

## Chapter 7

# Remote work: ensuring trade union and workers' rights through collective bargaining

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### 1. Introduction

Until early 2020, remote work was a never-ending promise (Aguilera et al. 2016). Indeed, its inevitable rise has been predicted by multiple scholars and experts since as far back as the 1970s. The prophecies, however, finally became a reality for very different reasons than could ever have been imagined: a global pandemic and the associated lockdowns required a huge number of workers to continue their jobs without going to their usual place of work. Since the Covid-19 pandemic, an unprecedented number of workers have experienced remote work, often intensively and for a long period of time. According to a recent Eurofound (2022) report, only 11 per cent of employees were working from home before the pandemic. In 2021, this increased to around 22 per cent working from home at least some of the time. Many wish to continue working (at least partly) remotely also in the future and it is fair to assume that remote work is here to stay (Eurofound 2022).

Remote work has a number of potential advantages for workers, as well as for companies and society. For some workers, remote work offers increased flexibility, improved work/life balance, time savings because of the lack of a commute and greater autonomy at work (Predotova and Vargas Llave 2021). We expect that the mass uptake of remote work during Covid-19 will also reduce some of the stigma associated with this type of working arrangement and the related negative impact on future work prospects and career development.

While remote work thus provides some opportunities, it also poses real challenges and risks for trade unions, workers and workplace terms and conditions (Lodovici Samek 2021: 174). Certainly it threatens to weaken solidarity between workers as well as with their trade unions, which have greater difficulty organising and communicating with remote workers (see Vandaele and Piasna, this volume). As far as workers are concerned, the adverse effects of remote work on physical and mental health have been highlighted in several Eurofound publications (e.g. Predotova and Vargas Llave 2021); in particular, less physical and informal contact between workers might result in their isolation. Furthermore, working at home risks an invasion of workers' private spheres and, in some cases, there are serious issues regarding ergonomics and health and safety in the (remote) work location (Predotova and Vargas Llave 2021).

As with all things, the devil is often in the detail and in how remote work is introduced and regulated. Without proper social dialogue and collective bargaining, remote work 'flexibility' might well result in increased pressure on workers to work outside office hours; the shorter commute might result in longer working hours; and the potential

for extra surveillance might lead to less autonomy and the violation of privacy rights. The increasing instances of national legislation and collective agreements on remote work since the beginning of the pandemic (Eurofound 2022; UNI Global Union 2022) shows that regulation, social dialogue and collective bargaining are important tools for providing an appropriate framework to ensure the protection of workers' rights. Indeed, the traditional collective response to such a radical (re)organisation of work and company life would be to ensure that it takes place through a combination of collective bargaining and employee information and consultation. In our view, it is only through genuine social dialogue that we can ensure that remote work delivers for all.

The social partners at European level negotiated a framework agreement on telework as early as 2002 (ETUC et al. 2002), incorporating many of the principles discussed in this chapter. Yet, 20 years on, the sudden explosion of pandemic-related remote work showed that these principles have their limits and should not always be taken for granted – and indeed, the social partners are now negotiating an updated agreement on telework and the right to disconnect, to be implemented via an EU directive. Similar talks are also taking place at EU sectoral social dialogue level with, for example, the December 2021 EU banking social dialogue joint declaration being used as a basis for the April 2022 national remote work collective agreement in the Romanian banking sector.

We can see that collective bargaining at various levels is required to make the principles tangible and applicable; and that only with this in place can remote work realise its potential for both workers and employers. The argument running throughout this chapter is that, as the new remote work reality is both fluid and complex, collective bargaining should have a central role in providing a normative framework. At the same time, however, many issues remain unresolved even within collective agreements.

The chapter discusses the challenges posed by remote work regarding both collective and individual workers' rights, focusing in particular on the trade union response including as regards freedom of association, collective bargaining, workplace organising, health and safety, privacy and access to training and career development; as well as on the rules and principles that need to be put collectively in place to ensure that this growing trend can be a benefit to workers and trade unions rather than a detriment.

We start in Section 2 with a discussion on trade union rights, continuing in Section 3 with a look at a number of workers' rights that are affected by remote work. Section 4 concludes. The chapter builds its analysis of good practice in the area of remote work on a database of specific collective agreements gathered by UNI Global Union. In total, over 100 agreements from 25 countries are included (UNI Global Union 2022) although here we focus for the most part on agreements reached within Europe. In each area of rights, we set out our view on what rights and obligations should be when workers work remotely, regarding workers themselves and their employers, complementing this with examples of good practice drawn from the UNI Global Union database.

## 2. Trade union rights

The European Charter of Fundamental Rights (European Union 2000) is quite clear: everyone (therefore including workers) has the right to freedom of association meaning, as far as the workplace is concerned, the right to form and join a trade union (Article 12). Moreover, workers have the right to collective bargaining and to take collective action (Article 28), as well as the right to be informed and consulted by their employer (Article 27).

