B-solutions

FINAL REPORT BY THE EXPERT

Advice Case: Applicable Labour Law for Telework

Advised Entity: Region Sønderjylland-Schleswig, Regionskontor & Infocenter

Expert: Dr Professor Bassah Khalaf

Date: 30/04/2024

Table of contents:

I. Executive summary
II. Description of the obstacle
III. Indication of the legal/administrative dispositions causing the obstacle
IV. Description of possible solutions
V. Other relevant aspects to the case
VI. References and appendix/appendices, if any

I. Executive summary

Home-office is modern and practical in our flexible work– also across national borders. A Danish employee living in Germany can easily sit and work "across the border" for his Danish employer in a home-office. But when the employer and workplace are in different countries, it causes difficulties because the legal status and labour law is unclear.

Based on a careful assessment of the law, and detailed discussion with care providers and officials in Denmark and Germany, the present report describes the legal challenges:

1. Both Denmark and Germany are bound by the Rome Convention, but Germany has a reservation to Article 7, that allows the State of the forum to apply the mandatory rules of another country with which the situation has a close connection instead of the law applicable to the contract.
2. The dismissal protection in Germany is regulated by law, because law guarantees the same rights for everybody. But in Denmark the collective contract defines the rights, if any such is concluded.
3. The workhours are higher in Germany than Denmark.
4. In Denmark there is no minimum wage.
5. Maternity leave and public holidays are different in the two systems.

The fact that case-law concerning cross-border home-office obstacles and jurisdiction in these cases is poorly and the fact that the systems in Denmark and Germany are so different and not applicable creates an unclear legal status for the employees working in home-office.

The report then sets out a number of possible actions which could be taken to address the obstacles.

1. EU-charter: The European Commission and the European Council could propose an initiative for a European Charter for labour in the EU, including minimum standards to ensure employment value and avoid exploitation.

2. Digital/telework frontier workers: Europe could consider introducing the concept of a digital frontier worker.

3. A not voluntary EU Framework Agreement on Telework: One solution could be to include more specific working and employment conditions, including telework-related accidents in the Framework Agreement on cross-border telework for home-office and

4. Changing national legislation: For home-office to be carried out in another country, changes in the national regulations in both countries are required.

5. Common rules based on bilateral agreements: The agreement could find inspiration from the social security Framework Agreement on cross-border telework or they could

decide that the Framework also apply for working cross the borders between Denmark and Germany.

6. Information portal: Based on the Rome Convention and the mandatory provisions and case law in Denmark and Germany concerning labour law, an official information portal can be created by the relevant authorities in both countries for employers and employees about home-office across the border.

II. Description of the obstacle

Technological and organizational changes in the world of work demonstrate the increasing need to extend the protective scope of labour law. Home-office is part of this need, which Corona also underlined. Home office is therefore here to stay. It is modern and practical in our flexible work. Everyone has advantages when an employee works from home. Many companies have realized that there is money to be saved by allowing employees to work from home; the costs per workplace are lowered, the office can be decentralized and the office rent can perhaps even be saved. On the other hand, many employees have also discovered advantages: no/less transport time, costs for clothing and representation are reduced, environmental benefits, it may be easier to manage family life' and flexibility in terms of time and place increases depending on the employer, function and industry.

Home-office can therefore be a strength with its flexibility – also across national borders. A Danish employee living in Germany can easily sit and work "across the border" for their Danish employer in a home-office. But when the employee and workplace are in different countries, it causes difficulties because the legal status of the employment and labour law is unclear.

Labour law is an undefined factor that raises many questions, also between Germany and Denmark, since a large part of the framework conditions on the labour market in Denmark are subject to collective agreements while highly regulated by law in Germany. Uncertainty and ignorance about the applicable rules and the specific requirements lead to the employer's

understandable refusal to agree to work from home or generally to work in unclear legal situations. This can leave employer or employee in a state of unknown consequences.

