



TWING PROJECT

Poland – Spain

**Transferability workshop
report**

AUTHOR: MACIEJ PAŃKÓW

PARTNER: INSTITUTE OF PUBLIC AFFAIRS, NOTUS-ASR

notus | recerca social aplicada
investigación social aplicada
applied social research
recherche sociale appliquée

**INSTYTUT SPRAW
PUBLICZNYCH**



This publication was produced for the project TWING – Exploring the contribution of social dialogue and collective bargaining in the promotion of decent and productive telework in the post-COVID-19 scenario (GA 101052332), funded by the DG Employment, Social Affairs and Inclusion of the European Commission. The opinions expressed in this report reflect only the authors' view. The European Commission is not responsible for any use that can be made of the information contained therein.

INDEX

1. Introduction	3
2. Setting of the focus group discussion	3
3. Practices of telework in the sectors under scrutiny	4
4. Best practices indicated by the social partners	6
5. Sectoral features and factors for implementing good practices	8
6. Transferability	9
7. Conclusions	11

1. Introduction

This report discusses the proceedings and outcomes of a workshop held on 21 June 2024 in Warsaw as part of the TWING research project. The aim of the meeting was to discuss among representatives of the partner organisations responsible for the project and the social partners representing two different countries, Spain and Poland, the prospects of transferring good practices on the regulation of telework between these countries, alternatively between different sectors or companies. The meeting allowed representatives of the social partners to familiarise themselves with the principles under which teleworking is carried out and regulated through social dialogue in both countries, and with good practices in this area at the level of specific companies or sectors. An additional important thread was the discussion on the possibilities of transferring these practices, taking into account the legal context and social dialogue practices in both countries, which may constitute factors favouring or hindering the implementation of certain solutions.

2. Setting of the focus group discussion

The workshop was organised in a hybrid format, combining the on-site presence of some participants with remote participation. Spain was represented by two representatives of the project leaders, NOTUS ASR, together with invited trade unionists from two sectors of the economy: chemicals (pharmaceuticals) and banking. Two trade unionists representing a company belonging to the pharmaceutical sector were present on site, while the banking representative, linked to the sectoral trade union structures, participated remotely via the Zoom videoconferencing platform. The Polish side consisted of two researchers from the Institute of Public Affairs (IPA), two trade unionists representing the IT sector (strictly: an international market research company, also active in the IT field), and two union representatives from the banking sector participating remotely. Both of these people belong both to the management structures of a medium-sized sectoral trade union active in banking and are active in its structures at the level of particular large universal banks present in Poland.

The discussions were held in the participants' native languages thanks to the simultaneous interpretation provided. At the beginning, a representative of the host (IPA) welcomed the guests and briefly recalled the assumptions and objectives of the TWING research project and the current workshop. Then, the second representative of IPA presented the main results of the fieldwork in Poland, focusing on the basic aspects of the labour law concerning

the use of telework (or strictly – remote work, as such a term exists in the Polish legal order). In a further step, the NOTUS representatives presented the main findings of a case studies conducted in the banking and chemical sectors in Spain. These introductory presentations, designed to familiarise all participants with the context of teleworking in both countries with particular reference to the social dialogue concerning it, were followed by the main discussion among the invited representatives of the social partners. The discussion took the form of a focus group interview (FGI): the moderator first briefly introduced the issue to be discussed and then asked participants to comment on it. Each participant had the opportunity to speak freely for several minutes on every issue. Interaction took place not only between the moderator and the participants, but also – spontaneously – among the latter, fostering a free exchange of ideas.

The discussion was divided into two parts, with a coffee break in between. In the first part, all participants had the opportunity to describe the teleworking situation in their sector, outlining the national/sectoral legal framework and the status of the social dialogue on telework. This was followed by a discussion of good practice examples, known to the interviewees, of regulating this form of work provision through negotiation or consultation between the social partners. The participants focused on those documents that had been developed in their home companies or, in the case of multi-employer bargaining, sectors. The second part provided an opportunity to discuss the possibility of transferring the previously discussed good practices in telework regulation through social dialogue in the other country, as well as in contexts other than the original (e.g. other companies, sectors). The main conclusions from both parts of the discussion will be analysed below.