Remote work, however, poses some challenges to the execution of these rights. During Covid-19, in workplaces where collective bargaining was already vulnerable, the pandemic was often used either as a pretext to shelve or suspend bargaining processes altogether, or elsewhere as a catalyst for doing so. In some cases, collective bargaining developed into concession bargaining, with workers finding they needed to compromise on some pre-existing rights to avoid lay-offs. Eurofound reports, for example, that company collective bargaining was seriously affected by the pandemic in countries such as Portugal and Greece (Allinger and Adam 2021).

In multinationals, a survey of European Works Council (EWC) representatives undertaken by the ETUI showed a striking lack of (transnational) information and consultation. While virtually all EWC representatives stated that their company was affected by Covid-19, only one in two said that they were kept regularly informed by the company and only one in four declared that they were consulted (De Spiegelaere et al. 2021: 19). These results are significantly worse than the (already questionable) information and consultation practices seen before Covid-19 (De Spiegelaere and Jagodziński 2019).

In the EWCs that remained active, there were reports of shorter meetings with very little space for questions and answers, highly moderated agendas and a general decrease in the quality of information and consultation. Other representatives pointed to growing inequality in hybrid settings, with some delegations being co-located while others only joined virtually and alone, and where sometimes the employer did not offer interpretation even though this had been provided at in-person meetings prior to Covid-19.

In terms of freedom of association, remote work is often accompanied by closer (digital) surveillance, making confidential (online) meetings between remote workers more difficult (Eurofound 2020a: 56). While worker representatives have to rely on digital infrastructure to connect with remote workers, the same infrastructure is often owned and controlled by management. Trade union organising and employee representation is thus seriously impeded as it is more difficult to organise, come together and share and exchange information informally or to discuss sensitive topics without fear of being digitally monitored.

The right to collective bargaining is undermined when negotiations need to be organised online and the Covid-19 pandemic resulted in interruptions to many existing bargaining structures. According to information received by UNI Global Union, information

and consultation rights were weakened through less debate in online exchanges, a dependence on digital tools and infrastructure, and an undue influence of the person setting the agenda and chairing the online meeting.

Remote work should not be used to diminish or obstruct a worker's right to form or join a trade union and nor should it be used to weaken social dialogue and collective bargaining, or impinge trade union organising, rights and activities. Nevertheless, in some countries, such as Belgium, employers seem to be relying on the EU GDPR (General Data Protection Regulation) not to give trade unions access to company mailing lists/e-mails in order to be able to contact all workers. In Belgium's finance sector, for example, trade unions are trying to include this access issue in their sectoral collective agreements but many employers appear unwilling to concede, often stating that there is no possibility to send e-mails to all workers. Very few banks have managed to reach an agreement on this aspect.<sup>1</sup>

In order to ensure the application of these fundamental collective rights, we consider that at least six conditions must be met. First of all, remote workers need to be guaranteed the same right to form and join a trade union and to participate in its activities. This means that they should have easy access to trade union information, the right to discuss trade union issues with colleagues and that employers should take a neutral approach towards trade union membership.

Quite a large number of collective agreements in Europe explicitly state that remote workers should have easy access to worker representatives and that they should enjoy the same collective rights as those not working remotely. One example is Luxembourg's finance sector remote work collective agreement (20 October 2020, reiterated in the 2021-23 national sectoral collective agreement) which states that remote workers have the same rights as non-remote workers, including the right to contact staff representatives (and vice versa), stand for elections and be included in calculations determining the thresholds for employee representation bodies.

Second, trade unions and employee representatives should be able to contact all workers, including those working remotely. In this respect, employers should provide physical and digital meeting rooms and detailed information on those working remotely (including names, job titles and contact details), as envisaged in the EU telework framework agreement (ETUC et al. 2002).

There are already some interesting examples of collective agreements, such as at Capgemini France (15 September 2021), which stipulate that remote workers should have equal access to trade union representatives as non-remote workers. In Spain, the

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1. In the bank sector collective agreement (2 December 2021), employers have agreed only to the following formulation: 'The trade union delegation may orally or in writing make all communications which are useful to the staff without disturbing the organisation of work; these communications must be of an occupational or trade union nature. Trade unions have the possibility to use modern communications channels for this communication. The electronic channels and access which trade unions can use shall be agreed in consultation and according to the internal communications policy of each company. The application of this Article shall in no way prejudice the provisions on respect for privacy (GDPR) and the provisions applicable within the company on IT security, ethics and the rational use of the means of communication made available.'

agreement at Deutsche Bank (7 February 2021) envisages that the company will provide detailed information to trade unions, including contact details, of employees working remotely. While the rights of trade unions to access employees are not often explicitly stated in collective agreements covering remote work (although a collective agreement on trade union remote assembly rights was signed by the social partners in Italy's banking sector in December 2020), many trade unions have nonetheless also been able to contact newly hired workers in a digital setting to inform them of the union and to organise them. This has certainly been the case in Italy and Spain, where trade union access rights to all workers are guaranteed by legislation (e.g. Italy's 1970 Workers' Statute) and, thus, also automatically apply to remote workers.

