

Managing Employee Relations in the Post-Covid World

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Summary

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- 5. Complying with GDPR**
- 6. Dealing with costs incurred by remote working**

I. Introduction: the experience of remote working during Covid-19

1. Remote working in Europe

1.1 Introduction

- Definition by the European Commission as *“the remote provision of labor that would otherwise be carried out within company premises”*
 - Has grown significantly over the past twenty years,
 - Increasing digitalisation and flexibilisation of the labor market
 - Became the primary form of work organization during the Covid-19 pandemic between March and June 2020
 - **Expected to play a key role in the organization of work in Europe in the coming years.**

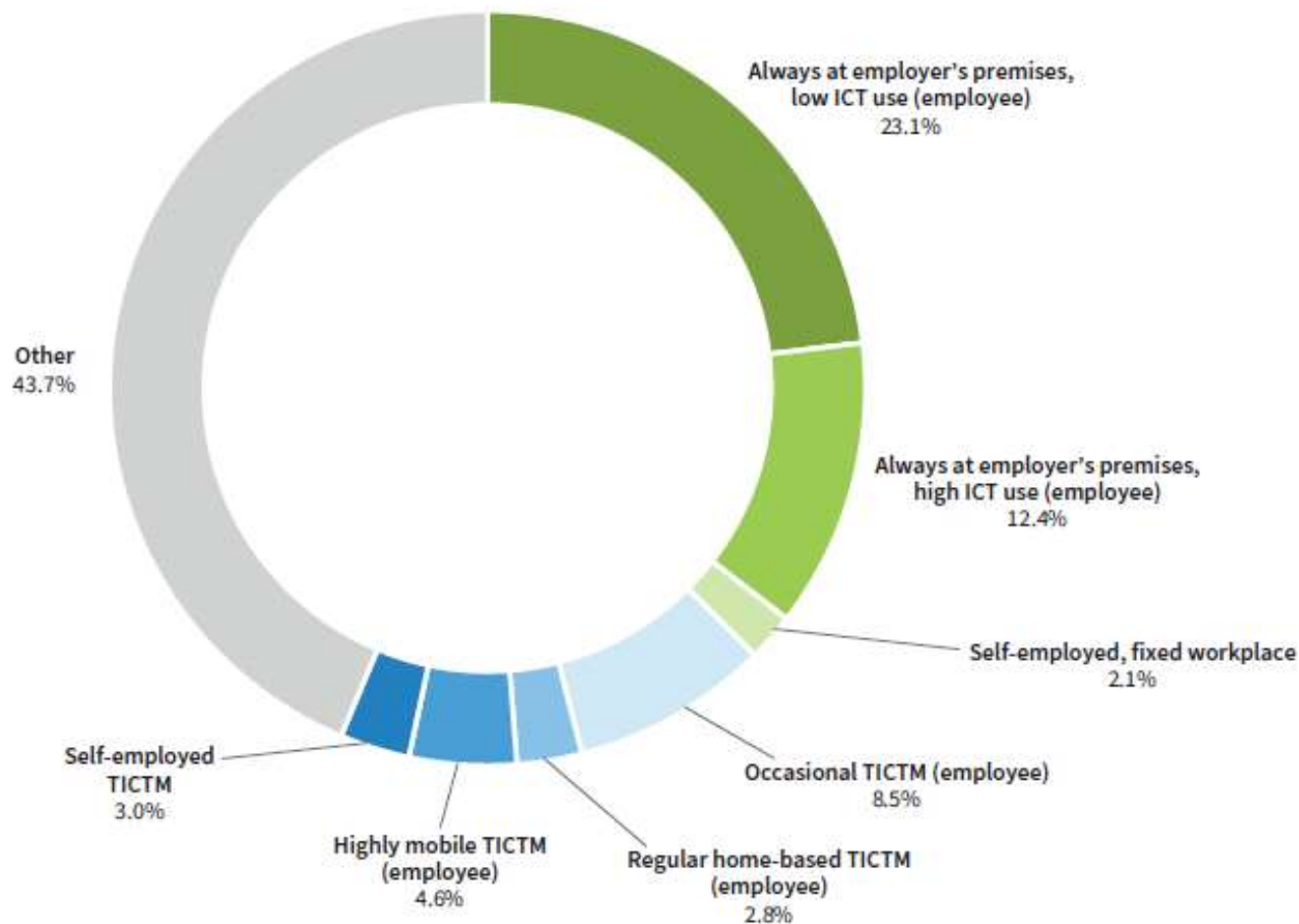
1. Remote working in Europe

1.1 Introduction

- Before the pandemic, only **11.1%** of employees in the European Union were working from home “usually” or “sometimes”
 - But **47,9%** of the employees worked constantly (33.7%) or occasionally (14.2%) at home during the pandemic (Eurostat Survey)
- While restrictions continue to be progressively lifted across Europe, a majority of workers still want to retain the flexibility gained through remote working during the pandemic.