III. Indication of the legal/administrative dispositions causing the obstacle

1. Definitions

Definition of worker

In the changing world of work and the emergence of new forms of employment that are often in the grey zone between traditional employment and self-employment the question of the scope of protection of labour and employment law becomes again more urgent. Although defining the concept of worker is thus of utmost (and growing) importance, it is not legally defined (yet) at EU level but has been shaped by numerous decisions of the Court of Justice of the European Union (CJEU) and in Article 8 of the preamble in the Directive (EU) 2019/1152 of The European Parliament and of The Council of 20 June 2019. Further there is almost a definition in the term 'worker' 'may not be interpreted differently according to the law of each Member State but has a Community meaning' when EU law applies (ECJ Case 75/63 – Unger [1964] and ECJ Case 66/85– Lawrie Blum [1986]). Irrespective of the public or private nature of employment, a worker is a person who performs services for a certain period of time—also of smaller but not purely marginal and ancillary amount of time—for and under the direction of another person in return for which they receives remuneration (ECJ Case 66/85 – Lawrie Blum [1986] and ECJ Case C-94/07 – Raccanelli [2008]). The remuneration can also be payment in kind. Civil servants, junior teachers due for a second state examination, trainee solicitor, trainees—provided that they are working as employed persons—and interns are considered to be workers, as well as professional sport players (ECJ Case C-415/93 – Bosman [1995]), as long as their sport constitutes an economic activity (ECJ Case C-519/04 – Meca Medina [2006]).

Definition of telework in home-office

The term 'telework' or 'teleworking' refers to a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work. In practice, telework is a work arrangement that allows employees to have regularly scheduled days on which they telework and regularly scheduled days when they work in their agency worksite. This includes any arrangement where employee conducts work activities during any regular, paid hours, from an alternative location mutually agreeable to the employee and the agency, e.g., home in home-office. The main characteristic of telework in home-office is that the employee can carry out their work activity online from their home.

2. EU labour law

Freedom of movement for workers is a key principle of the EU, enshrined in Article 45 of the Treaty on the Functioning of the European Union and further emphasised by secondary European law (EU Regulation 492/2011) and the case law of the European Court of Justice. Mobile workers may not be treated differently from domestic workers when it comes to access to employment and working conditions and they are entitled to the same social or tax advantages.

The EU aims to promote social progress and improve the living and working conditions of the peoples of Europe. As regards to labour law, the EU complements policy initiatives taken by individual EU countries by setting minimum standards. In accordance with the Treaty - particularly Article 153 - it adopts directives that set minimum requirements for:

- working & employment conditions,
- informing & consulting workers.

One of the main areas covered by EU labour law is working conditions. This includes provisions on working time (maximum of 48 hours of weekly work, including overtime), vacation leave (four weeks of annual vacation leave), part-time, and fixed-term work, temporary workers, and the

posting of workers. All of these areas are key to ensuring high levels of employment and social protection throughout the EU.

The Rome Convention

The Convention on the Law Applicable to Contractual Obligations 1980, or the "Rome Convention", is a measure in private international law or conflict of laws which creates a common choice of law system in contracts within the European Union. The convention determines which law should be used, but does not harmonies the substance (the actual law).

Article 4 of the Rome Convention provides for the determination of the law that governs a contract in the absence of a choice made by the parties. Article 4(1) provides that the choice of law is to be determined by the law of the country that is most closely connected with the contract. It also provides that a severable part of a contract which has a closer connection with another country may by way of exception be governed by the law of that country.

Article 7(1) deals with foreign internationally mandatory provisions. These so-called 'Mandatory rules', refers to the mandatory provisions of foreign law, and in paragraph (2) of that article, to the mandatory provisions of the law of the forum.

Article 7(1) allows the State of the forum to apply the mandatory rules of another Member State with which the situation has a close connection instead of the law applicable to the contract. In considering whether to give effect to these 'mandatory rules', regard has to be had to their nature and purpose and to the consequences of their application or non-application.

Under Article 7(1), the application by the national court of mandatory rules of foreign law may arise only under expressly defined conditions, whereas the wording of Article 7(2) of that convention does not expressly lay down any particular condition for the application of the mandatory rules of the law of the forum.

Article 7(2) of the convention allows the rules of the law of the forum to be applied whatever the law applicable to the contract.

It must though be pointed out that the possibility of pleading the existence of mandatory rules under Article 7(2) of the Rome Convention does not affect the obligation of the Member States to ensure the conformity of those rules with European Union law.

Article 4 and article 7 of the Rome Convention provision on "close connection" with the country whose rules are intended to be applied is an imprecise and discretionary rule. This is not entirely unproblematic. International trade and the ever-increasing economic integration are largely based on private law agreements that are entered into and fulfilled across national borders, which is why the rules on the choice of law in contracts – which determine which country's rules apply in a given contractual relationship – has quite a large practical significance. Further there is no clear legal status in cases where several countries have mandatory rules. For example, if a contract has the closest connection to Denmark, how are the legal status for an employee and the employer in relation to the mandatory requirements under German law that would normally apply?