Third, trade unions should be given free access to company infrastructure for communicating efficiently, safely, privately and flexibly with the workforce without management oversight or control. This includes access to any digital tools used for worker surveillance, digital and physical meeting rooms, chat spaces, etc.

For example, the Spanish banking sector collective agreement (29 January 2021) envisages that trade unions should be able to contact remote workers in private settings and stipulates that, where it is necessary to have personal and individual contact with a worker, the employer shall allow the union to make use of the company's digital tools (including video/audio conference calls or any other channel commonly used by the workforce) to be able to communicate with them, whether they are in the workplace or working remotely. The use of these digital tools should guarantee confidentiality for the worker accessing trade union support and, therefore, any type of monitoring, recording, storing of messages or similar is expressly prohibited.

Fourth, in the case of elections, anonymous and safe online voting procedures are required for remote workers. These workers should be included in the determination of bargaining thresholds and should have the means to take part in and stand in elections and to vote regarding collective action.

For example, in the telecommuting agreement of AXA Spain (7 May 2021), it is clearly specified that remote workers should be ensured effective participation in the activities of representation, including the electoral process. In Allianz Spain, the collective agreement (23 March 2021) envisages in-person voting by remote workers through a switch in their remote work days. At Telefónica Spain, the collective agreement (22 June 2021) ensures collective and trade union rights for remote workers with the same conditions for eligibility and participation in social elections.

Fifth, during collective bargaining rounds or information and consultation exchanges, management and employee representatives should co-determine and respect procedural rules guaranteeing equality in the conversation/negotiation.

Sixth, existing legislation on collective bargaining and/or information and consultation<sup>2</sup> should also be respected in remote or hybrid settings. This means early access to information, genuine and timely consultation before final decisions are taken, enough space and time for pre- and debriefing meetings, sufficient frequency of meetings, co-determination of the agenda, etc.

### 3. Workers' rights

Remote work merely refers to the performance of part or all of the contracted work tasks at a location outside of the employer's premises. There is no reason, therefore, why workers working remotely should have to do so under worse conditions and with fewer work-related rights than those performing the work at any worksite of the employer. This principle is the basis of much remote work legislation (Sanz de Miguel et al. 2021: 28).

While this principle seems simple, on-the-ground observation has shown that employers could (ab)use remote work to reduce not only existing collective rights and conditions of employment, but also individual ones. While in some cases differences can be understandable (as long as they do not amount to discrimination), it is essential that employers and trade union representatives agree on these first, through collective bargaining.

In this respect, Italy's February 2021 insurance sector joint protocol on remote work could be an interesting example to follow as it foresees the setting up of a trade union/ employer national bilateral observatory to monitor the progress of and developments in the remote work guidelines and their implementation.

#### 3.1 Employment rights

A first area in which differences might lead to discrimination is in employment rights. A study in Eurofound's 2015 European Working Conditions Survey showed that, before Covid-19, remote work was already associated with more precarious, temporary and lower paid jobs (López-Igual and Rodríguez-Modroño 2020). Reports from companies have shown that employers do indeed push for lower employment rights for remote workers, including more flexible contracts, fewer rules on working hours, fewer extra-legal benefits and even lower salaries.<sup>3</sup> This practice goes against the principle of equal pay for equal work under which remote workers should be covered by the same collective agreements and provided with similar, or equivalent, employment conditions.

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2. For a good overview of the different EU legislative texts, see the palette of workers' rights described by Jagodziński (2021).

3. This statement is based on reports to UNI Europa from affiliated unions. Further anecdotal evidence can be found in the popular press including, for example, Google's threat to cut the pay of remote workers in 2021. For the US, an NBER study indicated that remote work may be used to put pressure on wage demands (Barrero et al. 2022).

Accordingly, employers should neither reward nor punish workers for preferring one kind of work arrangement over another.

Many collective agreements provide for the equal treatment of remote workers compared to those who do not work remotely, such as the one from Deutsche Bank Spain (2 July 2021); the protocol on agile work of the Italian social partners (17 December 2021); Altran France (21 January 2021); Telefónica Spain (22 June 2021); the agreement by the social partners in the Luxembourg finance sector (20 October 2020); and the Greece banking sector agreement on remote work (1 April 2022).

### 3.2 Work equipment

It is the duty of the employer to provide workers with the equipment necessary to perform their work duties. Remote work only means that these are performed in a different location, so this does not relieve the employer of this obligation.