1. Remote working in Europe

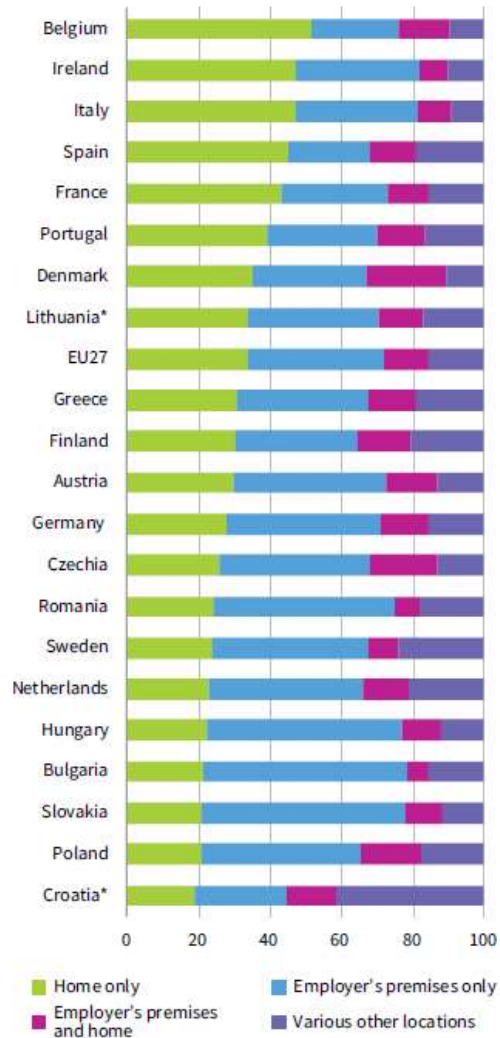
1.2 Before Covid-19



Source: EWCS 2015

1. Remote working in Europe

1.3 During Covid-19



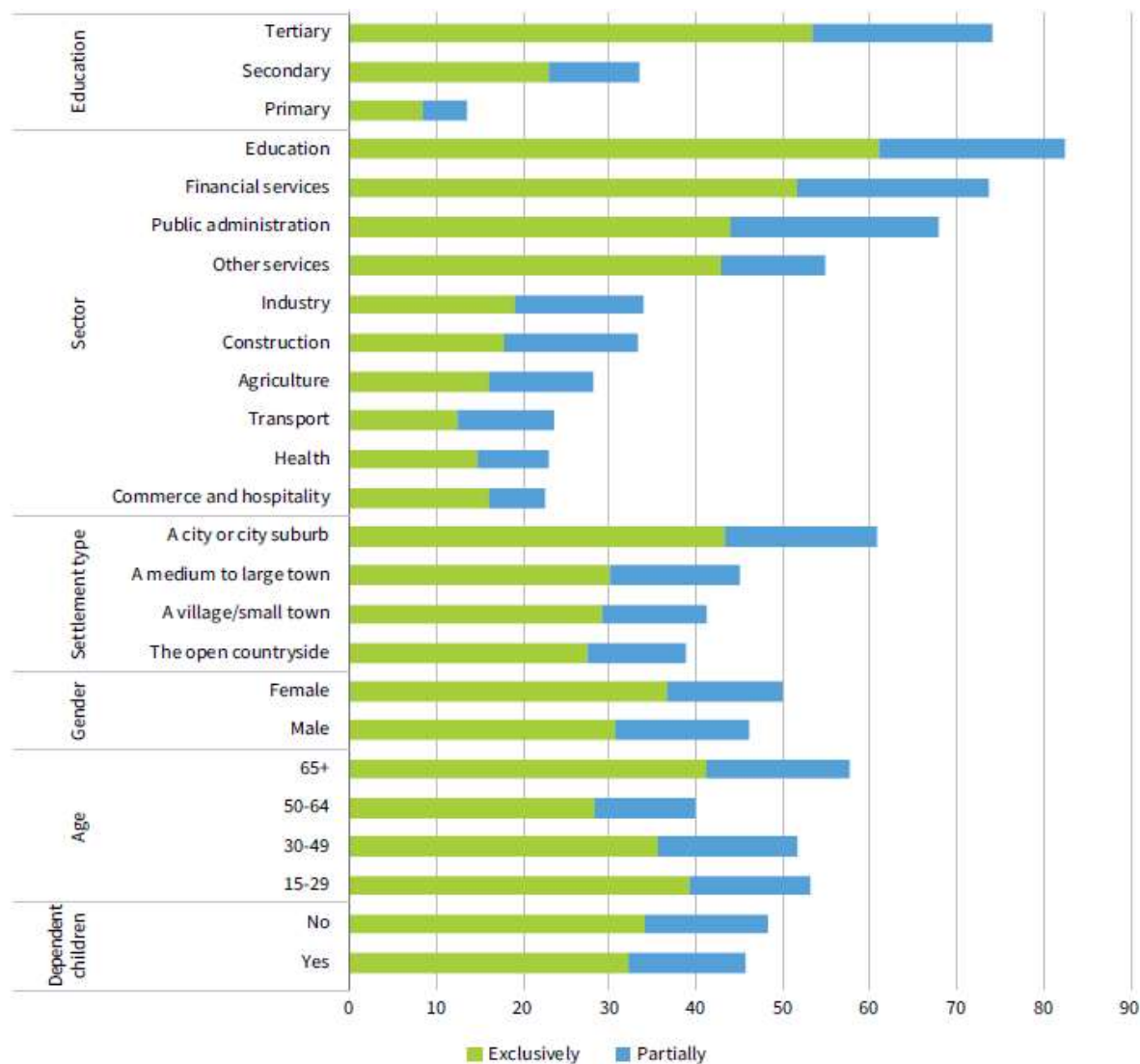
Notes: *Low reliability; Cyprus, Estonia, Latvia, Luxembourg, Malta and Slovenia not included due to insufficient number of cases.

Employees' place of work during the pandemic by country in EU27 (%), Eurofound (2020)

- 46% of those who worked from home during the crisis were **new remote workers**.
- Notably, a higher share (**49%**) of younger employees (18-34) remote worked for the first time during the pandemic.

1. Remote working in Europe

1.3 During Covid-19

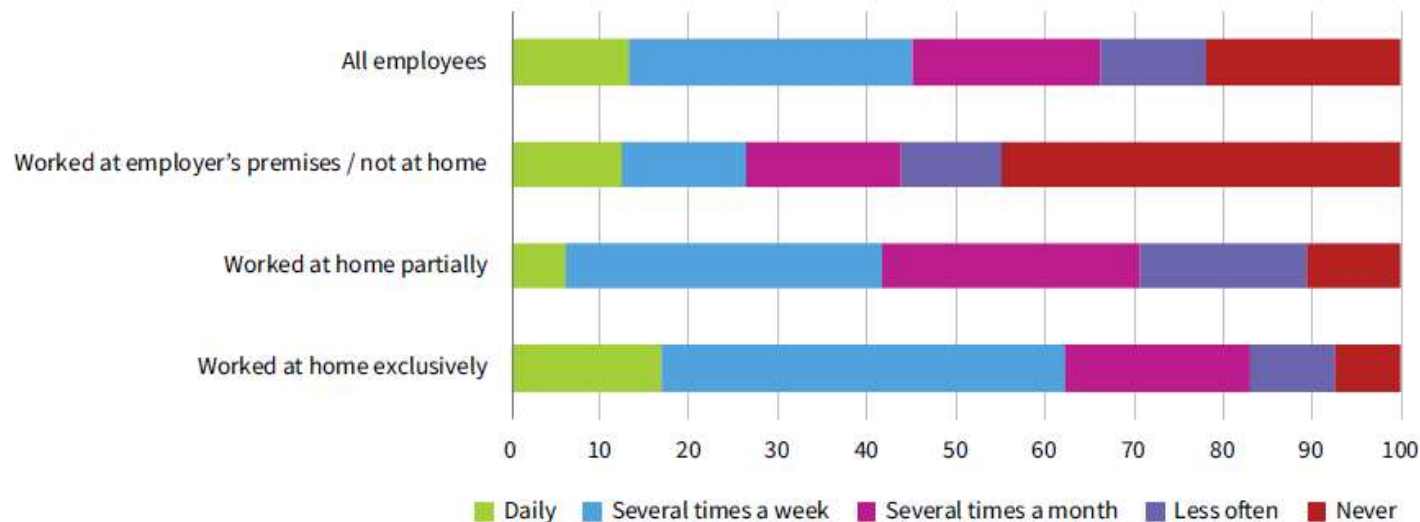


*Working from home during Covid-19,
EU27, Eurofound (2020)*

1. Remote working in Europe

1.4 What future for remote working in a world without / with less COVID restrictions?

- Eurofound:
 - **Experience** of working from home during the COVID crisis has been **positive** for the majority
 - **78% of employees indicated a preference for working from home at least occasionally if there were no COVID-19 restrictions.**
 - However, only **13%** indicated that they would prefer to work remotely daily in July 2020



Preference regarding regularity of working from home if there were no COVID-19 restrictions, by remote working status, EU27 (%), Eurofound

1. Remote working in Europe

1.5 Conclusions?

- Covid-19 pandemic is a turning point in the organization of work...
 - For **tertiary** employees mainly
 - Living in city or city suburbs
- Remote working is **expected** from the employer...
 - But not exclusively
- The best of both worlds?

II. Main challenges

1. Maintaining corporate culture while working remotely

1. Maintaining corporate culture while working remotely

1.1 Challenges

- Many challenges brought by remote working:
 - Dual nature of remote working:
 - More **autonomy and flexibility** in the organization of work
 - **Drawback:** isolation, intensification of work, less commitment to the company
 - Risks related to **corporate culture**:
 - Transition from a bureaucratic and "*factory-based*" work organization to a more flexible model of work
 - company as a place of work relegated to the background?
 - No more lunch time, coffee breaks: socialization and mutual interactions issues
 - Company's culture, unity, shared objective
 - **Managerial transition** issues:
 - Circulation of information
 - Vertical management ("*command and control*") becomes impossible: move from a culture of results to a culture of trust, notably by improving employees' autonomy
 - New role of managers against isolation

1. Maintaining corporate culture while working remotely

1.2 Potential solutions

○ Building a corporate culture based on trust : The example of Denmark

- Denmark is generally characterized by a management culture that is defined as “*management based on trust*” and “*freedom with responsibility*”.
 - A high level of social capital is seen as an important driver for good company performance.
- This is characterized by a high degree of **worker autonomy** and low levels of **internal control** in the work organization.
 - Such a managerial culture has been an important basis for introducing remote work, which was originally implemented informally based on trust between managers and employees.

1. Maintaining corporate culture while working remotely

1.2 Potential solutions

- **Intensify the number of corporate events to prevent any erosion of the social link**
 - Remote working arrangement promoting a minimum of **one or two** days in the office;
 - Guarantee a certain **autonomy** to the worker by avoiding too much supervision;
 - Intensify the number of **informal meetings**: seminars, company events, week-ends, visioconferences, etc.
- **The Monday Team Meeting:**
 - round table where all employees intervene and go over the achievements and the deadlines to come
 - Allows to align all the team and avoid a vertical logic where the manager drives the meeting and distributes tasks
- **One to one meeting** with remote workers:
 - E.g. 30 minutes every other week, to exchange on non-professional and operational subjects: how do you feel? How is your workload? What can I do to help?
 - It is recommended that the manager spend 80% of his team listening and 20% asking questions.

2. Managing work-life balance while working remotely: how to organize working time?

2. Managing working time while working remotely

2.1 Remote working and work-life balance: expectations

- Remote working presents significant advantages for both employers and workers by **allowing the time and place of work to be adapted to employer and worker needs alike**:
 - Granting more autonomy to workers
 - Improving productivity
 - Improving work-life balance ?

