", Going Digital Toolkit Policy Note, No. 1, <https://goingdigital.oecd.org/toolkitnotes/regulating-platform-work-in-the-digital-age.pdf>
- Pennings F., The Social Security Position of Teleworkers in the European Union: Consolidated Report, European Foundation for the Improvement of Living and Working Conditions, WP/97/27
- Schoukens P., Digitalisation and social security in the EU. The case of platform work: from work protection to income protection?, EJSS 2020, p. 434-451
- Stergiou A., Disability, Sakkoulas Publications, Athens-Thessaloniki, 1999 (in Greek)
- Stergiou A., Self-employed and employee in Social Insurance Law, Sakkoulas Publications, Athens-Thessaloniki, 2005 (in Greek)
- Stergiou A., Social Security Law (3<sup>rd</sup> ed.), Sakkoulas Publications, Athens-Thessaloniki, 2017 (in Greek)
- Traulos-Tzanetatos D., Labor Law and the Fourth Industrial Revolution, Nomiki Vivliothiki, Athens, 2019 (in Greek)
- Tsetoura A., The implementation of the Coordination Regulation on pensioners: the European pensioner (doctorate thesis), Thessaloniki, 2017 (in Greek)