However, many reports (Eurofound 2020b: 11; OECD 2022: 12) have shown that, when remote work became obligatory for many during the Covid-19 pandemic, and as the trend continued afterwards, remote workers have been required to obtain work equipment themselves, not always receiving adequate reimbursement or financial compensation, and therefore often working in worse conditions than at the office. According to a Eurofound study (2020b), less than half of remote workers during Covid-19 were provided with the necessary equipment or compensated for its cost.

From a trade union perspective, employers should provide, maintain and replace all equipment necessary for regular remote work including, for instance, appropriate desks, chairs and screens. Employers should also compensate workers performing remote work – with respect to the applicable law – for both the direct and indirect costs necessary to perform their duties including, but not limited to, rent for workspaces, insurance, electricity, internet, mobile phone service, etc. They should also inform workers of any national allowances or tax benefits associated with remote work.

Such provisions were laid down for example in the remote work agreement between the government and social partners in Austria (GPA, March 2021) which also included improved insurance coverage for accidents occurring during remote work.

In collective agreements, the issue of work equipment is generally settled, specifying that it is the employer's responsibility to provide. Differences are observed between companies specifying the exclusive use of equipment for work-related tasks, therefore excluding any private use (e.g. Banco Bilbao, 27 July 2011; Zurich Insurance, 30 July 2020); workspace visit requirements (Zurich Insurance, 30 July 2020; and others); and the possible use of the workers' own devices. In a number of agreements, additional cost compensation is envisaged on top of the provision of physical equipment to cover the miscellaneous costs of remote work. As such, the Spanish banking sector agreement (29 January 2021) provides for an additional allowance, as is also the case at Capgemini



France (15 September 2021), Liberty Insurance (18 February 2021) and Argenta Belgium (1 July 2020).

### 3.3 Skills development and career opportunities

Skills development and career opportunities are essential for worker satisfaction, growth and productivity. Again, that a worker is doing (part of) their work tasks remotely should not infringe on the right to training and career development.

In many European countries, legislation and/or national collective agreements have been put in place to safeguard this equal treatment (e.g. Telefónica Spain, 22 June 2021). However, in other cases the right of remote workers to receive the same information and to have equal access to employer-funded training and reskilling/upskilling opportunities, guidance and career development falls to collective negotiations. The guiding principles here are that employers should not offer training outside of working hours and remote workers should receive equal treatment in performance reviews, and consideration for promotion, akin to that of their counterparts not working remotely. Specific training should also be provided to help supervisors manage teams remotely. Furthermore, employers should, in particular, be taking active measures to promote equal access to digital training, including on new tools, technologies and as regards cyber security. Remote work models will increase the need for these skills and trade unions should be working with employers to develop inclusive training pathways, especially regarding diversity and gender.

It is key for employers to ensure that remote workers remain ‘visible’ within the company and to provide them with opportunities for regular (and both formal and informal) face-to-face meetings for career development and mentorship. This is particularly important for female remote workers who continue to bear the greater load of home and family responsibilities and have less time and opportunity to engage in career enhancing activities outside of their work schedules. The potential increased isolation induced by prolonged remote work can also impinge on the creation and building of workplace networks aimed at breaking the glass ceiling which could have a particular impact on the career development of women and minority groups.

Through collective bargaining, employers and trade unions are seeking solutions to these important issues. Almost 20 per cent of the collected agreements in the UNI Global Union database include references to career development (UNI Global Union 2022). Some insightful examples are the Luxembourg finance sector agreement (20 October 2020), which stresses that remote workers need to have equal access to training and career development opportunities. At La Poste in France (27 July 2018), remote workers are accorded the same access to training and career development opportunities as other postal workers and are ensured to receive appropriate training – both for workers and their supervisors – specifically related to the characteristics of remote working. Furthermore, a special online learning environment has been set up to ensure career development. At INDRA in Spain, the collective agreement on remote work (3 November 2021) ensures that the company will provide remote workers with



the same access to training and career development opportunities, as well as salary evaluation and progression, as those who are not working remotely. The Luxembourg interprofessional agreement on telework (20 October 2020) also guarantees equal treatment for remote workers in terms of wages, working time, career opportunities, etc., while remote workers at Telefónica (22 June 2021) have the same rights to professional development, working hours and wages as office workers.

### 3.4 Surveillance

Information and communications technologies can have a wide-ranging impact on workers. While they can facilitate work processes, the constantly evolving technologies for monitoring and surveillance can also create excessive controls, invade privacy (including as regards data rights – see further below) and undermine positive working relations. The massive uptake of remote work during Covid-19 was often coupled with an increase in the use of algorithmic management and worker surveillance tools (including geolocation) and extremely invasive software taking screenshots and/or photos of each worker every few minutes through their webcam, tracking every keystroke and analysing every email and chat message sent.

In principle, the use of surveillance tools to monitor remote workers, store their data and use these in disciplinary proceedings should be restricted unless firmly regulated through national or local law and/or a trade union collective agreement. Moreover, the use of systems that conduct employee surveillance by analysing facial expressions and emotions should be prohibited. Workers and trade unions should be granted the right to transparency and to participate in the implementation and use of any such surveillance tools.