- However, remote work often erases the **physical separation between work and living spaces**
 - Blurred lines between work and non-work life
 - Remote workers during the pandemic were much more likely to work regularly **in their free time**

2. Managing working time while working remotely

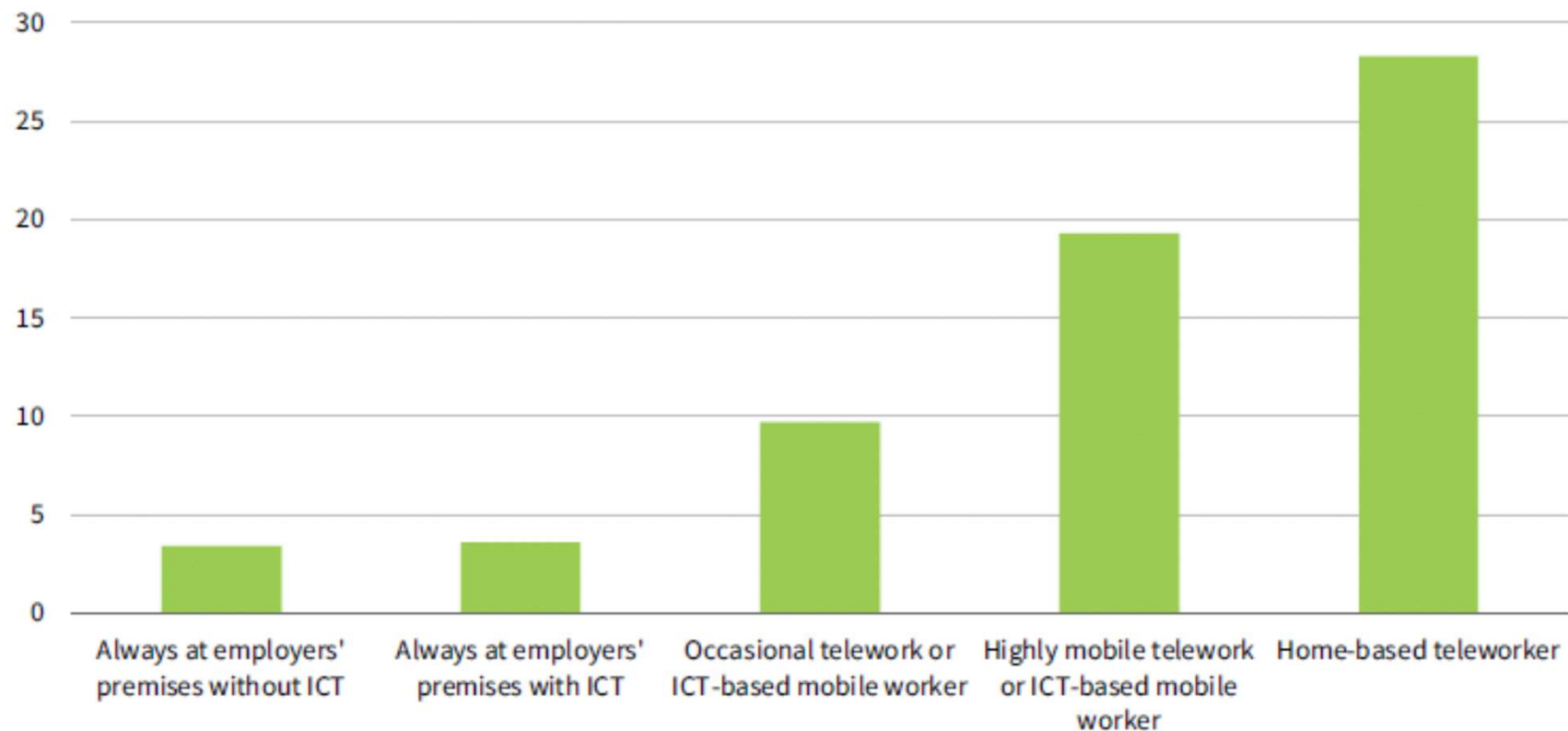
2.1 Remote working and work-life balance: findings

- The first studies conducted **before Covid** on the impact of remote work on the work-life balance seem to confirm these advantages:
 - Respondents to a survey conducted in **Estonia** (Eurofound, 2015) argued that remote work and information and communications technology (ICT)-based mobile work (TICTM) helped them to achieve a better work-life balance by granting them:
 - The opportunity to meet their care responsibilities and health needs
 - More flexibility: adaptation to traffic problems, opportunity to undertake personal activities (sports, family dinner, etc.)...
 - Similarly, a survey conducted in the **Spanish** banking sector (Eurofound, 2015) showed that TICTM gave employees *“greater autonomy to organize their schedule according to their own needs”*

2. Managing working time while working remotely

2.1 Remote working and work-life balance: findings

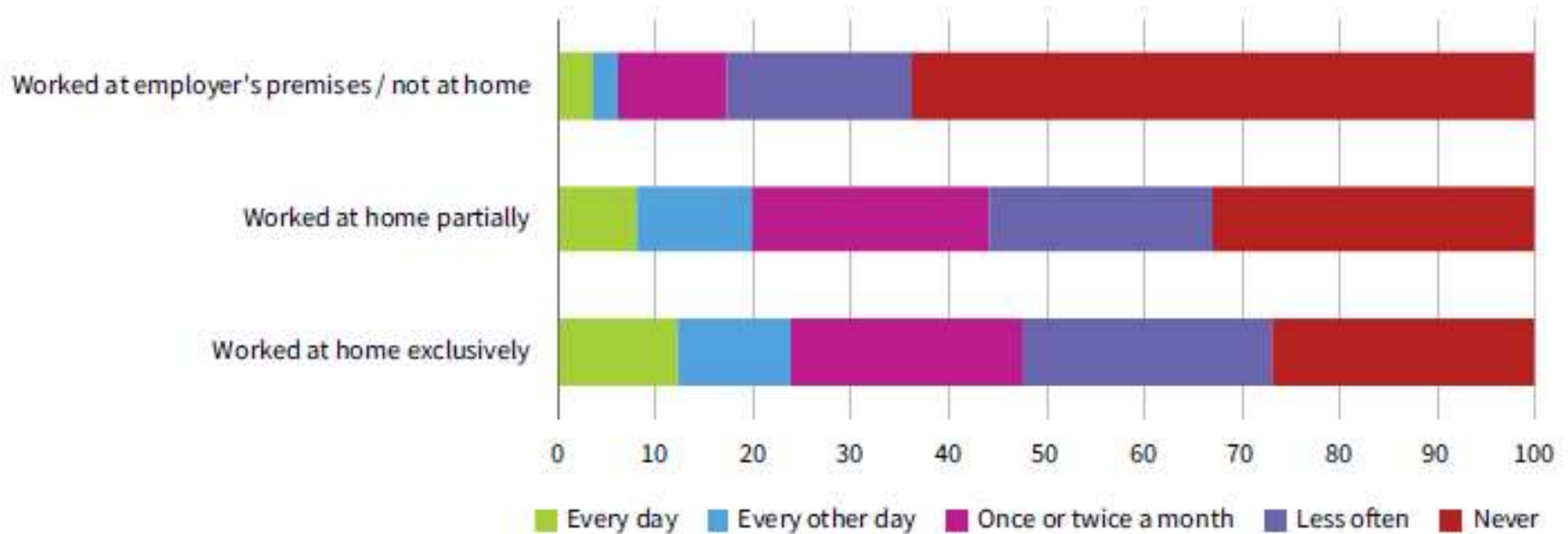
Share of employees in different ICT-based flexible arrangements working in their free time daily or weekly, 2015 (%)