The main purpose of the Rome Convention has been the harmonization of the various EU countries' rules on the choice of law in contracts. The convention was therefore supposed to promote unitary assessment, so that e.g. Danish and German courts would judge a given contract law case according to the same substantive rules.

In cases where a choice of contract law is necessary/requred', it is precisely because there is something to "choose between", because a given contract is linked to two or more countries and thus to two or more sets of contractual rules, and because the jurisdiction has not been settled between the parties. This is not entirely unproblematic, since in several countries there may be mandatory rules that may conflict and therefor places the parties in an uncertain legal situation.

Further Germany have declared pursuant to Article 22 (1) (a) of the Convention that it will not apply the provisions of Article 7 (1) of the Convention. How this in practice will affect the parties legal status if the jurisdiction has not been settled between the parties is unclear. The German authorities ((Bundesministerium für Arbeit und Soziales) have not returned to our inquiry on this matter. It is therefore not possible to illuminate this further within the framework of this report.

The Convention has been replaced, among all EU countries except Denmark, by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I Regulation). The Rome Convention continues to apply to

Denmark. It continues to apply to contractual obligations concluded before the entry into application of the Rome I Regulation.

3. Danish labour law

In comparison with other countries, Denmark has a flexible labour market due to the Danish model of "flexicurity" (composed of the terms "flexibility" and "security"). The term describes a system between the unions, employers' associations, and the state unions and the employers' associations, as well as statutory legislation, provide flexible employment opportunities with easy access to hiring and dismiss. In return, the state provides a stable social welfare safety net and training opportunities for employees who have been dismissed.

In Denmark, a distinction is made between blue-collar workers, white-collar employees and managing directors. Blue-collar workers are typically characterised by working with practical work, e.g. psychical work such as construction, cleaning etc. The definition of white-collar employees is explicitly defined in the legislation, according to which office/sales workers and employees who supervise and issue instructions to other employees fall within the ambit of the legislation.

While collective bargaining agreements typically apply for blue-collar workers, white-collar employees are covered by the Danish Act on Salaried Employees (in Danish: "Funktionærloven") and less often by collective agreements. The Salaried Employees Act is the most important legal instrument for white-collar employees, with most provisions being mandatory to follow when hiring and firing.

The primary aim of the statutory provisions is to protect employees' rights in relation to e.g. termination and illness.

Collective bargaining agreements in Denmark are concluded between either a union and an employer's organisation or between the union and the individual employer. They regulate salary and working conditions in a specific industry sector or company. Neither Danish nor foreign companies are however obligated to conclude collective bargaining agreements, and hence, terms of employment can be freely negotiated with respect to the statutory provisions.

There are thus mandatory rules concerning employment in Denmark:

- A maximum of 48 hours of weekly work, including overtime (usual working time in Denmark is 37 hours per week)
- Five weeks of annual vacation leave. Public holidays are in addition to this entitlement. Danish labour law prescribes 11 public holidays per year.
- The labor regulations in Denmark mandate employers to offer notice periods of one month to six months to terminate employment, based on seniority level:
    - one month's notice for the first six months of employment
    - three months of notice for six months to three years of employment
    - four months of notice for three to six years of employment
    - five months of notice for six to nine years of employment
    - six months of notice for more than nine years of employment
- Equal treatment and equal pay for all employees, irrespective of gender
- From 1 July 2024, employers in Denmark are required to register the employees' daily working time

It is also mandatory to issue an employment contract outlining all essential terms and conditions. This is required for all employees employed for more than 1 month for more than 3 hours per week on average.

There is no minimum wage in Denmark and salary is a highly negotiable term. The salary must, however, be considered "reasonable" when compared to hours worked. Collective bargaining agreements often specify a certain minimum salary, and even if an employer has not concluded a collective bargaining agreement, it is common to look to the industry's main collective agreement when determining salary for blue-collar workers.

The notice of termination for blue-collar workers is determined in the applicable collective bargaining agreement, if any such is concluded. If not, it is subject to freedom of contract. For white-collar employees, notice of termination is regulated by the Danish Act on Salaried Employees.

Employers are under a duty to establish and maintain a safe working environment, both physical and mental, ensuring that the employees are protected from injuries or health damages and that the

workplace complies with health and safety regulations. The Danish Working Environment Authority (WEA) is the Danish government authority responsible for ensuring compliance with Danish regulations. The WEA also offers companies guidance with regard to health and safety at work.