However, few agreements thus far (only 18 per cent of the UNI Global Union database) give special attention to this issue (UNI Global Union 2022). The French interprofessional agreement on telework (26 November 2020) states that any introduction of digital surveillance can only follow consultation with the works council and information should be shared with employees. At company level, one example is the Capgemini Spain agreement (15 September 2021) which states that the employer can recommend, but not impose, the activation of the remote worker's camera when they participate in video conferences and that the company's digital tools cannot be misused to control the connection of remote workers.

### 3.5 Data protection

The use of artificial intelligence (AI) and other digital technologies is growing exponentially across Europe and is especially prevalent in a remote work setting.

To ensure that remote workers also have data protection and privacy guarantees, all digital data processing should be transparent, GDPR-compliant and subject to collective bargaining. The introduction of new technology, e.g. data-driven AI or algorithmic

management tools, should be subject to a clear information and consultation process. It is, therefore, crucial for all workers and their trade union representatives to be informed and consulted prior to the implementation of such technologies and to be assured that they have the right to access, influence, edit and delete data collected on them via their work processes.<sup>4</sup> All the related details – including on the general organisation of the remote and digital workplace, as well as on security issues related to data loss, hacking, confidentiality breaches, etc. – should be clarified beforehand so that the rights and responsibilities of remote workers are well understood.

In many collective agreements, the issue of data protection often insists only on the individual responsibilities of the remote worker and the possible consequences in cases of violation, such as the duty of care regarding company equipment or the ban on using public and insecure wi-fi networks for work (Eir, 1 December 2020). Some agreements are clear that remote workers need to respect data protection laws, privacy and security provisions (Telefónica, 22 June 2021) and, in others, express limits are put on the transportation of hard copy documents (Eir, 1 December 2020). In some cases, collective agreements also specify what the worker should do in the case of the loss of (potentially confidential) material (Capgemini Spain, 15 September 2021).

On the employer side, there are also some examples of agreements in which employers acknowledge their own obligations and responsibility to protect workers' data privacy (Telefónica, 22 June 2021; Finansforbundet Denmark, 8 June 2021). On some occasions, agreements are more specific about the responsibility of the employer to provide the necessary means to work securely and to ensure that workers are sufficiently informed and trained in data protection measures (CWT Italy, 29 October 2021; Allianz Spain, 23 March 2021; Romanian banking sector, 8 April 2022).

### 3.6 Working time and the right to disconnect

One of the main risks of remote work in terms of workers' rights relates to the issue of working time and the separation between work and private life. Working remotely (and often from home) means there is less of a physical boundary between private spaces and work ones, or even none at all. Mentally, the boundaries between private time and working time are also less clear cut. Added to this, employers' expectations regarding the constant availability of remote workers play an important role in their working outside of normal hours and never fully disconnecting (Eurofound and ILO 2017). It is clear that, even before Covid-19, remote workers worked longer hours than contractually determined (Eurofound and ILO 2017) and struggled more with work/life balance than their counterparts not working remotely (Eurofound 2017: 86). Furthermore, during the pandemic, over one-third of those working remotely reported an increase in working hours (Eurofound 2020b: 11).

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4. There are already examples of collective agreements that provide for the information and consultation of workers and their trade unions when new technologies are introduced, e.g. the agreement for workers in cooperative companies (packaging sector, 2022) in Cuneo/Italy and that at the Royal Mail in the UK (2020).

Consequently, remote work should come with clear rules and collective agreements on working time, working hours and the right to disconnect. Remote workers are, like all their colleagues, entitled to rest periods and limits on the maximum hours of work, respecting the legal and contractual framework which is applicable (including regarding night shifts).

A large number of collective agreements maintain that the working hours of remote workers are the same as their non-remote working counterparts. For instance, the Romanian banking sector collective agreement on remote work (8 April 2022) states that workers performing remote work should be treated in the same way as other workers 'in terms of working hours and the way in which additional work is performed/compensated'. At the same time, however, few agreements set out how this can be guaranteed, given that many also specify conditions regarding the availability of workers. In some cases, remote workers must register their working time through online clocking-in tools (Seguros, 7 May 2021).

Quite a number of agreements also have rules about the availability of workers during remote work. As with working time, many agreements specify that remote workers should be reachable 'in the same way' as other workers (Capgemini, 15 September 2021; Altran, 21 January 2022; La Poste, 28 July 2018).

In addition, however, the flexibility to work remotely should be accompanied by the right to disconnect. This ensures that workers can maintain separation and a balance between their personal and professional lives, with full respect for working time rules. The duty to respect this right should not be the individual responsibility of each worker but it does require a collective approach, with the commitment of senior management, to minimise out-of-hours contact and to protect workers from any negative repercussions when they invoke rights in this area. More specifically, workers should not be rewarded for choosing to remain connected outside of working hours and those who disconnect should not be penalised. For workers with clearly defined working hours, remote work should not be used to extend hours or to reduce rest periods between scheduled working times.