Source: European Working Conditions Survey 2015

2. Managing working time while working remotely

2.1 Remote working and work-life balance: findings

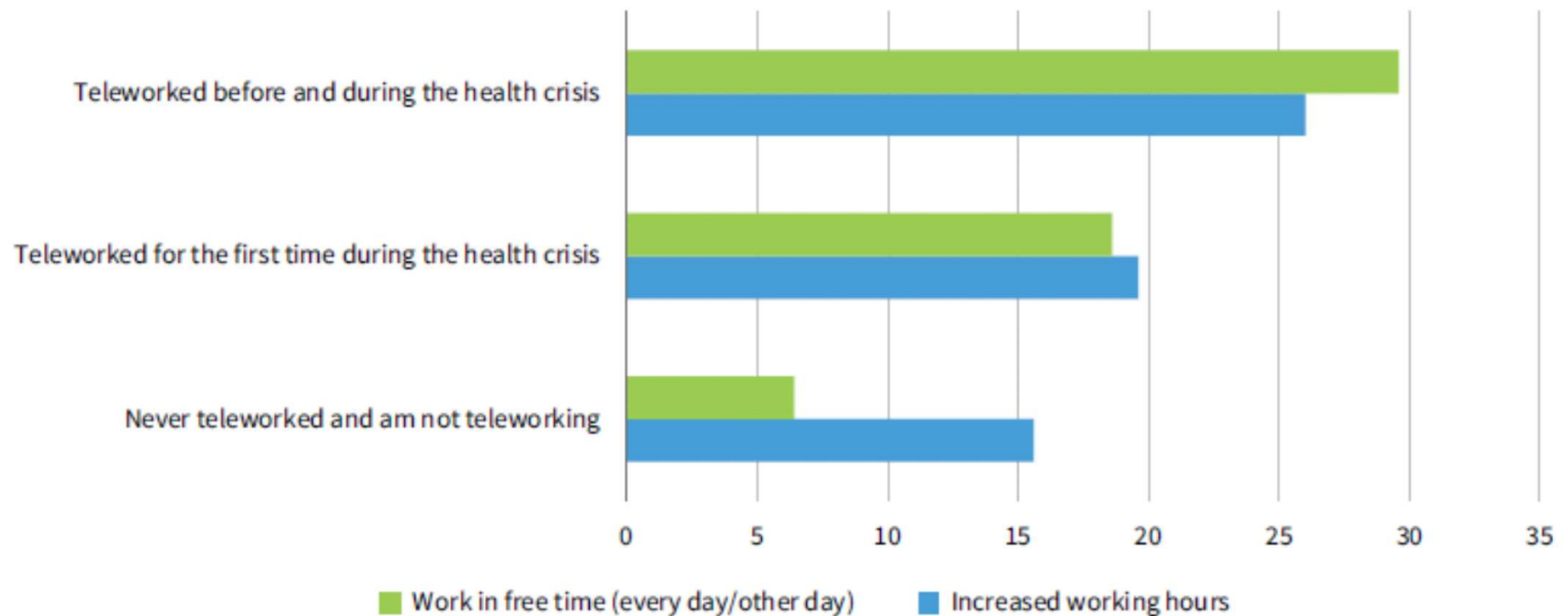


*Working during one's **free time** during COVID-19, by work location, EU27 (%), Eurofound (2020)*

2. Managing working time while working remotely

2.1 Remote working and work-life balance: findings

Experience of teleworking and working hours during the COVID-19 pandemic, July 2020 (%)



Source: Eurofound (2020d)

2. Managing working time while working remotely

2.1 Remote working and work-life balance: findings

- Information and communications technology (ICT): employees are constantly available
 - Potential extension of their working time and **increasing work pressure**

Finland

65% of remote workers were contacted about work-related matters outside of normal working hours in 2013.

35% of them reported that such contact had been made several times during the reference period.

Source: Statistics Finland, 2014

Spain

68% of Spanish workers confirmed that they had received emails or phone calls outside of normal working hours.

Source: Randstad, 2012

Sweden

53% of respondents to a survey of both mobile and non-mobile workers were available outside of normal working hours, even on a daily basis.

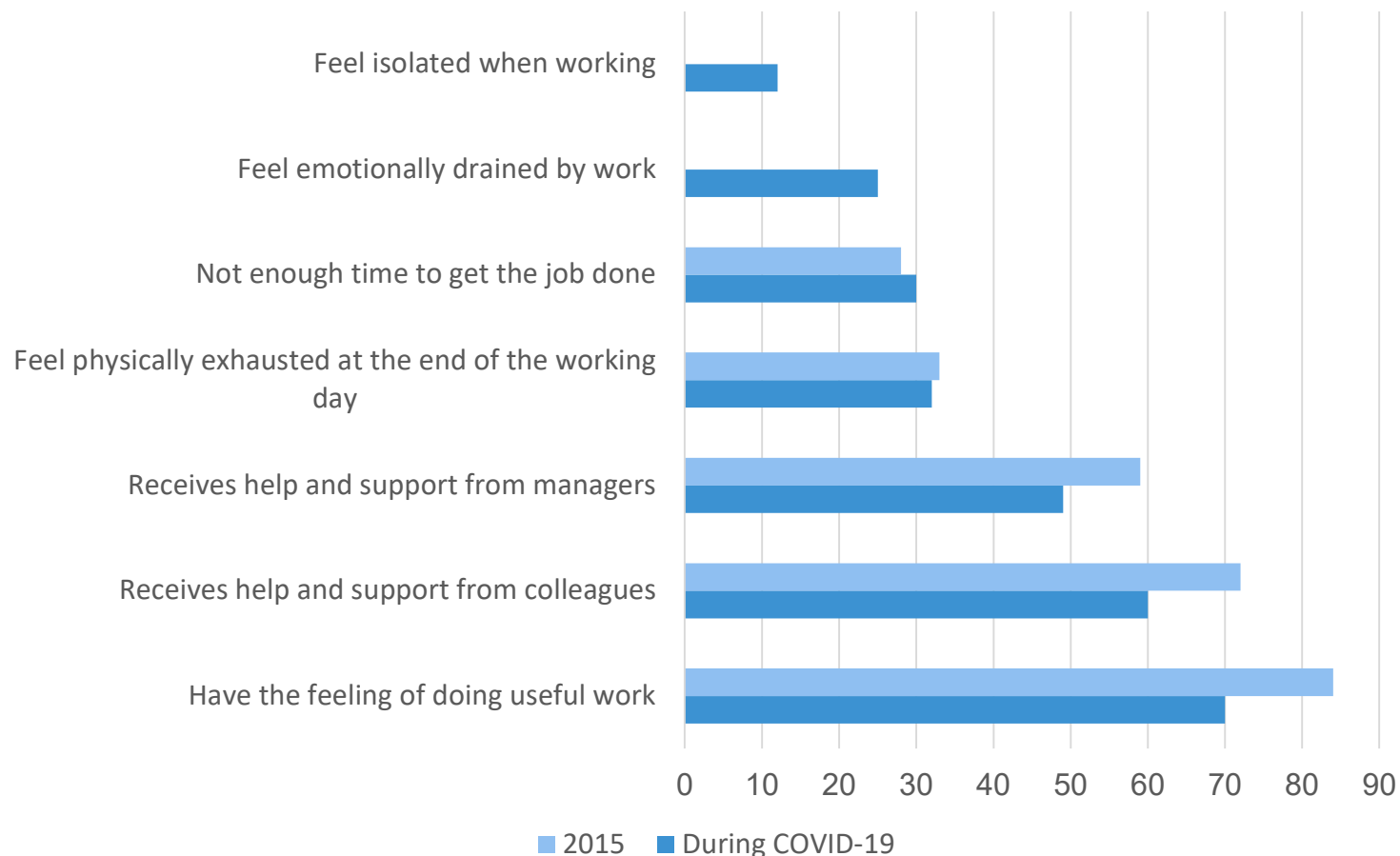
Source : Unionen, 2013

- Issues: Impact on mental health and litigation risks

2. Managing working time while working remotely

2.1 Remote working and work-life balance: consequences

Comparison of selected job quality indicators (employees) in 2015 and during COVID-19, EU27 (%) EU27 (%), Eurofound and EWCS