Employers shall comply with antidiscrimination legislation, based on EU law, which makes it unlawful for an employer to discriminate on the grounds of sex, ethnic origin, disability, age, or sexual orientation in connection with recruitment, promotion, salary, and dismissal. All businesses that have operations in Denmark are covered by The Danish Act on Equal Treatment.

Employees in Denmark accrue statutory retirement pensions (state pension and state supplementary pension) from the Danish government. However, though not mandatory, it's common practice for employers to pay a supplementary pension for their employees.

4. German labour law

The central purpose of the German labour law is to protect employees. Employees are dependent on their employers, not just economically, but personally under their contract of employment. The resulting need for special protection is met by labour law. The basic idea of labour law is to bring about a fair balance of interests between employers and employees. The main purpose of labour law consists of protecting employees from violations of personal integrity, economic disadvantage and health risks involved in working as an employee.

Employees working from home, who are economically dependent on their employers to a higher degree, are also covered by labour law, partly under special provisions and partly under provisions applying to all employees.

German employment law is divided into two areas: individual employment law and collective employment law. Individual employment law concerns relations between the individual employee and the employer, while collective employment law regulates the collective representation and organisation of employees as well as the rights and obligations of employees' representatives.

German labour and employment law is not consolidated into a single labour code. Separate laws for particular issues exist – e.g. the Federal Vacation Act or the Working Time Act. The main sources of German employment law therefore are Federal legislation, collective bargaining agreements, works council agreements and individual employment contracts. Many labour and employment law matters are heavily influenced by case law so that judicial precedent is an important part of the legal framework. Numerous separate laws and case law generally make German labour and employment law difficult to navigate.

Certain minimum standards for conditions of employment are contained in various laws, including the Federal Paid Leave Act (Bundesurlaubsgesetz), the Continued Payment of Remuneration Act (Entgeltfortzahlungsgesetz), the Part-time and Fixed-term Employment Act (Teilzeit- und Befristungsgesetz), the Caregiver Leave Act (Pflegezeitgesetz), and the Family Caregiver Leave Act (Familienpflegezeitgesetz). The statutory minimum standards are:

- Minimum wage that employers must pay to their employees. As of January 1, 2024, the minimum wage in Germany stands at €12,41 per hour.
- A maximum of 48 hours of weekly work, including overtime (usual working time in Germany is 40 hours per week).
- The Federal Act on Holidays entitles full-time employees to a minimum of 20 days of holiday per year. This goes up to 24 days if an employee works a six-day working week normally. Public holidays are in addition to of this entitlement. The number of public holidays varies from nine to 13 days per year, depending on the federal state.
- The German Civil Code mandate employers to offer notice periods of one month to seven months to terminate employment, based on seniority level:
    - four weeks to the 15th or the end of a calendar months' notice for less than two years of employment
    - two months of notice for five to eight+ years of employment
    - three months of notice for ten years of employment
    - four months of notice for ten to eleven years of employment
    - five months of notice for twelve to thirteen+ years of employment
    - six months of notice for fifteen to nineteen years of employment
    - seven months of notice for twenty years of employment
- Equal treatment and equal pay for all employees, irrespective of gender

- Compulsory employee registration of working hour

The statutory guaranteed minimum standards generally apply for all employees, including people employed on a fixed-term (‘Brückenteilzeit’, meaning a fixed-term ‘bridge’ period of part-time employment with the right to return to the former working hours), part-time or marginal basis and people employed by temporary work agencies.

Occupational safety and health and prevention of occupational accidentsis is regulated by law under the national occupational safety and health provisions – notably the Occupational Safety and Health Act (Arbeitsschutzgesetz) and ordinances (secondary legislation) based on it – and accident prevention regulations published by the accident insurance funds.

Germany's General Equal Treatment Act is an extension of human rights protection laws in the European Union that prevents employers from discriminating against employees. The protection offered by the Act extends to unequal treatment on a number of grounds, known as 'multiple discrimination.'" This includes, race, ethnicity, sex, religion/belief, age, sexual orientation, disability and pregnancy and motherhood.

5. Comparability/differences between the two countries’ systems

One of the consequences of expanding trade and travel in the world in general and the European Union in particular is the increased risk that European citizens or companies established in a Member State may be involved in a dispute of which all the elements are not confined to the State where they have their habitual residence. But in the European Union there cannot be a genuine internal market, envisaging free movement of goods, persons, services and capital, without a common law-enforcement area in which all citizens can assert their rights not only in their home country but also in other Member States.