3. Practices of telework in the sectors under scrutiny

The discussion showed that telework in both countries is a relatively important phenomenon for the social partners, although it is given more or less importance in the different sectors. It is also a relatively new issue as a practice offered by employers and as a subject for social dialogue, the popularity of which has increased considerably as a result of the COVID-19 pandemic and the associated sanitary restrictions. At the same time, important differences between the two countries are discernible, concerning, in the first instance, the timing of the response to this increase in popularity. In Spain, new legislation on teleworking was introduced by royal decree as early as autumn 2020, while in Poland, the new law, after lengthy discussions among the social partners and numerous disputes, only managed to be passed in autumn 2022 and came into force in spring 2023. At the time of the COVID-19

pandemic, out-of-office work in Poland was regulated by temporary and provisional legislation (lacking, among other things, provisions on health and safety at work), which needed to be developed and made more specific before being made permanent in general legislation. A second important element of the national context that differs between the two countries is the relatively stronger social dialogue in Spain, including in particular the practice of collective bargaining at sectoral level, absent in Poland. This means that, in the first country, the potential of the sectoral social partners can be used to effectively work out mutually beneficial collective agreements. In the latter country, on the other hand, we can only speak of negotiations and consultations at the individual company level, as well as national tripartite social dialogue. The latter, however, has a consultative formula and the results of the talks are taken into account by the government to a limited extent, depending on the will of policy-makers.

As far as the banking sector is concerned, represented by trade unionists from both countries, what distinguishes it in both Spain and Poland is the simultaneous: high teleworkability among employees, the interest of the social partners in this topic and the generally good or very good results of dialogue as a mechanism for regulating the rules under which teleworking is conducted. At the same time, there are banking employees in both countries who are not able to work remotely due to the nature of their duties – these are employees of local bank branches, employed in direct customer service. In the case of Poland, it was emphasised that there is a long-term downward trend in terms of the share of such employees due to the increasing digitalisation of banks, the growing importance of remote channels for providing services and the closure of local branches. On the other hand, in Poland, the lack of teleworkability among local branch employees is treated as a fact that cannot be remedied. Spanish unions, on the other hand, are taking more active steps to enable these employees to do at least a small amount of telework in the course of the week, or a kind of employee rotation that allows temporary teleworking.

The IT sector, represented only by participants in Poland, is particularly poorly unionised in this country. The few trade union organisations are characterised by their short lifespan and are often harassed or at least ignored by the employing side. The good practice analysed in the next section is an exception to the general rule identified in the TWING project, according to which unions in this sector had no voice regarding telework rules in companies. Overall, the scale of telework use in the sector is very high, facilitated by the nature of the tasks performed and the possibility of immediate transfer of work results to superiors. Employee rights, despite mostly high salaries, are often not respected, e.g. with regard to working time or holidays. In many cases, moreover, the regulations of the Labour Code do

not apply, as employees are often employed under civil law contracts or cooperate with the employer on a B2B basis.

With regard to the chemical (pharmaceutical) industry, represented by two trade unionists from Spain, the situation in the company where they are employed was discussed, with some references to the wider pharmaceutical labour market. The participants highlighted that the outbreak of the pandemic was a turning point in terms of the practice of remote work – previously it had only been implemented on a small scale, while the sanitary restrictions forced all employees capable of teleworking to leave their employer's premises. After the pandemic, employees, in turn, faced with the reluctance of managers to maintain remote work, began to resign from their employment with the company, which forced the company's authorities to accept this new form of work provision. Initially, one day of teleworking was allowed and, after negotiations with the union, it was possible to increase the weekly dimension for employees capable of teleworking to three days. In the case of production workers, one day of telework was successfully negotiated, and the union is now making efforts to increase this to two days per week. These rules are also accompanied by flexible working time patterns.

4. Best practices indicated by the social partners

All of the cases of telework regulation through social dialogue described by the participants deserve to be briefly mentioned, as they are interesting – and very diverse – examples of trade union commitment and determination to ensure decent telework conditions.

In the banking sector in Poland, a case was identified of a bank where, thanks to goodwill and readiness for dialogue on the part of the employer, a thorough process of consultation on the detailed rules of remote working was carried out as required by the amendment to the Labour Code, which came into force in spring 2023. Several weeks of discussions resulted in the signing of an agreement on the content of the company's remote working regulations. The union side agreed with the employer on the amount of reimbursement for remote work paid by the employer (EUR 1.20 per day of remote work), the range of organisational units and positions where remote work is allowed and its weekly share, as well as health and safety issues. The negotiated rules are relatively favourable compared to other banks, the employer took into account various comments from the union side on the draft rules. There were no manifestations of creating time pressure, occurring in various other companies in Poland, resulting from the obligation to conclude an agreement within 30 days, after which the employer can unilaterally introduce remote work rules in the company.

In the case of the Spanish banking sector, a sectoral collective agreement has been concluded in 2021, which is positively assessed by the trade union side, bringing numerous improvements for employees in relation to general labour regulations. It was emphasised that the document is a manifestation of a successful compromise between employee and employer representatives, being, in the view of the social partners, a point of reference for social partners in other sectors and even a source of inspiration abroad. Although there is detailing of the rules for remote working at the level of specific companies, in the opinion of the representative of the sectoral trade union structures, this is not necessary in many cases, as the content of the agreement is sufficiently detailed and beneficial for employees. The document regulates, among other things, the weekly share of remote work for specific positions, the equipment (telephone, internet connection, ergonomic chair) that companies must provide to employees and the amounts of reimbursement for media costs (these rates are significantly higher than typical reimbursement rates in Poland). In addition, specific measures are foreseen to prevent the psychosocial effects of teleworking; the ways in which trade unions can communicate with employees working remotely are also regulated.