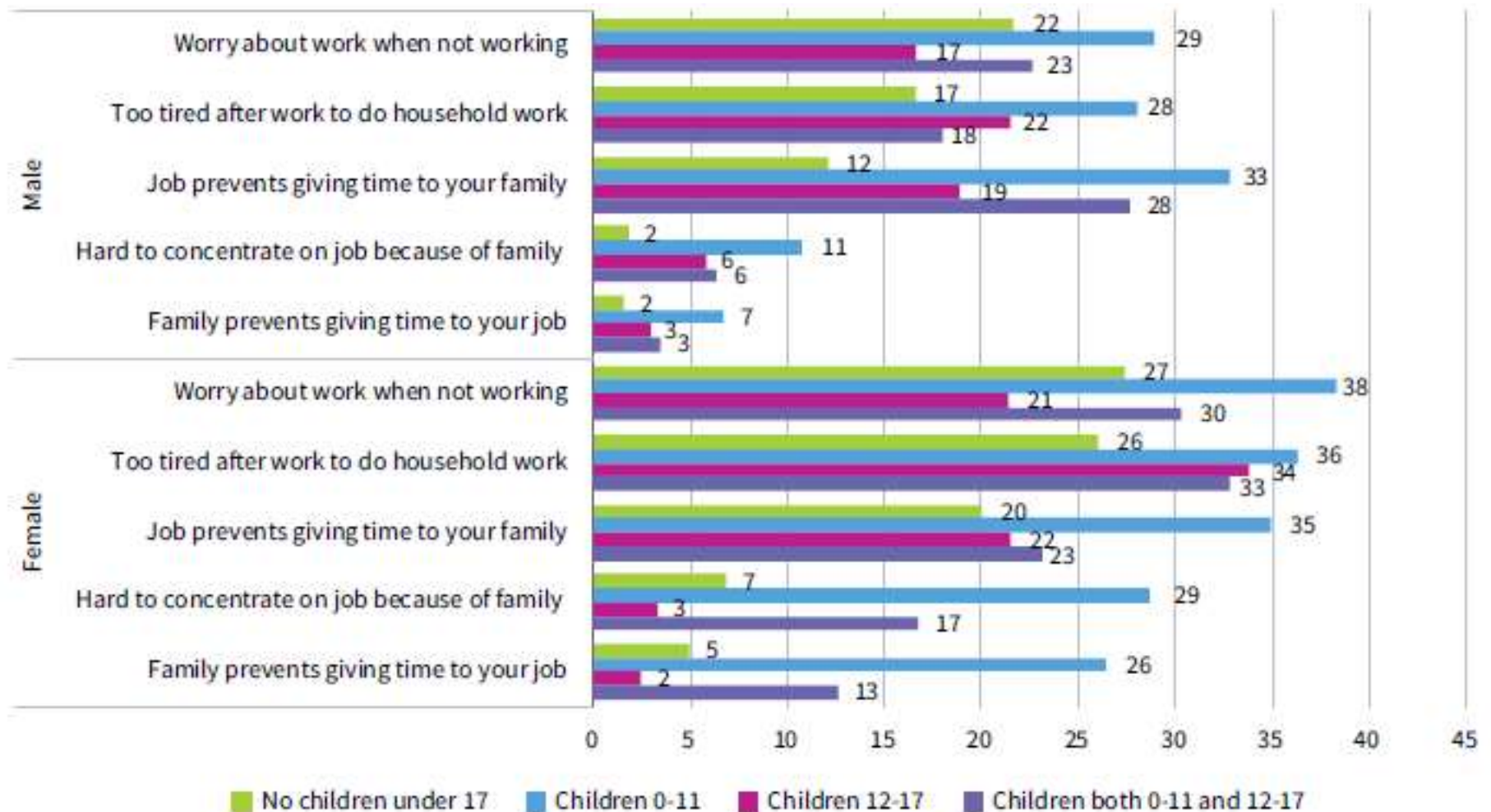
2. Managing working time while working remotely

2.1 Remote working and work-life balance: findings

- **April 2020, Eurofound e-survey:**
 - Respondents – especially women with children under 12 –struggling to balance their work and personal life
 - Work-life conflicts
 - increase in the incidence of overtime has been observed.
- **Two key factors:**
 - Gender-based distinction: women appear to struggle more than men, particularly if they have young children
 - Respondents with children under 17 who worked only from home during the Covid-19 crisis reported a greater degree of work-life imbalance.

2. Managing working time while working remotely

2.1 Remote working and work-life balance: findings



Work-life balance by gender and age of children in July, EU27 (%), Eurofound, 2020

2. Managing working time while working remotely

2.1 Remote working and work-life balance: findings

- In a nutshell:
 - Enhanced flexibility in the organization of working time
 - But
 - Increased working time, working over free time
 - Over connected employees due to the use of information and communication technology (extended availability, increased workload, etc.)
 - Blurred lines between work and private life
- Clear incidence on working time provisions / legislation

2. Managing working time while working remotely

2.2 How do legislations deal with working time?

- **EU law**
 - **EU Working Time Directive**
 - ECJ May 14, 2019 (Case C-55/18)
 - Member States **must require employers to set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured.**
 - Court recalls that the right to every worker to a limitation of maximum working hours and to daily and weekly rest periods is a fundamental right
 - Some room for maneuver to implement measures ensuring the effectiveness of such right
 - Not directly linked to remote work but not limited to on-site workers so should be largely applicable, especially as compliance with working time and the right to disconnect is recently promoted at the EU level.
 - **Framework Agreement on remote work from 2002 (not legally binding):**
 - remote worker manages the organization of their working time under the limits of national legislation and collective bargaining agreements

2. Managing working time while working remotely

2.2 How do legislations deal with working time?

- **National legislations:**
 - Most common approach is equal treatment
 - Some countries have specific rules applicable to remote work in matters related to working time:
 - In **Belgium, Bulgaria, Czech Republic, Lithuania and Slovakia**, the legislation clearly establishes that working time schedules **do not apply to remote workers**
 - In some of them, the legislation even states that remote workers are not entitled to compensatory rest or to overtime pay (Belgium, Czech Republic and Slovakia)
 - Are they really even workers?
 - In **Slovenia**, the law establishes that the employment contract for remote workers may define working time, night work, breaks, and daily and weekly rest periods in a different manner if the employee can schedule working hours independently.

2. Managing working time while working remotely

2.3 How to reconcile remote work and working time? French focus

- Remote work does not relieve the employer of his obligations to **monitor time and workload**
- Compliance with the regulations on
 - working hours: overtime, maximum daily and weekly working hours, etc.)
 - rest periods: daily and weekly rest periods, breaks, etc.
 - even if the employee is free to organize his/her own working time.
- Monitoring procedures adapted to the working time and workload, complying with:
 - The legislation on working time
 - The right to disconnect
 - The prevention of psychosocial risks linked to work overload and overconnection

2. Managing working time while working remotely

2.3 How to reconcile remote work and working time? French focus

- Specific rules have been edicted with regards to remote work:
 - The French Labor Code provides that the company agreement or charter must specify:
 - the modalities of control of the working time or regulation of the workload;
 - the determination of the time slots during which the employer can usually contact the remote working employee.
 - The employer must organize at least **one annual follow-up meeting** during which the employee's working conditions and workload must be discussed.

2. Managing working time while working remotely

2.3 How to reconcile remote work and working time legislation?

1. Determine the work slots of availability when the employee can be reached out and can answer to the employer's requests

- Why is it key?
 - Rules relating to working time, workload and rest times;
 - Work-life balance
 - Right to disconnect
 - Presumption of work-related accident
- Where do you do it?
 - Company agreement, charter
- Beware of employees not working in hours (e.g. French “*forfait jours*”)

2. Managing working time while working remotely

2.3 How to reconcile remote work and working time legislation?

2. Monitor and control working time

- Employer's obligation to monitor and control working time vs. employees' right to privacy and the risk of over-control created by the distance between the employer and the employee.
 - Cannot be excluded that over-management due to a lack of confidence towards remote workers be recognized as moral harassment.
- EU countries do not provide for **homogeneous provisions** in that regard, although most countries' legal provisions tend to refer to the general principles of **proportionality and legitimacy**
 - Proportional vs. prior consent vs. prohibited
- In any case, several countries rather regulate the digital monitoring of employees through **data protection legislation / privacy**
 - E.g. French Data Protection Authority (the *CNIL*) has further specified that the employer cannot permanently control the activity of their employees (for example through permanent screen sharing, key loggers or camera monitoring)

2. Managing working time while working remotely

2.3 How to reconcile remote work and working time?

3. Right to disconnect

- Very recent and trendy principle, linked to workplace digitalization
- Initiated by countries which realized they had to strengthen workers' protection against the negative aspects of remote work, and especially permanent availability, through the right to disconnect
 - France: Labor Code provision since in 2016
 - Italy, Spain (initially within the law on Protection of Personal Data and Guarantee of Digital Rights) and Belgium
 - More recently, also in Slovakia and Greece
 - Through company level agreements in **Germany** (e.g., Volkswagen in 2011 prohibited emails to be sent to staff mobile phones between 18.00 and 7.00)
- Soft approach rather than hard approach: based on workers and managers taking responsibility, rather than completely stopping work-related communication during certain periods.

2. Managing working time while working remotely

2.3 How to reconcile remote work and working time?

3. Right to disconnect

- *How can the right to disconnect can be defined?*
 - **Eurofound** : right for workers *“to be able to disengage from work and refrain from engaging in work-related electronic communications, such as emails or other messages, during non-work hours”*
 - **Belgium**: article 16 of the law on strengthening economic growth and social cohesion (2018) **negotiation** must be initiated by the employer with **health and safety committee** *“with a view to ensuring that workers' rest periods, annual holidays and other leave are complied with and that work-life balance is maintained”*
 - **France**: article L. 2242-17 of the French Labor Code company **negotiation** must be initiated on *“the terms and conditions for the full exercise of the employee's right to disconnect and the implementation by the company of measures to regulate the use of digital tools, with a view to ensuring respect for rest and vacation time as well as for personal and family life.”*
 - **Italy**, law no. 81/2017 (**smart workers only**): *“the agreement also identifies the worker's rest periods and the technical and organizational measures necessary to ensure the worker's disconnect from the technological equipment.”*
- **General idea**: ensure that employees' working hours are complied with, both in terms of connection to electronic communication means and in terms of rest.