There is considerable similarity in relation to the purpose and minimum standards concerning labour law in Denmark and Germany (see the table below). In practice, this means that it is possible for an employee of a Danish company to work from a home office in Germany or for an employee of a German company to work from a home office in Denmark .

	Denmark	Germany
Mandatory rules		
Minimum wage	None	12,41 (2024) (Minimum Wage Act of 11 August 2014 (Federal Law Gazette I, p. 1348), as last amended by Article 2 of the Act of 28 June 2023 (Federal Law Gazette 2023 I No. 172)
Maximum working hours	48 (in practice 37)	48 (in practice 40)
Holidays and Public	25 holidays and 11 public holidays	20 holidays and up to 13 public holidays
Notice periods to terminate employment	One month to six months based on seniority level for the white-collar employees.	One month to seven months based on seniority level
Equal treatment and equal pay for all employees, irrespective of gender	Yes	Yes
Compulsory employee time tracking	Yes	Yes

However, there are also significant differences in the systems of the two countries. The dismissal protection is ruled completely different in Denmark and Germany. In Germany the protection is

regulated by law, because law guarantees the same rights for everybody. But in Denmark the collective contract defines the rights, if any such is concluded. The Danish Employees Act (Funktionærloven) only rules the dismissal protection for the white-collar employees.

Further the workhours, minimum wage, maternity leave and public holidays are different in the two systems. This gives rise to several practical problems For instance, how is the legal situation for a person working for a Danish employer in Germany on a German public holiday? Or for a person working for a German employer in Denmark if the employee's child is sick?

The fact that case-law obstacles to cross-border home offices and jurisdiction in these cases is poorly and the fact that the systems in Denmark and Germany are so different and not applicable creates an unclear legal status for the employees working in home-office. Removing the obstacle of "double labour law" and unclear regulation could increase the employer's willingness to agree to work from home. This would increase the employer's competitiveness on the labour market (Lack of qualified workforce). At the same time it would increase the mobility and the possibilities for potential employees. Seen together this will lead to a higher degree of mobility in general.

IV. Description of a possible solution

The fact that the growth of remote working has enabled employees to live and work outside the country in which their employer and its premises are situated has led to a change of domicile on the part of many employees and thus affected the jurisdiction of domestic courts. However, this is not completely unproblematic hence some of the issued mentioned above in section 5. Therefore, solutions for home offices in other countries will require changes either in national legislation or in EU legislation.

1. EU-charter

The European Commission and the European Council could propose an initiative for a European Charter for labour in the EU, including minimum standards to ensure employment value and avoid exploitation. The minimum standards could include a detailed description of the working &

employment conditions, including home-office. Further it could state that the most favourable national regulation for the employee applies in any dispute.

2. Digital/telework frontier workers

Legal regulation is a relevant foundation for uncovering and tackling any dispute concerning labour and undeclared work in telework. Even more so in the case of tackling undeclared work in home-office, especially among teleworkers with several employers or serving various clients in cross-border settings.

There is no specific legal status for employees who work remotely from a different EU country. In EU law, they would be considered posted workers, multinational workers or a normal employee in their country of residence (when their employer is deemed to have a permanent establishment there) if and when some requirements are met.

Although there is no specific legal status for remote cross-border work, there is a status for employees who cross a national border physically from their country of residence to the country where they are employed within the EU, i.e. frontier workers or cross-border workers. Since cross-border remote workers also live in a different country to their state of employment, but cross the border digitally instead of physically from a home-office, the EU could consider introducing the concept of a digital frontier worker. In fact, during the pandemic, cross-border workers effectively became digital/telework frontier workers when lockdowns obliged them to telework. However, during the pandemic a force majeure was declared, suspending the changes that would normally have to take place in tax and labour law, amongst others. Now, cross-border workers might still engage in some telework even though restrictions have been lifted. Consequently, they and their employers are exactly exposed to the aforementioned difficulties.

An explicit legal framework under the digital frontier worker concept would reduce uncertainty and would not be limited to neighbouring countries. Additionally, it would be less dependent on thresholds that trigger the application of different work statuses which subsequently creates legal and tax implications for employers and employees.

3. The EU Framework Agreement on Telework

There is currently at EU Level no legislation specifically regulating telework in home-office, although several directives and regulations address issues that are important to ensure good working conditions for teleworkers.