This may require a rethinking of how to measure work, alongside the development of new tools. Many employers do not have the right tools in place and instead rely on office presence either as a proxy for productivity or as an indicator of individual success in the workplace. Presence and productivity are not the same thing and improved output can also be linked to remote workers' ability to manage their time flexibly and in accordance with the rhythms that are optimal for them.

In collective bargaining, two broad approaches can be identified. A soft approach stipulates a general commitment to the right to disconnect but leaves the responsibility with workers. Consequently, they have the right not to answer calls after working hours, but no similar limits are placed on the employer not to contact workers at these times (Eurofound 2021).

The soft commitment to the right to disconnect often comes with awareness-raising activities, training and some monitoring procedures. For example, the Capgemini collective agreement (15 September 2021) obliges management to invite workers to disconnect after working hours and during holidays, envisages mandatory training for workers on the right to disconnect and requires the issue to be discussed during annual job reviews. The Greece banking sector collective agreement (1 April 2022) guarantees the right to disconnect for remote workers, giving them examples of the ways in which they could achieve this (e.g. deactivating sending/receiving emails and activating mute notifications). The Altran collective agreement (21 January 2022) includes an obligation for managers and workers to follow a training course on the right to disconnect. The Vodafone Ireland collective agreement (3 February 2021) requires management to avoid organising meetings outside of core working hours and to schedule meetings in such a way that allows for breaks between each one. It also encourages workers to adapt their email communication to respect core working hours (using the delay send option, not expecting immediate replies, etc.). The right to disconnect policy in the Spanish finance sector company BME (November 2020) emphasises that, while new technologies can bring greater flexibility, work/life balance can only be maintained when the right to disconnect is assured. The policy also includes training and awareness-raising for workers on the protection of and respect for the right to digital disconnection and on the reasonable and appropriate use of new technologies. BME also guarantees that the exercise of the right to digital disconnection should not have a negative impact on job evaluation or entail any kind of penalty for the worker.

In the harder approach, there is not only a right to disconnect but also a duty or obligation to do so. In some cases, servers are shut down and/or emails not delivered during specific time periods (Eurofound 2021). The sectoral collective agreement for Spain's savings banks (October 2020) not only includes the right to disconnect once the working day is over, and no obligation for a worker to take part in meetings outside of their working hours, but also stipulates an obligatory disconnection period between 7pm and 8am the following working day.

In an employment context where working outside of working hours is still often seen as a sign of extra motivation and engagement (Müller 2020: 8), a harder approach might provide better guarantees than a softer one for achieving actual disconnection. However, it could also limit some workers' sought-after flexibility in exceptional circumstances. As such, there are few examples of company agreements that seek to enforce really hard measures as regards the right to disconnect (Eurofound 2021).

### 3.7 Health and safety

Legally, the situation regarding the health and safety of workers is quite clear: it is the duty of the employer to ensure the safety and health of workers in every aspect related to their work.<sup>5</sup> There should be no difference between remote work and other forms of work organisation when it comes to the employer's collective responsibility

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5. Article 5 of the 1989 (89/391/EEC) EU framework directive on occupational health and safety.

for occupational health and safety, including comprehensive insurance and liability, sick leave, quality work environments, ergonomics and violence-free workplaces (ILO C190).

Accordingly, physical health and safety is often covered in collective agreements on remote work, mostly by guaranteeing access to good work equipment and ergonomic material (La Poste, 27 July 2018). Over 60 per cent of the agreements in the UNI database include references to health and safety (UNI Global Union 2022).

Remote work, however, is associated with a number of specific health and safety risks (Buomprisco et al. 2021; Eurofound and ILO 2017; Senatori and Spinelli 2021). Some are related to the physical health of remote workers. The (more) intensive use of ICT tools and augmented screen time can result in visual discomfort and musculoskeletal pain (such as neck/shoulder pain or lower back pain). A lack of effective air circulation can result in unfavourable microclimates and cause sensory irritation in the eyes and airways.

The adequate implementation of health and safety measures for remote workers should, as necessary, be verified by the employer, trade union and worker health and safety representatives and/or the labour inspectorate. Where remote work is performed in the worker's home, access to the workplace should always be subject to prior notification and consent.

Given that the employer has less control over the actual use of equipment and the appropriateness of the remote workplace (La Poste, 27 July 2018), many collective agreements do foresee visits to the remote workspace or the conduct of self-assessments (Cajamer, 16 November 2020; Allianz Spain, 5 November 2020).