2. Managing working time while working remotely

2.3 How to reconcile remote work and working time?

3. Right to disconnect

- Recent legislative initiative from the European Parliament (Jan. 2021) which calls on the Commission to propose a law aimed at recognizing the right to disconnect:
 - Calls to establish **minimum requirements for remote work across the EU**
 - Broad scope of application, not limited to remote work
 - Proposed directive:
 - Definition of disconnect: *“not to engage in work-related activities or communications by means of digital tools, directly or indirectly, outside working time”*
 - MS to ensure employers take the necessary measures to provide workers with the means to exercise their right to disconnect, which encompasses the **implementation of an objective, reliable and accessible system enabling the daily duration of time worked to be measured.**
 - Refers to **social partners – at the appropriate level** – to ensure the effective implementation and enforcement of the right to disconnect, in accordance with national practices
 - Protection against adverse treatment
 - Employers’ obligation to provide clear information to each worker in writing.

2. Managing working time while working remotely

2.3 How to reconcile remote work and working time?

4. BEST PRACTICES

- Define the days remote worked and recall, if applicable, the working time arrangements in force
- Provide time slots for collective availability
- Organize team events (weekly meetings, get-together week-ends, days of collective presence, etc.)
- Implement a system monitoring working time daily (complying with the data protection and more general rules)
- Ensure that the right to disconnect is respected, by reminding people of the framework for working time and breaks, and reminding them of good practice in the use of email
- Organize regular reviews of working conditions and workload, and detect any increase in work as soon as possible
- Attention to solicitation outside employee's working hours

3. Ensuring remote workers' health and safety

3. Ensuring remote workers' health and safety

3.1 Remote work... From home or elsewhere?

- Many words/expressions are used to refer to remote work: remote work, homework, distance work, alternative workplace, location-independent work, etc.
 - Diversity of the expressions used illustrates the diversity of work arrangements entailed by remote work.
- In most countries with statutory definitions and specific legislation on remote work, remote work tends to include several alternative workplaces to the employer's premises.
 - In some countries, the term « homework » was even replaced by new categories of remote working to explicitly acknowledge the diversity of remote workplaces (Czech Republic and Spain)
 - In other countries, a distinction is made between homework and remote work (e.g. Slovenia)
 - France: ANI from 2020 indicates that it can be the home or a third-party location as a co-working space.

3. Ensuring remote workers' health and safety

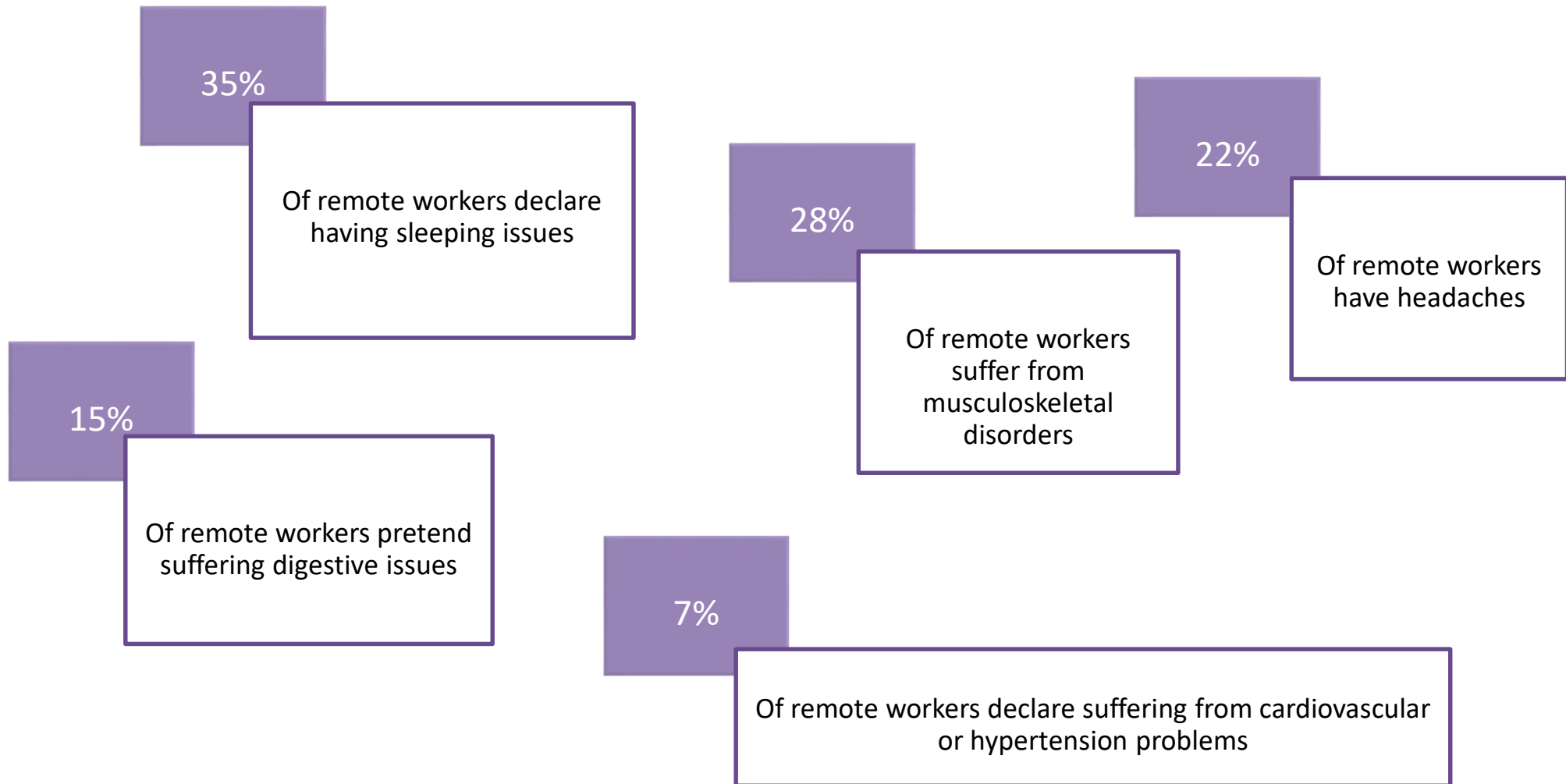
3.1 Remote work... From home or elsewhere?

- At first sight, **no general prohibition** to work from another place than home when working remotely
 - Could be complex to implement in countries where individual freedom is set higher than companies' interest

- However, it cannot be excluded that limits be set by CBAs, company agreements or individual agreements entered into by the employee:
 - For **confidentiality** / data safety reasons: internet connection that is not private for example;
 - For professional reasons: need to be sufficiently close to the employer's premises in case of emergency;
 - For **health and safety** reasons: non-conformity of the chosen workplace with the safety rules applicable to the company.

3. Ensuring remote workers' health and safety

3.2 Remote workers' health and safety: some introductory figures (France)



Source: Harris Interactive study from November 2020 « The professional activity of French people during the lockdown: week from November 2 to 8, 2020 »

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3. Ensuring remote workers' health and safety

3.3 Ensuring occupational safety and health while working remotely

- Most legislations recall that **employer is still responsible for work, as well as health and safety at work**
 - France or Denmark
 - But also alternatives to employer's liability :
 - Estonia: stress on employee's responsibilities
 - the law provides for the possibility for the employer and the remote worker to make an agreement providing for a contractual penalty in case the employee does not fulfil the OSH regulation.
 - Latvia: **shared liability** between employers and employees
 - In some other countries, employers have an enhanced duty of care towards vulnerable categories of people, such as pregnant employees.

3. Ensuring remote workers' health and safety

3.3 Ensuring occupational safety and health while working remotely

- Some legislations provide for specific provisions requiring employers to **provide additional resources or tailor-made plans** for remote workers to help them comply with OSH standards:
 - **Training programs** for the employee on how to safely use the work equipment provided (Lithuania).
 - French law also provides that employees receive an appropriate training, focused on the technical equipment made available to them and on the characteristics of remote work.
 - The remote worker's direct hierarchical superior and colleagues must also be able to benefit from a training on this way of work arrangement and its management.
 - Some legislation explicitly requires employers to **conduct a risk assessment** of the place of remote work and to take measures based on this evaluation or inform the employee of the specific risks existing in their place of remote work.