Essentially, it shall always be the duty of any employer to ensure the health and safety at all times, of all persons who may be affected by the work being carried out for such employer, even during telework in home-office. In fact, it has become extremely common to see employers regulating teleworking employee, especially following the COVID-19 pandemic. Employees have adapted to teleworking arrangements in terms of accessibility, flexible working times, continuous connectivity, social isolation and telework expenses, among others. However, due to the increase of employees working from home, more work-related incidents may occur in the employees' homes during work hours. Such teleworking arrangements present specific challenges for the employer to ensure and fulfil several occupational safety and health obligations, and the lack of EU legislation on the matter is unhelpful.

Where can the line be drawn between the happening of accidents at home during the employee's professional obligations, and accidents which happen at home during an employee's personal life? And secondly, what measures must be taken by the employer to prevent the teleworker from suffering from any physical or mental incidents during telework at home?

On July 1, 2023, a multilateral framework agreement came into force based on Regulation (EC) 883/04 on social security, which regulates social security obligations in cross-border teleworking. According to this regulation, cross-border teleworking refers to activities that can be performed independently of location and could be carried out either at the employer's premises or at their registered office, but are:

- performed in a Member State other than the one in which the employer is based, and
- rely on information technology to maintain contact with the employer's work environment and stakeholders/customers to fulfill tasks assigned by the employer.

Overall, the voluntary EU Framework Agreement on Telework mainly includes general recommendations related to information provided to and consultation with teleworkers on Occupational health and safety (OHS) policies and about on prevention of some psychosocial risks (isolation). Although it provides general and brief advice on telework employment conditions, the organisation of work, data protection, privacy, work equipment usage and collective rights, the agreement is purely voluntary in nature and therefore every Member State may opt to implement it at their own discretion.

However, the mention of telework-related accidents is nowhere referred to, meaning that once the issue arises, it is completely up to the employer to decide on how to tackle the situation, unless a specific clause in the employment contract related to accidents, even during teleworking (and not at office), is included. This diminishes the safeguarding which the law should always afford to the employee as the weaker party to an employment contract.

One solution could be to include more specific working and employment conditions for home office and teleworking, including telework-related accidents in the Framework Agreement on cross-border telework for home-office and teleworking. Further the Framework Agreement should not be voluntary.

On 30 October 2023, the Danish Ministry of Employment announced that Denmark will not sign the social security Framework Agreement on cross-border telework. As a result, the Framework does not apply in Denmark. Denmark is therefor only obliged to comply with the Rome Convention. However, Denmark has already an agreement concerning some elements of the Framework with Sweden.

4. Changing national legislation

The labour laws in both Denmark and Germany are primarily adapted to national standards and culture. For home-office to be carried out in another country, changes in the national regulations in both countries are required. But this is not completely unproblematic.

The Danish model is not a static entity; indeed, part of its strength is its ability to be flexible. Of the existing 22 directives concerning the labour market, more than half were introduced in the 1970s and 1980s, and these were relatively painless to implement in the collective agreements. The Danish model has always been characterised by close but mostly informal relations between the social partners and the political structure. The general rule has been a clear distinction between legislation and collective agreements, respected by both sides. A more regulated labour marked in Denmark like in Germany would therefore be very difficult. This would have a negatively effect on the flexibility in the Danish labour marked or maybe even demolish the Danish Model which have been fundamental for the employees' opportunities to have a direct influence on their working conditions. That is not something that is left to the politicians. The possibility of maintaining the conditions that has been achieved and the opportunity to develop them further requires flexibility and strong communities that can lift in droves.

However, this doesn't mean that other European countries should seek to emulate Denmark or that the model can be exported to other European countries. Each element of the Danish model has a different effect on unemployment and the cost of implementing the Danish model is very high. The costs associated with flexicurity may make the model less applicable to some countries. This includes Germany.

A flexicurity-orientated reform would undermine fundamental principles of the labour market constitution in Germany. First of all, employment protection through redundancy regulations and work councils would have to be abandoned. These, however, are core elements of labour law and codetermination. Principal changes would not be possible without compensation of workers in the form of (very) favourable job opportunities on the German labour market or generous unemployment benefits. Regarding the labour market and the budgetary situation in Germany, both alternatives appear to be rather unfeasible.

Secondly, changing a job would involve very high risks as workers lose a relatively high level of legal and real job protection in exchange of a more or less unprotected job – at least during the qualifying period. Therefore an uneven distribution of labour market risk can be discerned on the German labour market.