As far as the Spanish pharmaceutical company is concerned, there has also been a successful conclusion of a company collective agreement at the company as a result of negotiations led by the union side within the works council. This took place in July 2022. Amongst other things, the range of positions where remote working can be carried out was regulated, along with the weekly share of teleworking time. As indicated above, the trade union side was determined to negotiate a clearly higher proportion of out-of-office work than the employer preferred, and this was even the case for production workers where there are technical limitations for this form of performing their duties. It must be said that it was possible, in line with the employees' preferences, to obtain a significant share of remote working and, in addition, to include some arrangements to ensure flexible working hours for employees with special needs (e.g. parents of young children). A reimbursement of the employee's costs paid by employers of EUR 7.00 per teleworking day has also been negotiated. The employer also provides employees with the necessary equipment (laptop, smartphone, headphones).

In the case of a Polish IT company (strictly: a market research company, but with a significant range of IT activities in its portfolio), we are dealing with a specific situation resulting from the company's dislike of trade unions, even harassment of trade unionists, and ignoring their voice with regard to the rules of remote working. The employer ignored the trade union's position on the draft remote working regulations, which led its members to make the issue the subject of an already ongoing collective dispute. They also notified the

State Labour Inspectorate of the irregularities. The result was that some demands, rather inferior in the trade unionists' view, were accepted: the employer withdrew the employee's responsibility for servicing the equipment entrusted to them for purpose of remote work and the provision on the possibility of termination of the employment relationship in the event of a breach of the remote working rules. At the same time, the demands for an increase in the reimbursement rate for telework costs were not included. Subsequently, the employer did not take into account, in a separate consultation, the union's negative position on increasing the number of days of office work from one to two per week. Overall, however, compared to other companies in the IT sector in Poland, the determination and relative effectiveness of this union's action, which made it necessary for the employer to recognise its right to consult on the principles of remote working, should be appreciated. This brings some prospects for strengthening social dialogue in the sector in the future.

5. Sectoral features and factors for implementing good practices

The sectors where abovementioned good practices have been identified are characterised by medium (pharmaceutical industry), medium-high (banking) to high teleworking (IT). The first of these areas is the most inclusive of positions where teleworking is impossible or can only be done to a limited extent (manufacturing, blue collar positions). In virtually all of these sectors, the majority of workers prefer telework (hybrid work), which creates pressure on unions to take this issue into account in their relations with employers in an effort to provide employees with the widest possible opportunities to work outside the office. Unions are also interested in negotiating adequate reimbursement rates for remote working, which they are more successful in Spain.

The banking sector in both countries is characterised by a relatively high negotiating power of trade unions and a willingness of employers to dialogue and regulate telework in consultation with trade unions. The scope for telework is relatively large (not including only employees working in direct customer service), making it possible in both countries to negotiate telework for a wide range of positions and with a relatively high proportion of out-of-office work per week. At the same time, the presence of stronger sectoral structures and the practice of negotiating sectoral collective agreements creates better prospects in Spain for uniform teleworking rules across banks. In Poland, there is a higher probability of failure of negotiation/consultation of telework rules in some specific banks. Moreover, with regard to certain aspects of working conditions, bank boards have a practice of looking at other banks and finding instances of regulation that are least favourable to employees. Thus, it could be

said that it is more the market than social dialogue that then influences particular aspects of employment.

In the case of the Spanish pharmaceutical company, it seems that the market also played an important role in maintaining teleworking after the pandemic – its failure to do so risked employees moving to other companies. At the same time, the trade union side, despite failing to engage in collective bargaining at the industry level, was in a strong enough negotiating position that it was able to negotiate a number of favourable solutions for employees, as well as ensuring the maximum possible share of remote work for employees with lower teleworkability. The company's social dialogue mechanisms proved to be sufficiently effective for reaching a mutually beneficial agreement.

This mechanism, however, even at the level of individual companies, is practically absent in the Polish IT industry. In many companies there are no trade unions at all, or they are weak and not recognised by employers. In the example analysed above, partial success was possible thanks to the determination of trade unionists, but also certain features of employment in the company, such as the widespread use of employment contracts (in a typical IT or gamedev company, civil law contracts or B2B cooperation often predominate). An additional factor weakening the position of unions is the specific corporate culture and mentality of employees, which practically excludes the use of various forms of protest, including strikes. Unions therefore do not have this important “negotiating lever” in many service sectors. The regulations, in turn, do not impose an obligation on the employer to reach an agreement on the principles of remote work with the trade union side, which, in the absence of the former's goodwill, ends up ignoring the voice of the trade unionists.