3. Ensuring remote workers' health and safety

3.4 Hot topics: requirements for safe remote work place?

- ***Does the employee need to be insured?***
 - Remote work also supposes that both the employer and the employee be correctly insured for the performance of remote work.
 - No specific rules or insurance offers for remote work although some assuretechs start to develop specific insurances for remote work.
 - Insurance conditions are actually not so different between on-site and remote employees **as regards damages so third parties**
 - With regards to the **equipment** used:
 - The employee's house insurance usually covers the employee's **personal** equipment used for remote work.
 - What about **professional** equipment ?
 - Most insurance contracts do not cover company's goods located outside the company's premises
 - E.g. France: common practice to require insurance certificate

3. Ensuring remote workers' health and safety

3.4 Hot topics: requirements for safe remote work place?

- ***Remote work occupational safety and health also entails psychological well-being***
 - Isolation, different communication standards, etc.
 - Some national legislations specifically provide for the taking into account and prevention of these psychosocial risks.
 - In Italy: a particular attention is paid to avoiding risks associated with “technostress”
 - In Slovenia, the legislation provides that the following factors should be taken into account: stress and mental well-being, the fact that the employee works alone
 - In Portugal and Luxembourg: attention is drawn to the risk of isolation (Portugal requires the employer to promote regular contact between the remote worker, the company and other workers).
- 
 - Important to take into account these risks but most of all necessary to take practical measure to ensure prevention of these risks.

3. Ensuring remote workers' health and safety

3.4 Hot topics: requirements for safe remote work place?

- ***Can the employer visit the work place?***
 - Employer's health and safety obligations vs. employee's privacy rights.
 - Most countries provide employers, workers' representatives and/or labor inspectorates the right to have access to remote workers' workplaces to inspect their compliance with OSH regulation, however, usually subject to **prior notification of the employee and their consent or agreement**.
 - Remote worker's right to refuse access to his/her workplace is not the same in each country:
 - In **Bulgaria**, the remote worker's right is very limited: remote workers do not have the right to deny access to the workplace during the established working hours and/or within the limits established in the individual employment agreement and/or collective agreement without giving reasons.
 - In **Spain**, the rules are different depending on whether remote work is performed at the remote worker's home or elsewhere: permission of the remote worker is only required if they work from home. Risk assessment only relates to the space used for remote work (i.e., not the remaining of the house)
 - In some other countries, such as **Luxembourg**, the initiative of the on-site inspection can only come from the remote workers vs. employer

3. Ensuring remote workers' health and safety

3.4 Hot topics: requirements for safe remote work place?

- *Can the employer's liability be engaged for breach of its safety and health obligation? Especially in the event of accidents occurring at the remote workplace?*
 - General principle in the EU: same regulations apply to remote workers
 - Most countries however provide that the remote worker is required to **prove that the accident really happened in the workplace and during work hours** with investigation rights for and competent authorities
 - Exception for **France** which establishes a presumption in case of accidents occurring at the remote workplace and during work activity hours
 - To combine with enhanced safety obligation for the employer and obligation to evaluate professional risks
 - Draft legislation in **Poland**: in case of accident at work, the employee will have to agree to an inspection resulting in a safety and health report. If the employee refuses to cooperate, this refusal may result in the case note being considered a work-related accident.

3. Ensuring remote workers' health and safety

3.4 Hot topics: requirements for safe remote work place?

- **Best practices**
 - Provide (in a collective or individual agreement) for specific characteristics a potential remote workplace must fulfill
 - Try to obtain the employee's consent to proceed to an on-site inspection
 - Ensure that the employee is fully equipped (either by the company or on his/her own) to perform work in good conditions (especially **chairs, screens**)
 - Make a clear assessment of the **psychosocial risks** that could be associated with remote work and implement practical measures to avoid the emergence of such risks
 - E.g. required days of presence in the premises, virtual coffee breaks, specific hotline in case of feeling of isolation, etc.
 - Organize regular meetings with the employee to exchange on the working conditions and working time
 - Check the insurances policies

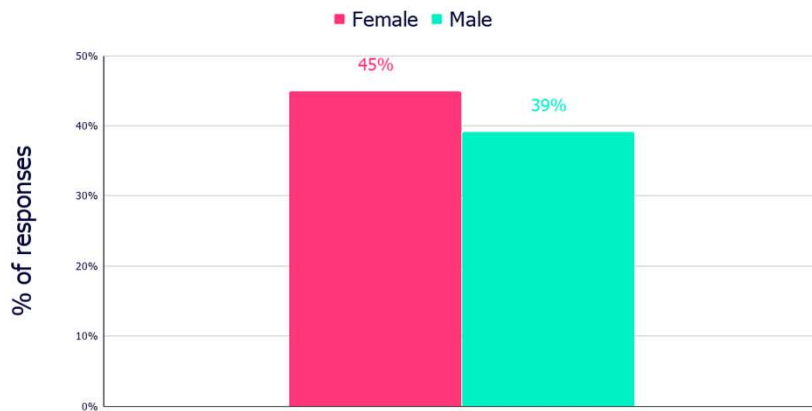
4. Remote working from abroad

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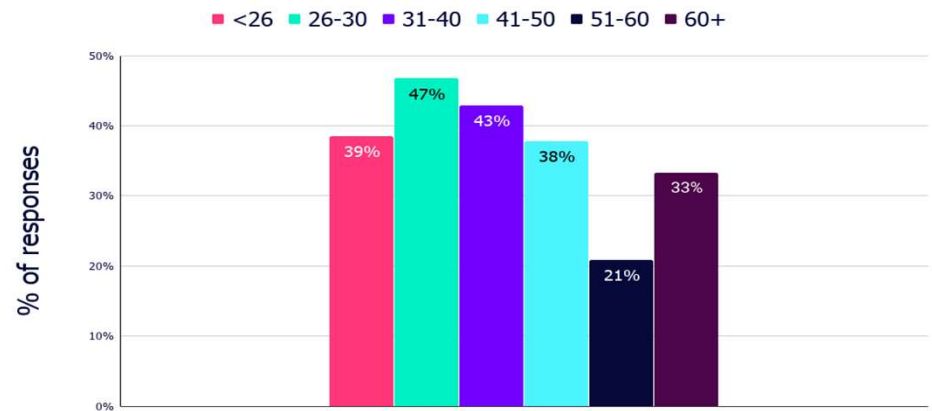
4.1 Introduction

- **Hubble survey (2021):** 42% of employees would want to use their company's remote working policy to work from abroad:
 - Women would be more keen on working from abroad
 - Youngsters are more willing to be working from abroad.

Proportion of employees who would want to use a flexible working policy to work from abroad (by gender):



Proportion of employees who would want to use a flexible working policy to work from abroad (by age):



4. Remote working from abroad

4.1 Introduction

- **PagoFX survey (2021, limited to UK):**
 - 1 in 16 employed UK adults (i.e.,) more than 1.9 million workers are now either fairly or very likely to work from abroad
 - 45% of surveyed people said that they could do their job just as well from abroad, although 19% said that they could only do so if they stayed in the same time zone.

4. Remote working from abroad

4.1 Introduction

- Increasing **diversity of situations** which can lead to employees being willing to remote work from abroad
 - Either on an occasional basis:
 - Employee willing to stay in their vacation location for some more days / weeks
 - Employee willing to remote work on some specific occasions for personal or professional convenience (visiting family, business trips)
 - or on a regular/permanent basis:
 - Employee hired in a specific country but who has not yet moved to this country (for some reason, e.g., pandemic, immigration problems, family reasons) and must stay in their initial country and remote work from there in the meantime;
 - Employee who, while usually working from its employers' premises in a given country, decided to settle in another country (for a definite or indefinite period of time).
 - For employers, might also be a way to be able to **hire or to retain the talents** they need to run their business
- All these situations do not entail the same consequences in terms of **legal regime**

4. Remote working from abroad

4.2 Legal issues

- *What about applying the rules applicable to secondment/posting of workers?*
- Not satisfying as the situation might not always correspond to the definition of secondment
 - Given in the **Posted Workers Directive** (Directive 96/71/EC of 16 December 1996): limited time
 - Given in the **Regulation relating to the coordination of social security systems** (Regulation (EC) no 883/2004 of 29 April 2004): limited time and on the employer's initiative
- Indeed in case of remote work abroad:
 - The performance of work abroad primarily results from the **employee's willingness/choice** rather than the employer's activity/request
 - remote work from abroad might not be contemplated for a definite period of time but rather on a **permanent basis**