5. Common rules based on bilateral agreements

Shared standards are needed to protect employees in home-office across the EU equally. While some common ground exists, for the most part national-level regulation on home-office differs between Member States, with notable disparities in health and safety, working time, and the right to disconnect. This also applies for Denmark and Germany. Both countries could therefor sign ad hoc bilateral/multilateral agreements, creating new pieces of legislation specifically conceived to regulate certain areas of cooperation. The agreement could find inspiration from the social security Framework Agreement on cross-border telework or they could decide that the Framework also apply for working cross the borders between Denmark and Germany.

6. Information portal

The most obvious solution will be an official information portal. Both Denmark and Germany are obliged to comply with the Rome Convention. Based on this convention, the reservations concerning the conventions and the mandatory provisions and case law in Denmark and Germany concerning labour law, an official information portal can be created by the relevant authorities in both countries for employers and employees about home-office across the border. With an information portal everyone is informed about the legal situation and rights of all parties. The parties are therefore informed about the legal situation and rights of both parties. The parties can hereafter make informed decisions.

V. Other relevant aspects to the case

The shift to remote work will continue in the coming years because of further technological and societal changes. With the potential increase in the number of employees working remotely for a company outside their country of residence, the associated regulatory challenges will need to be addressed in the EU. Facilitating cross-border teleworking in home-office is fully aligned with EU policies on promoting cross-border labour mobility in the European single market. Therefor a solution on EU-level for this case would be preferred. The EU-commission or other relevant EU-

bodies could create an official information portal on EU-level. All the EU-States are obliged to comply with the Rome Convention. Based on this convention and the mandatory provisions and case law in the EU-States concerning labour law, an official information portal can be created by the EU-Commission for employers and employees about home-office across the border. With an official EU-information portal everyone the EU is informed about the legal situation and rights of all parties. The parties are therefore informed about the legal situation and rights of both parties.

VI. References and Appendix/Appendices if any

- Sozialer Schutz bei Arbeit vom Homeoffice im Binnenmarkt, Eberhard Eichenhofer, ZESAR 09.2023, p.355-363.
- Udfordringerne for den danske model; Oplæg til LO's kongres 2011, Landsorganisationen i Danmark.
- Gennemførelse af EU's arbejdsret – kollektive aftaler eller lovgivning?, Jens Kristiansen, p. 401-416.
- Ernst Steindorff, 'Anmerkung zu EuGH verb. Rs. 259, 331 und 332/91 Allué II' (1994) JZ 95
- Friedl Weiss and Frank Wooldridge, *Free Movement of Persons within the European Community* (2002); Oliver Remien, *Zwingendes Vertragsrecht und Grundfreiheiten des EG-Vertrages* (2003)
- Christof Kerwer, *Das europäische Gemeinschaftsrecht und die Rechtsprechung der deutschen Arbeitsgerichte* (2003)
- Torsten Körber, *Grundfreiheiten und Privatrecht* (2004)
- Ulrich Becker, 'Free Movement of Workers' in Dirk Ehlers and Ulrich Becker (eds), *European Fundamental Rights and Freedoms* (2007)
- Catherine Barnard, *The Substantive Law of the EU—The Four Freedoms* (2nd edn, 2007)
- Report on the Convention on the law applicable to contractual obligations by Mario Giuliano, Professor, University of Milan, and Paul Lagarde, Professor, University of Paris I (OJ C, C/282, 31.10.1980, CELEX
- Official Journal of the European Communities, C 282, 31 October 1980 (OJ C, C/282, 31.10.1980)

- Labour Market Reforms and Homelessness in Denmark and Germany: Dilemmas and Consequences Lars Benjaminsen and Volker Busch-Geertsema, SFI (The Danish National Centre for Social Research), Copenhagen; GISS (Association for Innovative Research and Social Planning), Bremen, European Journal of Homelessness _ Volume 3, December 2009, p.127-153.
- https://kpmg.com/xx/en/home/insights/2023/07/flash-alert-2023-149.html
- https://max-eup2012.mpipriv.de/index.php/Employment_Contracts,_Individual_(PIL)
- https://www.eu.dk/samling/20211/kommissionsforslag/KOM(2021)0762/bilag/4/2554385.pdf
- file:///D:/USB-drev/B-Solutions/Arbejdsret/rules-and-rights-when-working-in-denmark.pdf
- file:///D:/USB-drev/B-Solutions/Arbejdsret/Bilag%2021%20-%20Rom%20I-forordningen%20.pdf
- https://bm.dk/media/6083/arbejde_i_danmark_maj_2006.pdf
- https://fho.dk/wp-content/uploads/lo/2017/05/3237-den-danske-model-lokongres2011.pdf
- https://www.bmas.de/SharedDocs/Downloads/DE/Publikationen/a998-social-security-at-a-glance-total-summary.pdf?__blob=publicationFile&v=2

Legal references

- Convention 80/934/EEC on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980.

