

# THE PRIVATE INTERNATIONAL LAW ASPECTS OF TELEWORK AND REMOTE WORK

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# PRIVATE INTERNATIONAL LAW – THE BACKGROUND

- Transnational employment relationships
- Individual v collective
- Jurisdiction of employment tribunals
- Application of employment laws
- EU v third states

# THE PROBLEM OF TELEWORK AND REMOTE WORK

- Non in contemplation of the drafters of the Brussels and Rome Regulations
- Two basic scenarios:
  - 1) An employee who habitually worked in Country A now works remotely from Country B
  - 2) An employer from Country A hires an employee in Country B to work remotely from Country B

# THE PROBLEM OF TELEWORK AND REMOTE WORK

- Are tele- and remote workers “employees” for the purposes of private international law?
- Jurisdiction affected because employees can only be sued where they live
- Where is the habitual place of work?

# THE PROBLEM OF TELEWORK AND REMOTE WORK

Brussels I: “courts for the place where or from where the employee habitually carries out his work or...the courts for the last place where he did so”

Rome I:

“law of the country in which or, failing that, from which the employee habitually carries out his work”

“The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.” “work carried out in another country should be regarded as temporary if the employee is expected to resume working in the country of origin after carrying out his tasks abroad”

# THE PROBLEM OF TELEWORK AND REMOTE WORK

Basic scenario 1: does the habitual place of work change?

Basic scenario 2: is there a habitual place of work?

Courts take into account all objective and subjective factors, the key question being the location of the home office “where or from which the employee principally discharges his obligations”, mutual intention of the parties and time spent in different countries (Case C-125/92 *Mulox*; Case C-383/95 *Rutten*)

Consequences: fragmentation of the internal labour market and potential undermining of EU employment legislation

# SOLUTIONS

- The potential loss of protection and undermining of EU employment legislation can be tackled by the courts through the concept of overriding mandatory rules
- Fragmentation seems inevitable
- Legislative change unlikely
- Role for transnational collective bargaining?