All workers have the right to violence-free workplaces. While remote work may reduce face-to-face forms of violence and harassment at work, it may lead to a higher risk of technology-enabled harassment such as work-related cyberbullying. Hence, policies should be put in place, or existing policies extended, to prevent, monitor and minimise these situations and these policies should be made known to all workers.

Collective bargaining can provide preventive and remedying solutions on this point, such as special training for workplace representatives, line managers and workers; flexible working hours for victims to seek protection or legal recourse; trusted contact points; psychosocial and financial support for victims; and disciplinary procedures for perpetrators (UN Women 2020). As such, the Telefónica collective agreement (22 June 2021) has a special dedicated section on the risk of cyberbullying in remote work settings. It includes a non-exhaustive list of cyberbullying practices and explicitly includes this in existing procedures regarding harassment at work. Similar detailed provisions are made in the Romanian banking sector collective agreement (8 April 2022).

One specific risk in this area relates to domestic violence, exposure to which could increase for remote workers (and women in particular) whose home is also their workplace (EIGE 2021: 78; ILO 2021: 20). The protection afforded to victims of

domestic violence by going to their place of employment often remains unrecognised and underestimated: when leaving the house, the risk naturally decreases. Work may therefore be a safe place for the victim in this situation and it is essential that work colleagues, trade union representatives and employers are aware of signs of distress, especially if the victim is working remotely.

As such, France's interprofessional agreement on telework (26 November 2020) calls on employers to provide remote workers with emergency contacts and hotlines for use in dangerous situations, particularly related to domestic violence. Similar stipulations are included in sectoral agreements such as the one in the French insurance sector (9 November 2021). Four per cent of collective agreements in the UNI Global Union database include special provisions and protections regarding domestic and gender-based violence (UNI Global Union 2022).

Other health and safety-based risks presented by remote work relate to the psychosocial health of workers. Reduced social interaction can cause increased loneliness and isolation. To reduce the psychosocial risks related to potential feelings of isolation for remote workers, employers should provide the opportunity for regular direct contact and formal and informal socialising with colleagues.

The Romanian banking sector agreement (8 April 2022) gives guarantees that remote workers should have 'the opportunity to meet and communicate with colleagues/superiors in a way that avoids social and professional exclusion'.

Additionally, working time and private time is becoming porous for remote workers. Private chores are done during breaks, while professional tasks are undertaken during non-working time. This blurring of the boundaries can result in mutual interference and work/life imbalance. In terms of stress at work, ILO and Eurofound note that highly mobile workers have been much more likely to report being stressed than office workers (Eurofound and ILO 2017: 38).

In collective agreements on remote work, references to the psychosocial wellbeing of workers are often limited. One good example is the Capgemini agreement (15 September 2021) which envisages raising awareness about the risks of isolation and hyperconnectivity. Employees can contact line managers, HR, staff representatives, colleagues or occupational health services and there is, in addition, an obligation to follow a training module on the right to disconnect.

### 3.8 The right to remote work being voluntary and reversible

As remote work has some potential advantages and disadvantages, it is evident that there should be considerable worker discretion on how much, if any, remote work they are willing to undertake (bearing in mind also that remote working may not be suitable for all workers and all types of work, while not every sector or company may be suited to remote working). The freedom to work remotely refers to the idea that all workers should have a right to perform remote work, limited only where the employer can make

a justifiable case against it. This also means there should be no obligation for workers to do so but also a parallel freedom and right to work on the employer's premises.

For these reasons, unless permanent remote work is part of the initial job description, there should be a right to perform remote work in a pattern that best suits the worker and any agreement on this should be modifiable and reversible (ETUC et al. 2002).

Many collective agreements provide for remote work to have a voluntary and reversible character, specifying that this reversibility applies to both the worker and the employer. While the clauses are, in general, mostly declarative, some agreements go further, specifying the conditions and procedures in which agreed remote work arrangements might be changed. As such, the BBVA agreement (27 July 2011) puts conditions on reversibility from the perspective of the company, specifying reasons related to work organisation, productive or technological changes, the remote worker's job position and new activities and requirements. In such cases, two months' notice needs to be observed. The worker, on the other hand, has a more general right of reversal. Similarly, Telefonica (3 December 2020) will provide information to worker representatives in cases of the reversal of a remote work arrangement, including the company's reasons for reversal. The Societas Europaea agreement in AGCS (5 November 2020) envisages a notice period of 15 days and a need for the company to justify reversal to the worker, while the Spanish banking sector collective agreement (29 January 2021) includes a notice period of 30 days. Liberty Insurance Spain (18 February 2021), however, stipulates that a remote work arrangement agreed upon by the company cannot be reversed for 18 months except in serious circumstances or *force majeure*. A monitoring committee reviews all requests for reversibility, both from the worker and from the company.