- Rome Convention on the law applicable to contractual obligations (consolidated version) Official Journal C 027, 26/01/1998 P. 0034 – 0046.

- Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland).

- Framework Agreement on the application of Article 16 (1) of Regulation (EC) No. 883/2004 in cases of habitual cross-border telework.

- Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I Regulation).

- Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (codification).

- Consolidated version of the Treaty on the Functioning of the European Union OJ L. 326/47-326/390; 26.10.2012.

- Executive Order on the Act on the Legal Relationship between Employers and Salaried Employees (LBK nr 1002 af 24/08/2017 Bekendtgørelse af lov om retsforholdet mellem arbejdsgivere og funktionærer).

- Directive (EU) 2019/1152 of The European Parliament and of The Council of 20 June 2019.

- Consolidation Act on Equal Treatment of Men and Women as regards Access to Employment etc. (LBK nr 1575 af 19/12/2022 Bekendtgørelse af lov om ligestilling af kvinder og mænd).

- The Federal Vacation Act (Bundesurlaubsgesetz in der im Bundesgesetzblatt Teil III, Gliederungsnummer 800-4, veröffentlichten bereinigten Fassung, das zuletzt durch Artikel 3 Absatz 3 des Gesetzes vom 20. april 2013 (BGBl. I S. 868) geändert worden ist).

- The Working Time Act (Arbeitszeitgesetz vom 6. Juni 1994 (BGBl. I S. 1170, 1171), das zuletzt durch Artikel 6 des Gesetzes vom 22. Dezember 2020 (BGBl. I S. 3334) geändert worden ist).

- The Continued Payment of Remuneration Act (Entgeltfortzahlungsgesetz vom 26. Mai 1994 (BGBl. I S. 1014, 1065), das zuletzt durch Artikel 9 des Gesetzes vom 22. November 2019 (BGBl. I S. 1746) geändert worden ist).

- The Part-time and Fixed-term Employment Act (Teilzeit- und Befristungsgesetz vom 21. Dezember 2000 (BGBl. I S. 1966), das zuletzt durch Artikel 7 des Gesetzes vom 20. Juli 2022 (BGBl. I S. 1174) geändert worden ist).

- The Caregiver Leave Act (Pflegezeitgesetz vom 28. Mai 2008 (BGBl. I S. 874, 896), das zuletzt durch Artikel 2 des Gesetzes vom 19. Dezember 2022 (BGBl. I S. 2510) geändert worden ist)

- The Family Caregiver Leave Act (Familienpflegezeitgesetz vom 6. Dezember 2011 (BGBl. I S. 2564), das zuletzt durch Artikel 3 des Gesetzes vom 19. Dezember 2022 (BGBl. I S. 2510) geändert worden ist).

- The German Civil Code (Civil Code in the version promulgated on 2 January 2002 (Federal Law Gazette [Bundesgesetzblatt] I page 42, 2909; 2003 I page 738), last amended by Article 1 of the Act of 10 August 2021 (Federal Law Gazette I p. 3515)).

- Occupational Safety and Health Act (Arbeitsschutzgesetz vom 7. August 1996 (BGBl. I S. 1246), das zuletzt durch Artikel 2 des Gesetzes vom 31. Mai 2023 (BGBl. 2023 I Nr. 140) geändert worden ist).

- Germany's General Equal Treatment Act (General Act on Equal Treatment of 14 August 2006 (Federal Law Gazette I, p. 1897), as last amended by Article 4 of the Act of 19 December 2022 (Federal Law Gazette I, p. 2510)).

Case-law

- ECJ Case 75/63 – Unger [1964] ECR 383, 39, Judgment of the Court of 19 March 1964.

- ECJ Case 66/85 – Lawrie Blum [1986] ECR 2121, Judgment of the Court of 3 July 1986.

- ECJ Case C-94/07 – Raccanelli [2008] ECR I-5939, Judgment of the Court of 17 July 2008

- ECJ Case C-415/93 – Bosman [1995] ECR I-4921, Judgment of the Court of 15 December 1995.

- ECJ Case C-519/04 – Meca Medina [2006] ECR I-6991, Judgment of the Court of 18 July 2006.