6. Transferability

In light of the above analyses, it must be concluded that the transferability of good practices between Spain and Poland has its important limitations, due to the different culture of social dialogue, collective bargaining practices and trade union positions. Almost every aspect of the national system of collective labour relations favours Spain – Polish solutions are less effective from the perspective of ensuring decent working conditions. At the same time, the good practices identified during the workshop in terms of regulating telework point to the sense of transfer practically only in the Spain -> Poland direction: the agreements concluded at company level in the latter country are at best (almost) equally favourable, if we do not take into account the usually narrower scope of the regulations they contain, as well as the

significantly lower typical reimbursement rates for remote work costs. Worse still, the transfer of good practices is proving problematic anyway for several fundamental reasons.

Firstly, the practice of sectoral collective bargaining is absent in Poland. Admittedly, the law provides for multi-employer collective bargaining, as well as a mechanism for extending multi-employer collective agreements to the entire sector. However, the practice of negotiating such agreements is very rare and their extension has never been used. There is also often a lack of relevant sectoral employer organisations to undertake negotiations, or they are not interested in collective bargaining, focusing more on advocacy or lobbying activities. Sectoral trade union structures are also often weak. Therefore, a source of inspiration can at most be found in cases of negotiated agreement on telework rules at individual company level. However, here, too, it will be difficult to convince employers to negotiate the principles of telework as part of a collective agreement, due to the regulations that came into force in spring 2023. This is because the amendment to the Labour Code introduced the practice of negotiating a separate piece of internal company regulations, which are remote working regulations.

Moreover, failure to reach an agreement on the content of such a document within the statutory deadline allows the employer to unilaterally adopt telework rules, at most partially taking into account the arrangements made with the trade union. In addition, the new Labour Code provisions on telework are extensive and very detailed, leaving a rather narrow range of matters that can be regulated at the company level. It mainly covers the reimbursement rates for remote work costs, the scope of positions with the possibility of remote working and certain technical issues related, for example, to the remote monitoring. Therefore, for example, the provision of the collective agreement mentioned by the Spanish participants regarding the possibility to indicate more than one place of remote work is not possible in Polish conditions: national regulations impose the choice of one place of remote work at a given time and informing the employer about it. However, it is worth considering expanding the range of issues that make up remote working agreements in Polish companies. A good source of inspiration is the collective agreement from the banking sector in Spain, which – in addition to basic issues – includes mechanisms to prevent the psychosocial effects of teleworking and a description of the rules for trade unions' communication with employees working remotely. It is also possible to imagine agreements on measures aimed at maintaining a work-life balance (taking into account the needs of different groups of employees, e.g. parents of young children, employees with care responsibilities for the elderly or the disabled, etc.), elements of an anti-discrimination policy or a reference to

training for employees and managers, adapting to teleworking and managing a dispersed team.

Workshop participants pointed to potential channels for the dissemination of good practices in the regulation of telework, including those related to the international cooperation of the social partners. Firstly, the promotion of favourable solutions could be mediated by European federations of trade unions and employer organisations. This was the case with the aforementioned Spanish sectoral agreement on teleworking for banking, which was promoted abroad. Secondly, the potential of European Works Councils (EWC) in disseminating good practices was pointed out (some participants have experience from participating in these bodies). However, it is important to be aware that the issue of transferring good practices this way is a complex topic. EWC delegates from different countries cannot always afford cross-border solidarity, and not all councils provide an effective forum for the exchange of views and ideas. Nevertheless, the idea seems interesting, as there is no doubt that EWCs have the potential to raise awareness, especially among workers from countries with lower levels of economic development and less developed social dialogue, of the good practices present in the most developed countries of the European Union.

7. Conclusions

The workshop held in Warsaw on 21 June 2024 was an opportunity to present participants with interesting examples of the implementation of telework principles through collective bargaining and consultation. At the same time, it revealed significant differences in the way social dialogue is conducted in Spain and Poland, and thus limitations to the transferability of good practices. Firstly, the asymmetry resulting from the different level of development of the economy and the national system of collective labour relations makes even the most favourable Polish cases of remote working agreements for workers unattractive for trade unionists in Spain. As for the potential of transferring good practices in the other direction, transplanting Spanish solutions to the Polish ground may face limitations due to the lack of sectoral collective bargaining practice in Poland. At most, specific provisions on certain aspects of remote working may be of interest to Polish trade unionists, provided that the employer side would be willing to take them into account and that they would not be in conflict with specific national labour laws. Undoubtedly, however, the workshop was – as suggested by the numerous reactions of the participants – an interesting experience for

them, improving their awareness of solutions for regulating teleworking through social dialogue in the other country and sector.