4. Remote working from abroad

4.2 Legal issues

- In the absence of a clear legal framework, several issues are raised by remote work from abroad:



- Which law is applicable with regards to **employment law**?
- Which law is applicable with regards to **social security**?
- What are the requirements in terms of **immigration law**?
- Data protection, and especially protection of exchanged data, must also be taken care of.
- Beware of tax problems, and especially:
 - The risk of the characterization of a permanent establishment
 - The determination of the employee's tax residence

4. Remote working from abroad

4.2 Legal issues: applicable employment law

- **Applicable employment law** defined in EC Regulation no. 593/2008 of 17 June 2008 (Rome I), art. 8:
 - Employment contract shall be governed by the **law chosen by the parties**
 - Without depriving the employee of the ground protection provided in the absence of choice
 - If no choice, contract shall be governed by the law of the country in which or, failing that, from which the employee **habitually carries out his work in performance of the contract**
 - If the habitual performance criteria cannot be applied, contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated
 - Finally, criteria 2 and 3 do not apply where it appears from the circumstances as a whole that the contract is more closely connected with another country: in such case, the law of that other country shall apply

- **Is the employee remote working from abroad still subject to the employment law initially applicable to his/her employment contract?**

4. Remote working from abroad

4.2 Legal issues: applicable social security law

- In the EU: **EC Regulation (EC) no. 883/2004 of 29 April 2004 on the coordination of social security systems**
 - In case of remote work from abroad:
 - The social security regime currently applicable to the employee should remain when applicable when:
 - remote work is very temporary and does not lead the employee to perform **more than 25%** of his/her activity in another country:
 - remote work is implemented on a permanent basis but for a limited part of the employee's work (only one or two days a month)
- Outside of the EU: **bilateral conventions** to avoid dual application of 2 laws

4. Remote working from abroad

4.2 Legal issues: immigration law

- **Within the EU** (+ Iceland, Liechtenstein and Norway) : **free movement of workers**
- **Outside of the EU** (including the UK): remote work does not prevent workers from the obligation of obtaining a visa and a work permit authorizing them to work from another country than their country of origin.

5. Complying with GDPR

5. Complying with GDPR

5.1 GDPR and employee monitoring

- GDPR (Regulation (EU) 2016/679) regulates the collection, use and transfer of personal data and sets out provisions that apply to all data-processing operations, **including employee monitoring**.
- Before GDPR: the Article 29 Working Party (WP29) had already warned against the implications of digital technologies for workers' rights:
 - *"If there are no limits to the processing, and if it is not transparent, there is a high risk that the legitimate interest of employers in the improvement of efficiency and the protection of company assets turns into unjustifiable and intrusive monitoring."*
- Despite this attempt to harmonize, national particularities remain.
 - **Bulgaria:** employer has the right to install surveillance and control systems, including GPS tracking, if this is justified by the nature of the activity performed or for security reasons.
 - **Italy:** remote control devices can be used only for legitimate purposes and for specific reasons – such as organizational and production needs, for work safety and for the protection of the enterprise's assets – **and by no means can they be used as a tool for the surveillance of individual workers.**

5. Complying with GDPR

5.2 Protecting the privacy of remote working employees

- **E.g. Guidelines from the French Authority for Data Protection (CNIL)**
 - Prohibition to monitor constantly through webcams
 - Could you force the employee to turn on the webcam during **visio conferences**?
 - Encourages the use of backgrounds (blurred or corporate) to prevent that
 - Prohibition to use **key loggers** of software implementing permanent screen share
 - Prohibition to use systems in which employees is to click every xx minutes to prove he/she is working or to take pictures
- Other countries?
 - **Belgium:** longstanding national collective bargaining agreements regulating specific forms of monitoring, for example video surveillance.
 - Italian Data Protection Authority, 2020: Ensure *“the provision to workers of adequate training and information about the treatment of their data”*

5. Complying with GDPR

5.3 Protecting company data remotely

- Remote workers are, in some respects, more likely to be **exposed** to security risks and threats:
 - Use of **personal devices**, which may not have all of the appropriate technical measures required by the company;
 - Use of their **personal accounts** (private email, private file sharing system, etc.)
 - They may access confidential data without the appropriate **technical safeguards** (e.g. **personal storage**)
 - Connection through **personal or even public Wi-Fi**

- Food for thoughts
 - IT tools: encryption, use of VPN
 - Prohibit BYOD (bring your own device)
 - Training on the new security tools and processes
 - Remote working policy in which rules and tips

6. Dealing with costs incurred by remote working

6. Remote work, remuneration and costs

6.1 General rules

- Many legislations provide for an **equality of treatment** between remote workers and on-site workers, notably **in terms of remuneration**
- How should it be applied in practice?
 - Remote workers are **not placed in the same situation** for different elements:
 - they are using their own house, phone and internet subscription (or are paying a fee to work in shared workplaces),
 - they are not having lunch at the company's cafeteria, etc.
 - Lots of practical questions, not a lot a definitive answers most often resolved through **collective negotiation**

6. Remote work, remuneration and costs

6.2 Hot topics inspired by French experience

- **Reimbursement of professional expenses:**
 - No homogeneous position between the different countries of the EU:
 - Very specific **French** case which initially provided for the obligation for the employer to *“take charge of all the costs directly incurred by the performance of remote work, in particular the costs of equipment, softwares, subscriptions, communications and tools, as well as their maintenance”*.
 - Such provision has however been removed from the law in 2017...
 - ... but remains in a 2005 National Collective Agreement and in case law
 - In practice: **covered by negotiation** using the social security tolerance to avoid paying social contributions
 - Exception of **Spain** which adopted a new law in October 2020 introducing the employer’s obligation to **compensate the employee for the costs of remote working**.
 - Similarly in **Slovakia**, an amendment of the Labor Code dated March 2021 obliges the employers to reimburse the employee for increased costs related to remote work, **such as expenses for materials and tools**.

6. Remote work, remuneration and costs

6.2 Hot topics inspired by French experience

- **Equipment to perform work remotely**
 - Not homogenous between countries: up to the employer, in the individual negotiation, no provision
 - French example:
 - French Labor Code used to provide for the employer's obligation to take charge of the costs of remote work, especially those linked to the equipment
 - Although this provision has been removed from the Code since 2017, the 2005 ANI (which remains in force) still sets the employer's obligation to "**provide, install and maintain the equipment necessary to remote work**"
 - Equipment the company had rather provide (IT, phone, etc.)
 - Vs. equipment the employee would like the company to provide (chair, head set, keyboard, etc.)
 - Issue has to be dealt with in collective agreements or individual agreement signed by the employees

6. Remote work, remuneration and costs

6.2 Hot topics inspired by French experience

- **Meal vouchers / lunch allowance**
 - French example for a question strongly debated during the Covid-19 crisis
 - General position of the French Social Security (URSSAF): meal vouchers must benefit to remote workers, subject that the remote worker's working conditions be equivalent to that of on-site workers (i.e., a working day organised in two shifts with a meal break in between)
 - Position taken by the French Ministry of Labor during the Covid crisis in the Q&A published and regularly updated
 - Contradictory positions taken by French courts
 - Nanterre Court: the court held that remote workers and on-site workers which do not have access to a company cafeteria are not in the same situation, consequently, remote workers are not entitled to receive meal vouchers (Nanterre Court, March 10, 2021, n°10/09616)
 - Paris Court: the court for its part considered that remote workers are in an equivalent situation to on-site workers so that they should be able to benefit from meal vouchers if on-site workers are granted some (Paris Court, March 31, 2021, n°20/09805)
 - Not (yet) appeal decision or decision from a higher court to settle the issue

6. Remote work, remuneration and costs

6.2 Hot topics inspired by French experience

- **Transportation fees**
 - French Labor Code provides that the employer:
 - *Shall pay, in a proportion and under conditions determined by regulation, the **price of the subscription taken out by its employees for travel between their usual place of residence and their place of work** by means of public passenger transport or public bicycle hire services*
 - *Or, when the employee cannot take public transportation, the employer may pay all or part of the fuel costs and costs incurred for the supply of electric, rechargeable hybrid or hydrogen vehicles incurred for travel between their usual residence and their place of work.*
 - No specific position has been taken, either by the Administration or the French courts, about employees working remotely.
 - If no working on site at all, no payment of subscription or payment only when business trips
 - If part-time working on-site, recommended to continue reimbursing half of the subscription
 - What about employees coming only part time to the office? Full reimbursement?
 - What about employees moving far away from their usual place of work/abroad?

This document presents information which is general in nature.

It does not qualify as legal advice, and is intended for personal use only.