Remote work should not be used by employers as a substitute for the company's workplace nor as an excuse to reduce and/or close workplaces in the attempt to cut costs or undermine working conditions. Prior to the pandemic, some companies were already installing (mandatory) systems of remote work in order to reduce office space and related costs. This practice continued and was probably reinforced after the onset of the pandemic.<sup>6</sup>

In cases of major remote work restructuring, permanent workplace closure and/or the digital offshoring of jobs, the employer should negotiate the terms of the restructuring with the trade union beforehand and measures should be put in place to protect workers. This obligation on the employer, and the right of the worker, is enshrined in a number of EU directives.<sup>7</sup> In our view, if workplaces are closed, workers should first be offered the option to transfer to another workplace location or, if there is no transfer option or the worker chooses instead to work remotely, the employer should maintain

6. One anecdotal example is the decrease in office rentals in Brussels in the aftermath of the pandemic (Lyons 2022).

7. For example, Council Directive on Collective Redundancies (98/59/EC); the Directive on Transfers of Undertakings (2001/23/EC); the Directive on Information and Consultation (2002/14/EC).



the employment relationship and there should be no reduction in pay, leave or other terms and conditions of employment.

### 3.9 Equal opportunities

The option to work remotely must be available without discrimination and be considered as an equally valuable form of work. Gendered stereotypes about remote work requests coming mainly from women should be fought or there is a risk of creating a stigma and a long term negative impact, notably as regards career development, income and pay/pension gaps.

Negotiating remote work collective agreements should also be part of a wider debate on evolving workplace culture, social norms and expectations (see Arabadjieva and Franklin, this volume). While it is important to note that increasing access to remote work can encourage more women to balance work better with unpaid personal responsibilities and thus remain active in the labour market, ‘gender neutral’ remote work is only likely to be possible where it is accompanied by a cultural shift towards an equal sharing of care and household duties, as well as access to good and affordable (public) care services. This is fundamental to ensuring that remote working and other new forms of work do not exacerbate the unequal distribution of unpaid care and domestic work between women and men.

The EU Commission has confirmed (March 2021)<sup>8</sup> that Covid-19 presented ‘a major challenge for gender equality’ and UNI Global Union’s own research has also highlighted how remote work risks further increasing the gender digital divide and further labour market segregation when women are already experiencing inequalities in terms of access to, and training in the use of, information and communications technologies.

The Deutsche Bank Spain collective agreement (2 July 2021) is clear: ‘telework should avoid the perpetuation of gender roles and stereotypes. To this end, it must be diagnosed and dealt with in the Equality Plan.’ The Italian social partner protocol on agile work (17 December 2021) declares that there should not be any discrimination with respect to working conditions, career opportunities and training initiatives. Remote work should promote the effective sharing of parental responsibilities. The Romanian banking sector agreement on remote work (8 April 2022) also has a specific chapter on ensuring gender equality. The Spanish law on telework (23 September 2020) ensures equal treatment regarding wages and working time, and highlights the need for companies to avoid indirect discrimination and provide policies on sexual harassment.

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8. EU Commission, 5 March 2021 ([https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_1011](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1011)).

## **4. Conclusion: forward through collective bargaining**

From the above overview of issues and collective bargaining practices, two points become evident. First of all, it appears that remote work is quite a complex and context-bound activity. Even extensive and elaborate collective agreements are unlikely to address all possible events, scenarios and realities. For this reason, collective agreements on remote work should focus not only on setting down rules and regulations but also on establishing continuous and genuine social dialogue on the issue. Only by guaranteeing that remote workers have access to proper representation, and that this representation lies in dialogue with the employer, can remote work issues be addressed efficiently and effectively.

Second, while our overview of some of the collective agreements shows that they cover many issues and often establish good practice, the chapter also identifies some weaker areas. Particularly in the areas of data protection, digital surveillance and equal opportunities, there seem to be few examples of agreements discussing the issues in detail. This conclusion is, nevertheless, indicative at this stage given the limited access to collective agreements and the rapid increase in collective bargaining on remote work following Covid-19.

At the same time, this chapter highlights that remote work poses a number of important challenges to the effective right of workers to organise and bargain collectively. It is therefore key that policymakers at all levels take measures to guarantee and promote the use of these rights by making sure that trade unions have access to remote workers, that staff meetings can be efficiently organised and that existing rules on information, consultation and bargaining are respected by employers.

While remote work has a number of undeniable potential advantages for workers (and companies), the realisation of this potential depends on quite a large number of factors. Through collective bargaining at interprofessional, sectoral and company level, trade unions and employers can agree to conditions on remote working that cater to the needs and wishes of all parties involved. As such, collective agreements are the best way of ensuring the equal treatment of remote workers and their colleagues, trade union rights and freedoms, adequate work equipment, working hours, the right to disconnect, etc. As the challenges created by remote work continue to appear and evolve, intensive social dialogue, information, consultation and negotiation at company, sectoral and country level are essential. To shape the remote work reality in an equitable way, a fair and equal dialogue and bargaining environment should be created and maintained.

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All links were checked on 28.02.2023.